THE STATE OF democracy in AFRICA

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Preface

People have been writing about democracy in Africa for years, and it is not hard to understand why. The continent's political path has been anything but straightforward. It's a story marked by struggle, hope, deep frustration, and moments of real transformation. No two countries share the same experience, and even within countries, the meaning of democracy can shift from one community to the next. That complexity is part of what makes Africa's democratic journey so compelling, and so important to keep revisiting. That is probably why so many researchers and thinkers have been drawn to it over the years — because it is a journey still unfolding, and deeply human at its core.

However, beyond the theories and headlines, we felt there was room for a book that brings together voices from the continent, people who live these democratic realities every day. Africa is not a single story, and neither is its democracy. From thriving civic movements to painful democratic backsliding, the continent offers a full spectrum of experiences. It felt important to honour that diversity.

In the decades after colonialism, African countries were faced with the challenge of building democratic systems in a world that was moving fast, sometimes faster than institutions or political cultures could keep up. When the third wave of democratisation swept across the globe, Africa was part of it, but often with fewer tools, weaker institutions, and less historical grounding in these systems. Words like 'elections', 'good governance' and human rights' became familiar, but not always deeply rooted. In many places, democracy became something to perform — the 'right thing to do' — rather than something lived or deeply understood.

Still, what is often overlooked is the deep and growing desire for democracy among everyday Africans. According to Afrobarometer (2024), 66% of Africans support democracy, and that support becomes even more powerful when authoritarianism creeps in. We see this in how citizens push back: in protests against rigged elections, in resistance to constitutional manipulation, or in the courage to speak up when their rights and dignity are under threat.

We do not claim that this book explains everything about democracy in Africa. It does not. However, what it does offer are the perspectives of people who know their countries, and their struggles, from the inside. Each chapter was written by someone deeply familiar with the context they write about. Many wrote about their own countries, which makes this not just a book of analysis, but also one of reflection, frustration, hope, and above all, lived experience.

Our hope is that this book adds something meaningful to the ongoing conversation about democracy in Africa. We are not just looking ahead to better policies or stronger institutions — though those are vital. We are also hoping for something more grounded: peaceful transfers

of power that feel normal, leaders who listen, and a culture of democracy where rights are not just written in constitutions, but felt in people's everyday lives.

Introduction: From democratic expansion to democratic backsliding

Davina Murden

Since its introduction in ancient Greece, democracy has evolved into a cornerstone of modern political praxis across the globe. As of June 2025, whether classified as full, flawed, or hybrid, over 180 countries are officially recognised as democracies (Brilliant Maps 2024). Sen attributes this global pattern to the determination of people who have historically fought for political participation and a meaningful voice in their respective countries (Sen 2003). However, it is no secret that the practice of democracy is currently facing what can be described as 'its most serious crisis' due to free and fair elections, rights of minorities, freedom of press, rule of law, the transparent management of core state institutions that are increasingly under attack around the world (Abramowitz 2018). A catchword that has gained prominence in recent global political discourse is 'democratic backsliding', defined as the 'erosion' in democratic values or institutions in a political system (Carothers & Press 2022). 'Democratic backsliding' can occur in any country, regardless of regime type (Little & Meng 2024, 150). Scholars argue that there are generally three categories of 'democratic backsliding' in existing literature. These are shifts from (a) liberal democracy to electoral democracy; (b) democracy to autocracy; and (c) institutionalised autocracy to personalist autocracy (Little & Meng 2024, 151). It makes 'elections less competitive without entirely undermining the electoral mechanism', it restricts participation without abolishing universal franchise, and may loosen accountability constraints on officials (Waldner & Lust 2018, 95). A concerning fact is that, as of January 2025, 70% of the world's population lived in countries that were either non-democratic or democratically backsliding (DuBard 2025). In fact, experts reveal cracks in democratic foundations of countries such as the USA which used to be viewed as a model of democracy (Goldsmith 2025). Nevertheless, supporters of democracy remain hopeful about the possibility of reinforcing 'democratic architecture' and preserving both the normative foundation and public demand for democracy (Shein & others 2023, 6). Building on this perspective, the next section explores the nature of these 'democratic architecture' and normative foundation.

Understanding democracy through its normative foundation

In broad terms, democracy is defined as a political system in which power is not concentrated in the hands of a few, and mechanisms ensuring popular representation and accountability are actively applied (Diamond 1990, 49). Or, to borrow the words of Huntington, democracy is a system in which 'its most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes' (Huntington 1991,

7). Its normative foundation rests on the principles of the right to vote, freedom of speech, freedom of press, citizen involvement and rule of law. Along these lines, over the years, different organisations have set their parameters to measure democracy in different countries.

The most common scoring process is based on measuring the electoral process, political pluralism and participation, functioning of the government, civil liberties, associational and organisational rights, rule of law.[1] Based on these, it is later determined whether the surveyed countries are full, flawed or hybrid democracies. In a full democracy, basic freedoms and liberties are respected (Wike and others 2021). In a flawed democracy, the levels of political participation are low despite free elections and respect for civil liberties prevail (Wike and others 2021). The third type, and one that became a topical concept in political analysis is the hybrid regime, also known as anocractic regimes.

Hybrid democracies are said to be in the 'gray zone', occupying a polymorphic space somewhere between closed authoritarian regimes and liberal democracies (Hameed 2022, 3). Some scholars such as Bøås and others argue that hybrid regimes exist 'in a sort of limbo of unsettledness' in which the regimes are both democratic and authoritarian at the same time (Bøås and others 2024, 9). As stated by Sumarokova, the following core set of institutional attributes are present in hybrid regimes: periodic multiparty elections for the selection of the executive branch; an elected legislature which is poorly represented by the opposition; few limits to the arbitrary power of the chief executive; and frequent violations of citizens' political and civil rights (Sumarokova 2025). Hybrid regimes are said to be mostly common on the African continent, making the continent representing the largest share of hybrid regimes in the world (International IDEA 2019, 62). Other regions where hybrid regimes are common include some countries in Eurasia, Asia and Latin America (Levitsky & Way 2002, 51). In fact, it is worth noting that hybrid regimes started to proliferate in the political landscape of these specific regions during the third wave of democratisation (Hameed 2022, 4; Menocal and others 2007, 29). In the same line of thought, Diamond remarked that although hybrid regimes were already present in the 1960s and 1970s, their steady increase became more evident during the third wave of democratisation (Diamond 2002, 23-24). Therefore, it may be put forward that these regions, mostly characterised by low levels of economic development, adopted hybrid democratic regimes during the third wave of democratisation. This raises the question of whether a functioning democracy can endure in contexts of economic weakness.

[1] These are used by renowned entities such as Freedom House, the Economist Group, Afrobarometer, among others.

The modernisation approach to democracy emphasises that democracy is more likely to emerge in countries with high levels of socio-economic development (Menocal & others 2008, 30). Likewise, Asamba notes that democracy is a 'luxury' that only affluent nations can afford (Asamba 2022). Further, Lipset argues that in economically stable countries, it is easier to instil the values of democracy to the public due to their high levels of education (Lipset 1959, 79). This view aligns with that of Cutright who notes that as nations become more urbanised, their education levels and mass media become more advanced, there is an increase for more democratic support in political institutions (Cutright 1965, 569-582). In other words, this demonstrates that higher levels of socio-economic development may lead to the transitioning from political system to another, or from one type of democracy to another, as in the case of South Korea.

As highlighted by Cho, South Korea is regarded as one of the most successful cases of third wave democratisation (Cho 2024, 4). Yet, its democratic process was not a linear one. Under the rule of former authoritarian leaders such as Park Chung Hee and Chun Doo-hwan, South Korea became known as the 'Miracle on the Han River' and attained significant economic growth. However, Cho argues that this same economic miracle led to the downfall of authoritarianism and to democracy through the growth of civil society (Cho 2024, 26). Nevertheless, while in South Korea, higher levels of socio-economic development led to a more liberal democracy, in other Confucian states such as in Malaysia, a significant economic growth did not translate into a full-fledged democracy until 2018 when, for the first time, the opposition achieved victory.

Despite its economic evolution that elevated the country from low to upper middle-income status, Malaysia was oscillating between authoritarianism and democracy (World Bank Group 2025). It was in fact qualified as an electoral authoritarian system[2] in which the coalition known as the National Front (NF) had been ruling the country since independence in 1957 (Lemière 2021). Under the regime ruled by the NF, there was a lack of open, free and fair elections; an oppressed opposition; marginalisation of some minority groups; lack of media freedom, among others (Yagi 2019). Some of the main factors that contributed to the downfall of the ruling party were social media, a united opposition, and internal ruptures within the ruling regime (Nadzri 2018, 158). The point here is that even after achieved high levels of socio-economic development, this did not immediately lead to a more democratised Malaysia. In other cases, dethroning a long-standing political party or leader from power may require more than social media, a strong opposition, and internal ruptures in ruling regimes. For

[2] An electoral authoritarian regime is one in which there are regular multiparty elections at the national level, but violation of liberal-democratic values in systematic and profound ways (Schedler 2015).

instance, the faltering democracy project in Africa has led some regions to experience coup d'états as a form of protest against corrupt leaders who cling to power.

Democracy in Africa has been marked by a multiplicity of events, ranging from the end of colonisation and the attainment of independence to civil wars and military coups. This raises the question of what went wrong during the democratisation process on the continent. As documented in the literature, the democratisation process occurred in three distinct waves. During the 1990s, when the third wave swept through Africa, it significantly reshaped the political landscape and inaugurated democracy on the continent (Diamond 1999). It shook the dominance of long-standing military, autocratic and one-party rule (Kambala 2025,1). Yet, scholars such as Joseph argue that democratisation was not even supposed to happen in Africa (Joseph 1997, 363). This is because, at the time democracy was introduced on the continent, many African countries were too poor, too culturally fragmented, and lacked the requisite civic culture to sustain democratic principles.

As a result, democracy was introduced on a weak foundation, entering an infertile terrain for which the continent was largely unprepared. Consequently, many African states continue to grapple with weak institutions that fail to serve as effective watchdogs for the protection of the fundamental values of democracy. In this line of thought, Djilo and Handy opine that the reason behind the 'teething problems' facing democracy and the state-building process stem from the fact that many African states are still relatively young (Djilo and Handy 2024). Despite this, some African countries such as South Africa, Cape Verde and Seychelles fare relatively well politically and are considered successful democracies.

Conclusion

Democracy remains a dynamic yet fragile political system whose global proliferation reflects both historical struggles for participation and ongoing challenges to its integrity. While full democracies continue to safeguard civil liberties and political freedoms, the rise of hybrid regimes and the phenomenon of democratic backsliding highlight persistent vulnerabilities, particularly in regions with weaker institutions or lower socio-economic development. Cases such as South Korea and Malaysia demonstrate that economic growth alone does not guarantee democratic consolidation, while Africa's experience underscores the difficulties of establishing democracy on nascent state structures. Ultimately, the survival of democracy depends not only on institutional frameworks and socio-economic conditions but also on sustained civic engagement, resilient norms, and the capacity of societies to defend the principles of accountability, representation, and rule of law.

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Rule of Law and Accountability in Angola: Addressing Corruption and Reform

Lydia T. Chibwe

1. Introduction

The history of Angola since its independence has been influenced by a complex interaction of colonial legacies, Cold War rivalry and the longstanding authority of the governing party (Vines and Weimer 2011). Portugal, having colonised Angola, inadequately prepared the region for self-governance, resulting in persistent political and ethnic differences that caused a bloody civil war soon following its independence in 1975 (Birmingham 2015). The Popular Movement for the Liberation of Angola (MPLA), the National Front for the Liberation of Angola (FNLA), and the National Union for the Total Independence of Angola (UNITA) engaged in war, each competing for political dominance. The war, which was intensified by Cold War geopolitics, saw the MPLA receiving military assistance from Cuba and the Soviet Union, whilst apartheid South Africa and China supported UNITA and subsequently, the United States (Dulley and Sampaio 2020). The United States formally recognised the Angolan government in 1993, after a 27-year conflict that resulted in nearly 500,000 deaths and severely damaged the nation's economy and infrastructure (Hodges 2001).

The MPLA has ruled Angola since its independence, initially under President Agostinho Neto and subsequently under Jose Eduardo dos Santos, who presided over the country from 1979 to 2017. Under Dos Santos, the MPLA solidified its power, maintaining a one-party regime into the 1990s. The party's urban-focused governance exacerbated political and economic disparities, especially in rural areas where UNITA had traditionally gained support (Vines and Weimer 2011). The end of the Cold War compelled the MPLA to shift towards a multi-party system while it maintained dominance over Angola's political and economic structures. Although Dos Santos secured 82% of the vote in the 2008 elections, his government became progressively linked with extensive corruption, especially in the oil industry, economic mismanagement and political repression (Soares de Oliveira 2015). His government promoted personal and family safety, suppressing opposition and strengthening governmental authority over important institutions. Upon Joao Lourenço's rise to power in 2017, succeeding Dos Santos, expectations for change heightened. Lourenço, a former defence minister and MPLA official, initially suggested a break from Dos Santos' regime by focusing on the former president's family and inner circle in a highly publicised anti-corruption campaign (Benomar 2024). However, despite efforts to reduce the Dos Santos

family's influence, Angola's transformation has been gradual rather than revolutionary. The MPLA remains firmly entrenched within state institutions and the economy continues to struggle due to corruption, excessive reliance on oil and limited political plurality (Benomar 2024). The country's democratic progress is fragile, with accountability mechanisms largely controlled by the ruling class.

This chapter aims to critically evaluate the rule of law and accountability in Angola, concentrating on the degree to which Joao Lourenco's anti-corruption effort has really promoted democratic governance or just functioned as a mechanism for political consolidation.

This chapter is guided by the following principal research questions:

- How has the rule of law in Angola evolved under Lourenco's administration?
- To what extent have efforts to combat corruption enhanced accountability inside governmental institutions?
- What systemic challenges persist in compromising judicial independence and transparency?

This chapter argues that while Lourenco's reforms have diminished elite networks tied to the former government, they have not significantly enhanced the rule of law. The ongoing selective accountability, inadequate judicial independence and MPLA's dominance over political institutions suggest that Angola remains in a state of managed transition rather than true democratic consolidation. This study will critically assess Angola's legal and political frameworks to demonstrate that genuine accountability necessitates institutional reforms that transcend political rivalry and address structural weaknesses in governance.

2. Historical and Political Context of Governance in Angola

2.1. Dos Santos' Rule from 1979 to 2017

The government of Angola was significantly influenced by President Jose Eduardo dos Santos, who was in power for almost forty years, from 1979 to 2017 (Harvey 2022). His government was characterised by state capture, elite corruption and economic mismanagement, all of which strengthened the MPLA's supremacy and institutionalised a patronage system. Dos Santos governed a Marxist-oriented one-party state until the 1990s, when the worldwide fall of communism and internal pressures compelled Angola to adopt a multi-party political system (Harvey 2022). Nonetheless, despite democratic improvements, authority remained concentrated inside the MPLA and Dos Santos' inner circle (Soares de Oliveira 2015, 67).

Angola's oil wealth served as both a source of revenue and a weapon for political manipulation. The identification and use of extensive oil reserves enabled the MPLA to fund its conflict against UNITA during the civil war (1975–2002) and subsequently to strengthen state authority. Nevertheless, oil earnings were ineffectively administered, with substantial amounts misappropriated by government personnel and redirected to offshore accounts (Messiant 2001). Sonangol, the national oil corporation, emerged as a pivotal tool of state control, guaranteeing that the MPLA elite retained access to substantial economic resources while the general populace of Angola reaped few advantages (Hodges 2001, 94). Dos Santos also appointed his son Jose Filomeno ("Zenu") as head of the sovereign wealth fund (Vines 2018).

There was widespread corruption during the period, with government officials profiting from lack of transparency financially, lucrative contracts and nepotism. In 2016, Isabel dos Santos, the president's daughter, was controversially selected to lead Sonangol, a decision seen as an attempt to maintain familial dominance over Angola's economic resources (Hodge 2001, 94). By the late 2000s, popular discontent about corruption and economic mismanagement escalated, resulting in heightened criticism of Dos Santos' governance. The 2014 oil price collapse revealed the vulnerability of Angola's economy, intensifying calls for responsibility and change (Messiant 2001, 592).

2.2. Joao Lourenco's Rule 2017 to Present

Joao Lourenco became the president in August 2017 and people perceived his rise to power as a period of transition rather than transformation (Vines 2018). Lourenco, a veteran of the MPLA, was anticipated to uphold Dos Santos' policies; nonetheless, he promptly initiated measures to dissociate himself from his predecessor's administration (Vines 2018). He initiated a highly publicised anti-corruption drive, pledging to remove the entrenched patronage networks that had pervaded Angolan politics for decades (Croese 2022, 355). Numerous prominent individuals from the Dos Santos government, including his children and close friends, encountered legal action, resulting in Isabel dos Santos losing control of Sonangol.

Nonetheless, corruption remains a main challenge in government and electoral processes. Some critics claim that Lourenco's anti-corruption initiative has been discriminatory, focussing on the Dos Santos family and their associates while exempting other MPLA elites (Soares de Oliveira 2015, 144). The continuing state control over institutions, media censorship and economic disparity indicates that Angola's governance framework is profoundly shaped by the MPLA's prolonged supremacy. Despite Lourenco's notable arrests and economic reforms, the crucial

framework of political authority remains, raising concerns about the authenticity of Angola's democratic transformation.

3. Corruption and Its Impact on the Rule of Law

3.1. Corruption Cases and Selective Accountability

Corruption continues to be a major concern in Angola, damaging governmental institutions and strengthening elite power structures. For instance, Isabel dos Santos, the daughter of former President Jose Eduardo dos Santos, who was recognised as Africa's wealthiest woman, saw her business empire crumble following the 2020 disclosure of more than 700,000 papers that implicated her in money laundering, unlawful state contracts and offshore operations (Cascais 2024). The disclosures indicated her dominance over 400 businesses across 41 countries, with multiple companies registered in tax havens such as Malta, Cyprus and Mauritius, allowing the laundering of Angolan state monies to international accounts (Cascais 2021).

Isabel dos Santos denies any misconduct, arguing that it is a political attack. At the same time, the Angolan government, led by President Joao Lourenco, has started legal actions against her and other associates of the Dos Santos elite (Cascais 2024). Critics contend that anti-corruption initiatives have been markedly selective, focussing on individuals from the last government while excluding prominent MPLA affiliates (Soares de Oliveira 2015, 147). This has raised controversy on whether the campaign is a serious effort against corruption or merely a political tactic to consolidate power.

3.2. Judicial Independence in Question

The management of corruption cases raises concerns regarding judicial independence in Angola (Oxford Analytica 2023). The Supreme Court and Constitutional Court have been essential in deciding high-profile issues. Nonetheless, their decisions frequently appear to be consistent with government goals (Oxford Analytica 2023). Although Isabel dos Santos encountered judicial proceedings, other influential individuals within the MPLA remain untouched, strengthening the view that the judiciary functions as a political tool rather than a neutral legal body.

The government's control over nominations for judges and case settlements worsens the trust in Angola's legal institutions. The lack of transparency in judicial processes and the persecution of partisan dissent suggest that the judiciary functions not as an independent check on authority but as a tool for suppressing opposition (Messiant 2008, 594). These challenges prevent Angola's achievement of genuine democratic government and institutional accountability.

3.3. Effects on the Economy and Public Trust

Corruption has severely affected Angola's economy, hindering international investment, economic diversification and social development initiatives. A country heavily reliant on oil exports has seen pervasive corruption inside state-owned companies, for instance, Sonangol, the national oil corporation (Soares de Oliveira 2015, 102). Substantial oil revenues, which might have financed infrastructure and public services, have instead been misappropriated or diverted to offshore accounts, as shown in scandals that include the former president's daughter, Isabel dos Santos (Hodges 2001). The misappropriation of public resources has weakened investor trust, causing several international businesses to be reluctant to enter the Angolan market owing to ambiguous business practices and insufficient regulatory enforcement (Soares de Oliveira 2015, 103). Consequently, Angola's attempts to diversify its economy beyond oil into agriculture and industry have stagnated, resulting in persistent high unemployment and economic disparity (Hodges 2001, 99).

The mismanagement of public resources has adversely affected social services, especially in healthcare, education and housing. Although Angola is among Africa's greatest oil producers, it experiences elevated poverty rates and restricted access to essential services, a predicament exacerbated by the misappropriation of funds due to corruption (Messiant 2008, 593). This has led to widespread public discontent, as many Angolans express displeasure over the absence of significant changes in their everyday lives despite the nation's considerable natural resources (Hodges 2001). The public's assessment of Joao Lourenco's anti-corruption initiative has been mixed. Although his measures, including the prosecution of Isabel dos Santos, were initially perceived as commendable, many today regard the changes as politically driven rather than a sincere attempt to rectify the system (Soares de Oliveira 2015). Critics contend that the campaign has been discriminatory, focussing on individuals from the former regime while exempting present MPLA elites, undermining public trust and intensifying scepticism over the government's dedication to change (Soares de Oliveira 2015, 144).

4. The Role of Civil Society and Media in Promoting Accountability

4.1. Press Freedom and Censorship

A free and independent press is a cornerstone of any functioning democracy (Danso 2025). It enables transparency, ensures accountability and empowers citizens to make informed decisions about governance. Without press freedom, corruption thrives unchecked and human rights abuses go unchallenged. Numerous international bodies, including the United Nations and the African Commission on Human and Peoples' Rights, affirm that press freedom is essential to democracy and good governance (United Nations Human Rights Council 2016; African

Commission on Human and Peoples' Rights 2019). According to Reporters Without Borders, countries with robust protections for journalists tend to have higher levels of political participation and institutional trust (Reporters Without Borders 2023). Thus, undermining the media's ability to operate freely poses a serious threat to democratic resilience.

Angola has significant restrictions on press freedom, as the government uses media legislation and control to reduce criticism and reporting on corruption. The 2023 Angola Human Rights Report indicates that the state-controlled media predominantly supports the MPLA, with significant channels such as Angolan Public Television (TPA), Radio Nacional and Jornal de Angola closely affiliated with the ruling party (United States Department of State 2023, 11). Despite the existence of private media channels, several have been taken by the state on the pretext of corruption enquiries, therefore diminishing plurality in reporting. Moreover, journalists often encounter harassment, detention and censorship while covering corruption or human rights abuses. In March 2023, the online portal Camunda News terminated its activities due to threats from the Criminal Investigation Service (SIC) for purportedly functioning without appropriate registration (United States Department of State 2023, 12).

The government's intolerance of opposition using criminal libel legislation is also apparent. In August 2023, a social media influencer was sentenced to six months in jail for criticising the president on TikTok, a penalty the public prosecutor aimed to increase to two years (United States Department of State 2023, 12). Such instances demonstrate the use of libel and defamation laws to suppress criticism and investigative journalism.

4.2. Civil Society Activism

Civil society organisations (CSOs) are crucial in uncovering corruption and promoting accountability, however, they encounter significant governmental repression (Maslen 2024). Organisations such as Maka Angola, established by investigative journalist Rafael Marques de Morais, persist in exposing corruption while facing threats and harassment (International Press Institute 2018). Transparency International, an organisation that oversees worldwide corruption, has condemned the selective approach of Angola's anti-corruption initiatives, highlighting the absence of accountability for present MPLA officials (Transparency International 2023).

Although the constitutional guarantees peaceful assembly, protests are often suppressed. In January 2023, the police violently dispersed a demonstration against fuel price rises and restrictions on street trading, resulting in 17 injuries and many arrests of organisers (United States Department of State 2023, 16). Moreover, activists organising a rally in favour of political

prisoners were arrested before starting the actual protest (United States Department of State 2023, 16).

The government's proposed legislation on NGOs[1], launched in May 2023, has drawn significant condemnation from civil society. Activists claim that the bill would place unnecessary restrictions on NGO operations and financing, restricting their capacity for independent functioning and facilitating state actions to dissolve organisations that critique the government (United States Department of State 2023, 17).

5. Comparative Analysis: Angola and Other African Countries

Three countries South Africa, Ghana and Kenya were selected for comparative analysis because of their notable institutional reforms aimed at strengthening judicial independence and combating corruption (Akinyi 2011; Pillay 2022; AfriMAP 2007). These countries presents contextually relevant examples within the African continent where mechanisms such as independent commissions of inquiry and judicial oversight bodies have been implemented with varying degrees of success. These models provide valuable insights for Angola, which faces similar governance challenges, particularly concerning political interference, accountability deficits and public mistrust in institutions.

5.1. South Africa: Lessons from the Zondo Commission on State Capture

The Judicial Commission of Inquiry represents South Africa's proactive approach to combating corruption into Allegations of State Capture, referred to as the Zondo Commission (Pillay 2022, 2). Formed in 2018, the panel was assigned to examine significant corruption and fraud in the public sector, especially during Jacob Zuma's leadership. The Zondo Commission undertook extensive investigations for nearly four years, resulting in a thorough report published in 2022 (Pillay 2022, 2). The investigation delivered comprehensive insights into the mechanics of state capture and included practical recommendations to avoid repeat incidents. The commission's efforts highlighted the importance of an independent judiciary and transparent investigative procedures in combating high-level corruption. Angola could gain important lessons from that

[1] The proposed NGO law, presented by the Angolan Ministry of Justice and Human Rights in May 2023, mandates that non-governmental organisations register through a state-approved portal, submit comprehensive financial statements and secure prior approval for international collaborations or funding. Civil society groups, including Omunga and Mosaiko, expressed concern that this law could restrict civic space by introducing greater bureaucratic oversight of NGOs, especially those focused on governance, human rights and anti-corruption. Opponents claim that the law grants the executive excessive discretionary authority to suspend or dissolve organisations considered to violate "public order," a term that remains undefined in the draft (Human Rights Watch 2023; Maka Angola 2023).

approach, highlighting the necessity for independent investigative entities and public accountability to address systemic corruption.

5.2. Ghana and Kenya: Efforts to Strengthen Judicial Independence and Transparency

Ghana and Kenya have taken steps to strengthen judicial independence and enhance transparency. The Judicial Service of Ghana has established the Judicial Complaints Unit, allowing individuals to report misconduct and thereby improving accountability within the system (AfriMAP 2007, 4). Similarly, Kenya created the Judicial Service Commission (JSC), an autonomous body responsible for overseeing judge nominations and disciplinary matters (Akinyi 2011, 2). These initiatives aim to protect the judiciary from foreign influences and internal corruption. Angola could benefit from implementing similar frameworks that promote transparency, merit-based appointments, and mechanisms for public complaints, thereby reinforcing the rule of law and public trust in judicial proceedings.

Although Angola has implemented anti-corruption initiatives, a comparative analysis with South Africa, Ghana and Kenya indicates that the efficacy of these measures predominantly relies on the creation of autonomous institutions, transparent procedures, and protections against political meddling.

6. Challenges to Strengthening the Rule of Law in Angola

6.1. Institutional Weakness and Political Interference

The political landscape of Angola has been predominantly influenced by the MPLA since the nation attained independence in 1975. This extended single-party influence has substantially compromised the independence of both the judiciary and the parliament. The MPLA's extensive control over political institutions has resulted in the systematic suppression of political opposition and an absence of authentic checks and balances within the government (Freedom House 2024). This concentration of power undermines the judiciary's autonomy, as judge nominations and rulings frequently rely on political factors, thus diminishing public confidence in legal institutions.

6.2. Dependence on Oil Revenue

Angola's economy is primarily dependent on oil, with the petroleum industry constituting almost 80% of government revenue. This reliance has fostered an atmosphere favourable to elite corruption. The state's oversight of oil resources, chiefly by the national oil corporation Sonangol, has enabled the misappropriation of revenues and the consolidation of patronage networks. From 2007 to 2010, almost $32 billion in oil money was reported as missing from government accounts,

underscoring the extent of inefficiency and corruption within the industry (Human Rights Watch 2011). The misallocation of resources hinders economic diversification and diminishes the government's ability to invest in vital public services, hence prolonging socioeconomic inequities.

6.3. Lack of Political Will for Structural Change

Although public commitments for transformation, Angola's government has exhibited a constrained political will to implement significant structural reforms (Soares de Oliveira 2015). Anti-corruption initiatives have frequently been selective, focusing on opposition politicians while protecting allies, hence questioning their authenticity and efficacy (Soares de Oliveira 2015, 104). The entrenched patronage system favours those in authority, generating a disincentive to seek genuine reforms that might undermine established networks of influence and wealth accumulation. This hesitation to implement significant institutional change hinders the establishment of a strong rule of law and sustains a cycle of governance challenges.

7. Recommendations for Strengthening Accountability in Angola

7.1. Judicial Reforms

To improve judicial independence in Angola, it is important to protect the courts from political interference. This might be accomplished by reforming the judicial nomination procedures to guarantee meritocratic selections free of presidential influence. Creating a transparent and independent judicial council tasked with supervising the court can enhance its impartiality. The changes would correspond with initiatives to modernise Angola's criminal justice system, as demonstrated by the implementation of a new Criminal Code and Criminal Procedure Code in 2020 (Globalex 2020).

7.2. Strengthening Anti-Corruption Institutions

Improving the effectiveness of anti-corruption agencies necessitates the establishment of stringent transparency and oversight frameworks. It is essential to provide these organisations with sufficient finances and operational independence to avert excessive political influence. Despite having a thorough legislative anti-corruption framework, Angola has had difficulties in effective implementation (GAN Integrity 2015). Empowering government officials such as the Court of Accounts and the Financial Information Unit with investigative and prosecution powers might enhance their ability to tackle corruption effectively.

7.3. Protecting Press Freedom

A free and independent press is vital for holding power to account. Strengthening media independence laws and ceasing the harassment of journalists are essential steps toward this goal. In 2016, concerns were raised regarding media laws that threatened free speech in Angola (Human Rights Watch 2016). Revising such legislation to decriminalize defamation and protect journalistic activities can foster a more open and transparent society.

7.4. Promoting Civic Engagement

Boosting citizen participation and bolstering watchdog organisations are essential for enhancing accountability. Enabling forums for civil society to participate in discussion and supervision can result in more accountable governance. The formation of the Commission for Law and Justice Reform in 2020 sought to engage many stakeholders in the reform of Angola's legal and judicial institutions (Kapapelo 2020). Enhancing such activities through broad involvement may enhance the rule of law and democratic government.

8. Conclusion

Angola's anti-corruption measures are characterised by selectivity, and judicial independence continues to be undermined. Obtaining meaningful rule of law necessitates unbiased justice, freedom of the press and institutional changes. Enhancing anti-corruption frameworks and guaranteeing political accountability are essential. International pressure and internal reform measures must collaborate to promote Angola's democratic advancement and governance integrity.

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The Decline of Democracy in the Republic of Benin: A Perspective on the Restriction of Freedom of Expression

Oluwatosin Senami Adegun

1. Introduction

Democracy is 'a system where ordinary citizens have a meaningful, even if indirect, role in the affairs of the state, including the formulation of policies and laws and their implementation (Ibrahim 1999, 319). The people and their participation are central to democratic governance of which the respect for fundamental rights including the freedom of expression are major indicators to determine the practice or otherwise of democracy in a state (Civics Academy 2015).

The Republic of Benin (formerly known as Dahomey) is a former French colony located in West Africa (Britannica n.d) which gained its independence on 1 August 1960 (African Commission n.d). Benin's independence was short lived by the military coup of 1963, and the military administration ended in 1968 when the military installed a purported civilian government after the military annulled the election conducted the same year (South African History Online n.d). The military subsequently took over political power in October 1972 which ushered Major Mathieu Kerekou to political power as head of the military regime, and whose military administration ended in 1990 (Muchelemba 2024).

It is important to note that there were aborted coups between 1963 and 1990 (Sylvester and Agonnoude 2020, 164). Benin returned to democracy in 1990 with the adoption of the Constitution of the Republic of Benin of 1990 (Constitution) and multiparty system (Muchelemba 2024). Thus, by its political history, Benin's democracy has faced challenges including collapse of democratic institutions, military interventions and consequent violations of human rights (Sylvester and Agonnoude 2020, 164).

Benin has witnessed a stable democracy since 1990. However, based on the Freedom House report using the indices of political rights and civil liberties on the scales of 40 and 60 respectively, the quality of Benin's democracy is less to be desired as the country has been rated 'partly free' for five consecutive years from 2021 to 2024 with a recent overall score of 61 out of 100 (Freedom House 2024). The 'partly free' suggests a decline in the guarantee of the right to freedom of expression, particularly free and independent media which has an average score of 2 out of 4 (Freedom House 2024). The state of democracy in Benin is worrisome because Benin was rated 'free' in 1999 (UNHCR n.d).

The decline in Benin's democracy has been largely attributed to the regime of Patrice Talon who has been the president of Benin since 2016 and has been accused of using various undemocratic measures to consolidate power in 2021 (Campbell 2021). There have been cases of attacks on the opposition, arbitrary arrests, and internet shutdowns during elections (Amnesty International 2019), enactment of legislations such as the Digital Code of 2018 which has provisions that restrict freedom of expression (Amnesty International 2019).

The undemocratic actions of the regime of Patrice Talon resulted in the applications filed against Benin at the African Court on Human and Peoples' Rights (African Court) for human rights violations including absence of independent judiciary (Ajavon v Republic of Benin 2019), freedom of expression (Noudehouenou v Republic of Benin 2020), peaceful assembly, political participation and public participation in constitutional amendment (XYZ v Republic of Benin 2020). Benin's setbacks as regards its democracy worsened when in its reaction to the decisions of the African Court, the country on 25 March 2020, withdrew its declaration which grants direct access to the African Court for individuals and civil society organisations as provided in Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (African Court Protocol) (XYZ v Republic of Benin 2020, para 2). Benin's withdrawal of Article 34(6) African Court Protocol further restricts the citizens' access to remedy for human rights violations of which access to remedy. Benin has ignored calls to reverse its decision on the withdrawal which has implications of denying its citizens access to remedy for human rights violations (Africtivistes 2020).

In addition, Freedom House reported that President Patrice Talon on assuming political power in 2016 used the justice system as an instrument of attack on political opponents, there were attacks on electoral rules, police brutality and restrictions on civil liberties (Freedom House 2024).

From the foregoing, it is apparent that Benin is experiencing a decline in its democracy from different fronts including violations of several human rights. However, this chapter focuses on the state of freedom of expression which is germane to a functional democracy. Consequently, this chapter is divided into five parts: part 1 is the introduction, part 2 highlights the legislative framework on freedom of expression that applies to Benin, part 3 discusses the cases where the right to freedom of expression is threatened or violated in Benin, part 4 provides possible recommendation to address violations of the right to freedom of expression, and part 5 is the conclusion.

2. Legislative framework on the right to freedom of expression

Freedom of expression is a bedrock of democracy as it guarantees the right of persons as well as group of persons to receive information, express their views or opinions and to impact information (Kikon and Yadav 2025, 423). The right to freedom of expression is guaranteed both offline and online (UNHRC Resolution 32/13) and as such, the right to freedom of expression also extends to the receipt and sharing of information online. Consequently, the right to freedom of expression is guaranteed for persons and group of persons in Benin in its Constitution and other regional and international human rights instruments to which Benin is a party specifically, Article 23 of the Constitution, Article 9(1) of the African Charter on Human and Peoples' Rights (African Charter), and Article 19(10 and (2) of the International Covenant on Civil and Political Rights.

Other soft law that guides the right to freedom of expression includes the United Nations Human Rights Committee General Comment 34 on Article 19 of the ICCPR and the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression and Access to Information in Africa of 2019.

It is pertinent to state that though the right to freedom of expression is not absolute (ICCPR articles 19(3) and 20), for there to be a valid restriction of the right to freedom of expression, such restriction must comply with certain parameters which are that it must be provided by law, pursue a legitimate purpose like respect for the rights of others, be necessary and proportionate (SALC n.d).

In upholding the right to freedom of expression against Benin, the African Court in *Houngue Eric Noudehouenou v Republic of Benin* declared that Article 410(1)(3) of the Beninese Penal Code which restricts the means judicial decisions can be criticised to specialised journals is a violation of the right to freedom of expression guaranteed under Article 9(2) of the Africa Charter. According to the African Court, Article 410(1)(3) of Benin's Penal Code failed the test of legitimate aim, necessity and proportionality.

It is however concerning that despite these legal instruments on the right to freedom of expression, there are still incidents of restrictions of the right which negatively affect democracy in Benin as highlighted in some of the examples below.

Cases of violation of the right to freedom of expression in Benin

Freedom of expression has been threatened and violated in Benin through enactment of legislations, Freedom of expression has been threatened and violated in Benin through enactment

of legislations, abuse of power as evidenced in arbitrary arrest of journalists, closure of media houses and undue regulation of the press by the High Authority for Audiovisual and Communication (HAAC) which regulates Benin's communications sector (PPLAAF 2024, 11-13).

In year 2021, HACC ordered the closure of many online media outlets (Media Foundation for West Africa 2020), and on 8 August 2023, HAAC indefinitely suspended the operations of *La Gazette du Golfe,* a privately owned media outlet for covering the coup and political situation in Niger as a form of solidarity to the Niger government which democracy was truncated by a military coup (The Committee to Protect Journalists 2023).

There are also repressive provisions in the Digital Code of 2018 and the Criminal Code (Civicus 2023). For example, Article 550 of the Digital Code on 'harassment through electronic communication' is overly broad with up to two years imprisonment and/or fine of ten million West African francs as punishment upon conviction. Anyone who 'initiates an electronic communication that coerces, intimidates, harasses or causes distress' or 'initiates or relays information against a person through social networks' is liable to be punished (HRWF 2022, 13).

Thus, Article 550 of the Digital Code was used in 2021 as the basis to arrest, detain and charge Dagan, Adahou and Adihounda for posts shared on their social media accounts (HRWF 2022, 13). Other examples of arbitrary arrest and detention include the arrest of Virgile Ahouanse, a journalist in 2022 for reporting a police officer's alleged extrajudicial killing of which the Court for the Repression of Offences and Terrorism (CRIET) imposed judicial restrictions, and the case of Damilola Ayeni, a Nigerian journalist who was arrested at Pendjari National Park in August 2023 when sourcing for information on an environmental issue. Damilola was accused of being a religious extremist and was detained for several days (though later released) without a charge (United States Department of State 2022, 9).

Another measure the government of Benin has used to restrict freedom of expression is internet shutdowns during elections as it was done during the parliamentary elections in 2019. At the verge of the parliamentary elections, the government of Benin shut down the internet despite opposition parties did not participate in the election (Amnesty International 2019). The shutdown of the internet during elections restricted the sharing of information by journalists and restricted the ability of citizens to share opinions via the internet on the elections (Salem Solomon 2019). This is despite the decision of the Community Court of Justice of ECOWAS which declared internet shutdown a violation of the right to freedom of expression (Amnesty International Togo v Togolese Republic 2020).

3. Recommendations

The violations of the right to freedom of expression as identified above constitute setbacks for Benin's democracy. It is therefore important that citizens, civil society organisations (CSOs), regional and international human rights bodies should closely monitor the state of freedom of expression in Benin and seek redress through the protective and promotional mandates of international, regional and sub-regional human rights bodies like the African Commission and the ECOWAS Court.

Despite that Benin has withdrawn its declaration made pursuant to Article 34(6) of the African Court Protocol consequent upon which individuals and CSO a do not have direct access to the African Court, individuals and CSO can make use of the ECOWAS Court which does not restrict access to institute human rights claim and does not require exhaustion of local remedies before a claim can be submitted.

The African Commission is also an important mechanism, and aside from its protective mandate which is activated when a communication is filed, individuals and civil society organisations can also activate its promotional mandate by ensuring that shadow reports are submitted to be considered during state party report process, and that country visit is initiated among others.

Submission of shadow report on freedom of expression to the United Nations Human Rights Committee being the monitoring body for the ICCPR can also be explored, and shadow reports on the state of freedom of expression and democracy generally can be submitted for consideration during the Universal Periodic Review which is a mechanism of the United Nations Human Rights Council.

Advocacy on the right to freedom of expression in Benin should be intensified with collaborations among individuals, civil society organisations both inside and outside Benin, international non-governmental organisations and other stakeholders.

4. Conclusion

For a viable democracy, the right to freedom of expression must be protected, and as such any act or omission that threatens or violates the rights should be challenged. Therefore, among other indicators of democracy, every stakeholder must ensure that the freedom of expression is not diminished, and the present violations must be addressed no matter the degree of resistance by the government of Benin.

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The State of Democracy in Cameroon: A failed trajectory?

Ruddy Morfaw

1. Introduction

Democracy has become the world's favourite but oft-abused child of the last century. And when examined, especially in the context of post-independent Africa, it is often difficult to confidently assume it did exist. Nevertheless, even in the failures of African governments to live up to this cherished colonially acquired taste, one still always chooses to proceed from the premise that our states are democratic, before considering the obstacles to its full realisation. In the wake of global fears around the precarious state of democracy today, Cameroon is one of such countries with an interesting trajectory.

At the dawn of its modern statehood, like many other African countries, Cameroon embraced the promise of a new republic, where nationalists inevitably believed in and pledged lasting democratic change. However, more than half a century later, the new model of leadership is hardly adapting.

Prior to independence, Cameroon was divided into French-speaking 'Cameroun' under French rule, and English-speaking 'Cameroon' under British rule. The former gained independence in 1960, and the latter in 1961 through a historical merge which reunited a people long divided under the League of Nations following seizure of the territory from Germany after World War I. In over this 65-year merge, the country has been ruled by only two presidents – the former (President Ahmadou Ahidjo) for 22 years and the latter (President Paul Biya) for 43 years and counting. Though with varying levels of developmental progress, both presidents have had an almost equitable description of their leadership style – centralised and autocratic/dictatorial (Harkness 2020; Bertelsmann Stiftung 2024, 4, 15, 25). For Ahidjo and Biya, loyalty to the president and wielding a firm political hand has been a core characteristic of their leadership (Jürg 1998,5; Kiwuwa 2022).

In the light of key democratic principles involving the sharing of power, inclusion and accountability, this chapter therefore provides an overview of the state of Cameroon's democracy and how it is impacted by the current global and continental trend in democratic decline.

2. Assessment of Democracy

2.1. Accountability through separation of powers and respect for the Rule of Law

The foundation of Cameroon's democracy is particularly traced to its flawed 1972 post-colonial Constitution which, in its current form, has merely been amended a few times over (1996 & 2008). Though it is the source of all power, rights and freedoms, the Constitution of the Republic of Cameroon (the Constitution) has unfortunately been described as 'less liberal', unprogressive, and reinforcing principles that have failed to guarantee true democratic governance (Fombad 2013, 7). The country's governance image therefore reflects this underlying signature of control, concealment and a desire to blare the boundaries of power.

Cameroon's executive branch has always had a strong influence on all arms of government, reinforced by every new constitutional amendment. The President is the head of the armed forces (art 8(2) of the Constitution), the legislature and the judiciary (art 25 & 37(3)), whose officials he may appoint and dismiss, including the prime minister who serves as the head of government (art 10(1)). The President also enjoys total immunity while in office, and by President Biya's 2008 Constitutional amendment, the President may only be indicted by the Court of Impeachment (constituted under the Supreme Court) and following a decision by the National Assembly and Senate (art 53), both of whose leaders he himself appoints. In any case, the fact of his immunity hardly makes such indictment feasible.

The judiciary remains answerable to the executive. Although the Constitution guarantees the independence of the judiciary (art 37(2)), it also declares the President as the guarantor of this independence (art 37(3)). Therefore, the exercise of judicial power is possible only through him, creating an extensive level of control and ease of manipulation. Membership into the judicial corps as well as the Bar, has been left too precarious, disorganised and unreliable, further encumbered by the practice of both French Civil Law and English Common Law whose application tend to be unclear. Career growth (including appointments, remuneration, promotion, transfers, and dismissal) is strongly tied to the whims of and allegiance to the executive (Enonchong 2012, 313-37), and this practice has affected the ability of the judiciary to build a robust system of accountability even in administrative matters.

Becoming a judge or prosecutor involves going through the National School of Administration and Magistracy in Yaoundé, whose entrance has for the longest time been marred by political fraud and mafias. With no law school available, the government decides when Bar exams are held, and over the last fifteen years this has featured an over seven-year interval, with the government's usual excuse being a lack of funds. Unfortunately, such an attitude has not only demonstrated irresponsible planning and financial mismanagement, but more importantly a deliberate desire for chaos and disregard towards establishing a robust legal system capable of ensuring socio-

political accountability. Access to justice is fundamentally slow and unreliable, litigation processes are often costly and corrupt, with several months and sometimes years in waiting trials, while brutality from the security forces including the police and gendarmes, remains endemic.

The state of the rule of law in Cameroon, including government transparency and inclusion, absence of corruption and enjoyment of rights, has in years been unpleasantly poor. According to World Justice Project's 2024 Rule of Law Index, Cameroon ranked 32nd out of 34 regionally, and 133 out of 142 globally, with a consistent score drop in the last 15 years (World Justice Project 2024). Furthermore, according to Freedom House's 2025 assessment of freedom in Cameroon, the country is considered 'not free', with a score of just 15% (Freedom House 2025). The country scores only a 6 out of 40 in the enjoyment of political rights, and a 9 out of 60 in civil liberties (Freedom House 2025).

2.2. Inclusion through political pluralism, elections, public participation and freedom of expression

Inclusive decision-making in democracies is particularly embedded in electoral processes and the presence of socio-political structures that guarantee the right to freely hold and share one's opinions.

Cameroon, with a diversity of over 250 ethnic groups has had a rich history of mono-partyism and multipartyism mixed along tribal and non-tribal lines. From 1961 when both Cameroons united to form a federal state, President Ahidjo had embraced multipartyism with an interest towards fostering national recognition of the identity and diversity of each side in a bid to promote 'unity' and 'stability' (Takougang 1993, 268–302). However, this changed in 1966 when he merged all political parties into the dominating Cameroon National Union – CNU (changed to the Cameroon Peoples' Democratic Movement – CPDM party by President Biya). This move began the spate of interest in 'unity in diversity' – a slogan which has become a watchword under every policy of President Biya's leadership, and which many have criticised as an easy escape from complaints of marginalisation and bad governance (*Cameroon News Agency* 2019).

Multi-partyism only resurfaced around 1991 following widespread pro-democracy protest and violent government crackdown in retaliation (Hopkins-Hayakawa 2011). The ensuing years witnessed presidential election boycotts by political parties in 1992, 1997 and 2008 where Biya consistently won, and his victory strongly criticised by opposition parties and international observers (US Department of State 1998). Biya's removal of the presidential term limit in 2008 (art 5(3) of the Constitution) equally sparked riots, violence and arrests across the country, to

which he subsequently went on to win the 2011 and 2018 elections with an overwhelming majority. Now at the age of 92, he intends to run for another seven-year term. Tensions have already heightened in anticipation for the October 2025 presidential elections. Yet, as of March 2025, a comprehensive electoral list has yet to be published, despite the law requiring its publication no later than 30 December of the year prior to elections (Electoral Code, sect. 80). Two leading opposition parties have already been banned based on 'illegal' and 'clandestine movements' (Human Rights Watch 2024), political activists have already faced government arrests and detention (Amnesty International 2024), while media houses are having their activities banned for injuring the reputation of the president and his ministers (Committee to Protect Journalists 2024).

Biya has remained the chairperson of his party (CPDM) since its creation in 1985, and by its constitution the 'natural candidate for presidential elections' (*The Guardian Post* 2024). The party has consistently held majority seats in Parliament and Senate, which he has used to create and consolidate a web of power and control. Parliamentary and municipal council elections were scheduled for February 2025, but Biya succeeded in postponing them by another 12 months, which amidst criticism from the opposition, his CPDM party justified as a need to decongest the 2025 electoral calendar (Huaxia 2024). Although the Constitution allows for postponement in 'case of serious crisis or where circumstances so warrant' (art. 15(4)), this move is particularly pertinent not just because it was similarly done prior to the strongly contested 2018 presidential elections and justified on 'financial and organizational' grounds (Handy and Fonteh 2020), but also because of the legal requirement for parties presenting presidential candidates to be represented either at municipal or parliamentary level (Electoral Code sect. 121; Fokwen 2024). A move to postpone therefore potentially creates an uneven playing field for parties that do not yet have such representation, and who were counting on the opportunity to fulfil this legal requirement. For example, in this year's elections, this is the case for the Cameroon Renaissance Movement (CRM), which has increasingly gained public support since the last presidential elections (Moki Edwin 2024). Such postponement therefore has an effect of unduly eliminating competition which is fervently needed in this year's Presidential elections.

The CPDM Party currently has no official succession plan, with growing rumours of President Biya's son, Frank Biya, being positioned for a takeover. Meanwhile, although the CRM Party leader, Maurice Kamto, seems to be gaining support in constituting and leading an opposition coalition for a better competitive chance, the entire opposition faction remains largely fragmented.

The process of contesting electoral decisions in Cameroon presents other insurmountable hindrances. Election results are proclaimed by the Constitutional Council sitting only in Yaoundé, three of whose members (including its president) are directly appointed by the head of state without the need for prior consultation (art 51(2) of the Constitution). This same appointed president of the Constitutional Council is required to appoint one of the Council's members as Chairperson of the National Commission for the Final Counting of Votes (Electoral Code sect. 68). This only reveals a spiral of executive control evident from the top personnel involved in the management of election results in the country. Further, the Electoral Code, under sections 133 and 168(2), requires election petitions to be made within just seventy-two hours following closure of the polls, and the Constitutional Council is given only fifteen days within which to proclaim presidential election results following such closure (sect 137). This also leaves very little room for any contestation, and insufficient time to prepare for rigorous and contestable litigations before the justice system. The Constitutional Council, whose decisions cannot be appealed, has indeed been noted to arbitrarily dismiss election petitions, as was seen in the last two presidential elections. In 2011, fifteen out of twenty petitions on election irregularities were rejected for 'lack of sufficient proof' (All Africa 2011), and in 2018, all eighteen petitions calling for a re-election due to fraud were rejected and described by the government as mere 'distractions' (Moki Edwin 2018).

Political opponents and dissidents continue to face firm government persecution. Individuals, rights groups and media houses are often prohibited from public discussions about the president's viability for power, as was recently the case in 2024 where the government banned, under penalty of prosecution, all public discussions about the president's whereabout and his viability for another mandate, considering the state of the country and his failing health (Nwenfor Boris 2024). Whistle-blowers calling out corruption and other government malpractice have remained key targets to arbitrary government attacks including torture, enforced disappearances and death.[1]

In this fervent effort to consolidate power, it is unfortunate that socio-economic development has remained deplorable and is currently worsened by the country's ongoing Anglophone Conflict.[2]

[1] See for example the famous stories of Lapiro de Mbanga, Martinez Nzogo, Longue-Longue.

[2] The Anglophone Conflict/Crisis is an armed conflict which began sometime in October 2016 by separatist fighters in the Anglophone Regions (Northwest and Southwest), inspired by disgruntlement with Cameroon's political leadership and varying claims of marginalisation by the francophone majority. For further discussion of this problem, see for example: International Crisis Group, 2017, *Cameroon's Anglophone Crisis at the Crossroads*. Africa Report N°250, August 2, 2017. https://www.crisisgroup.org/africa/central-africa/cameroon/250-cameroons-anglophone-crisis-crossroads

Various groups have continually felt marginalised in decision-making and in the sharing of state resources and this constituted a key instigator to the Conflict in 2016, which despite eventually making a few 'cosmetic' concessions after prolonged calls for dialogue,[3] the government has failed to deliver any lasting solution. Reflecting on the dynamics of this conflict, it is particularly ironical to consider that this same government on 28 February 2022 issued a press statement calling for dialogue in the resolution of the Russia/Ukraine war, as it considered this to be 'the only way out for a return to normalcy' and an effort to uphold peace and security.

Cameroon since independence has indeed registered fluctuating periods of economic growth and development. Unfortunately, this was undermined by heightened corruption and misuse of state resources following the discovery of offshore minerals around 1977 (Bertelsmann Stiftung 2024, 4). By 2000, the country had become part of the list of Heavily Indebted Poor Countries of the International Monetary Fund, following the failure of Biya's New Deal structural reform program which ushered in heavy loans from the World Bank (Bertelsmann Stiftung 2024, 5). BTI's 2024 report notes that despite making some noteworthy improvement since the 1990s, Cameroon's socio-economic development has significantly 'stalled' with a very low Human Development Index value of just about 0.576 and a rank of 151 on 189 (16, 17).

3. The Continental Wave of Democratic Decline on Cameroon's Democracy

Situating the above analysis in context, today's global geo-politics fears the rise of another wave of communist sympathies in Africa, with cries about democratic decline. Concerns include the move to authoritarianism through elections, the rise of military coups and military leaders showing little commitment to democratic rule, erosion of democratic values, and limited socio-political inclusion.

Considering the state of Cameroon's democracy, it is almost impossible to establish the country's exemption from this trajectory. The dynamics of its political leadership have increasingly revealed an authoritarian objective and a preference for the consolidation of power in a few hands. Cameroon's electoral history hardly convinces the presence of a 'democratically elected' president. And even if the credibility of the electoral process were slightly to be ignored, the country's socio-economic state only further highlights the incapability of its 'democratically elected' leaders.

[3] Such as the granting of a Special Status to the two English-speaking regions, the creation of a Common Law Section of the Judiciary and assignment of Magistrates according to language mastery, etc. See for example: Accord. 2017. "The Anglophone Dilemma in Cameroon." July 21, 2017. https://www.accord.org.za/conflict-trends/anglophone-dilemma-cameroon/

Cameroon has never experienced a coup d'état forcing its elected president out, unlike many West African countries in recent years, with military leaders taking over and seemingly hesitant to relinquish power democratically. However, evidence reveals that it is not just the military leaders who are reticent on adopting or returning to democratic rule, but even those who came to power through elections. Habiba and Mthuli (2012) note that in the early years of Africa's democracies, the rise of coups was highly attributed to ideological rifts over preference for socialism, capitalism and other economic systems, but increasingly towards the 2000s coup d'états became mainly spurred by factors such as bad governance, economic failures and the government's inability to guarantee fundamental freedoms and rights. Indeed, today, many note that the failure of Africa's 'democratically elected' leaders has contributed to the rise of coups on the continent (Menssah 2023; Peace and Security Council 2014, 1; Duzor and Williamson 2023).

It is also interesting to think that most of these leaders ousted by coups in recent years have set off their mandates with fierce international criticism for conducting unfree and unfair elections with arbitrarily extended mandates, just a few years prior to the coups that unconstitutionally removed them from power. If one who comes to equity is expected to come with clean hands, can a second unconstitutional change of power truly dilute the effect of the former? Addressing the problem must therefore consider issues of unconstitutional amendments which arbitrarily curtail the people's rights and modify presidential term limits. Such capricious practices are often doorways to sustaining unproductive 'democratically elected dictators' who continuously build tight networks of influence and control within the system and use this to stay in power.

4. Conclusion

Indeed, there is no expectation for a perfect democracy for Cameroon, nor can democracy itself ever be perfect. However, the preliminary prospect is to have a significant level of progress more than 65 years into independence – a long enough phase to test democracy and adopt a model that works for the people.

The year 2025 promises to be a decisive year for Cameroon, in view of the upcoming presidential elections. Every other election year has provided similar anticipation, but with little eventually attained. However, even in the event where presidential power were to change hands, the hope inevitably is that the broken system built in its wake may leave with it.

By International IDEA's 2024 global state of democracy ranking, Cameroon falls around 129 out of 173 countries. Whether Cameroon aims for a true democratic identity or not, the ultimate call

is for the people to finally get to enjoy a desirable level of inclusiveness and development which come with accountable leadership. Because for too long, this has hardly been the case.

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Rule of Law and Accountability in the Central African Republic

Polit Gok Waar

1. Introduction to governance and politics in Central African Republic

Central African Republic (CAR), a diamond and gold-rich country of 5.7 million people, has struggled to find stability after it gained independence from France in 1960. Its foundations were marred with violence and numerous coups (Fombad 2014, 412-448). The latest political unrest was in 2013 when the then President Francois Bozize was overthrown by a rebel alliance. Following the military coup takeover, militias fought back and the country fell into a spiral revenge attacks and bloody violence, with armed groups controlling large swaths of the country (Morawako 2022, 67-77). In 2018, the current president, Faustine-Archange Touadera, turned to mercenaries from the Russian Wagner Group to counter and quell the violence, and push fighters out of major towns and cities (Dukhan 2020, 1-14). Since then, ties between CAR and Russia have grown stronger, with Moscow securing contracts to exploit the country's vast mineral resources with little to show for by the government in terms of development, rule of law, and accountability. Tenets of democratic values have hardly been part of the equation as gross violations of human rights, lack of accountability. Further, ethnicisation of CAR's governance and politics have been exploited for an easy access to political power and to public resources for ill intentions (Bagayoko 2010, 21). In 2023, CAR underwent a constitutional referendum and article 35 of the 2016 constitution which mandate the president to serve for five years and renewable once scrapped the two-term presidential limits and that would enable president Touadera to contest for a third term in the presidential elections in August 2025 (Valade 2023).

Down memory lane, another good example that critically portrays a culture of decay for the rule of law and accountability and worthy visiting is that of General Kolingba and his regime (1981-1993) which came to power through a coup d'état and went on a spree of enriching his family and his political cronies (Bagayoko 2010,10-15). CAR today continues to experience regional divides between those in the north and south, and this division was very much aggravated by the then President Jean Ange-Felix Patasse who set the 'people of the savanna to people of the river' (Bagayoko 2018, 17-20). The national army during his regime was largely in a state of utopia and fragmentation of civilians into militia groups became a common hobby among the youth. In 1996 and 1997 alone, three mutinies broke out to protest against the non-payment of salaries and the degradation of living conditions in the country. In response, fifty people lost their lives and France

pulled out its military presence in the country (Bagayoko 2018, 25). This introduction briefly outlines the historical background of CAR since independence, and the following sub-headings will further conceptualise rule of law, accountability and constitutionalism in CAR.

2. Conceptualising the rule of law and accountability in CAR

The rule of law has been defined by the United Nations (UN) as a 'principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards' (UN 2025). The doctrine of the rule of law which was popularised by British scholar AV Dicey, viewed the rule of law as one of the crucial elements of constitutionalism and the two are 'conjoined twins' and one cannot exist without the other (Fombad 2008, 187). In his widely acclaimed 'Law of the Constitution', Dicey was in consensus that the pretext of the rule of law is in itself ambiguous, and different writers have their own refinements on what it entails (Fombad 2008).

Dicey argued that the rule of law is a prerequisite for accountability and he conceptualised it in three different pretexts (Fombad 2008, 181-195). The first is the principle of legality, which illustrates that nobody should arbitrarily be deprived of their rights and freedoms through the arbitrary exercise of wide discretionary powers by the executive. Second to that is the principle of equality, which connotes that, nobody is superior to the law, and everyone is subjected to the jurisdiction of the ordinary courts so established. Lastly, the general principle that the rights of individual(s) are effectively protected by the action and decisions of ordinary courts other than by guarantees provided in the constitution.

Contemporarily, the above principles have resulted in a focus on justice, corrections, and police as the primary vehicles for the rule of law engagement and accountability in CAR (Caus 2021, 105-110). However, other areas may also contribute to the core goals of the rule of law such as efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence especially in war context in CAR. As highlighted in the introductory part of this chapter, CAR has regularly experienced absence of the rule of law and lack of accountability and often, violent power transitions became the norm (Koko 2021, 954-984). In the aftermath of the 2004-2007 civil war, a unity government was established, headed by Francoise Bozize who had ruled for five years earlier. Years later, rebel groups formed across the country tapping into longstanding grievances among the Muslim communities as the rift and dissatisfaction against Francoise Bozize continued to swell (Koko 2021, 962-966).

In 2012, most of the rebel groups began to openly fight against the government which led to the signing of the Libreville Agreement in August 2012. In early 2013, the rebel groups formed the popular Seleka (coalition in the Sango language) rebel movement, which rapidly occupied major towns, and in March 2013, they took over the capital Bangui and formed a new government headed by Francis Michel Djotodia who formally disbanded the Seleka movement (Glawion 2022). The grievances in CAR have also been ignited by the limited 'statehood' and the absence of proper government institutions and the pandemic corruption levels have derailed any efforts that would ensure rule of law and accountability become a reality (Glawion 2022, 29).

Weak governance structures and lack of public services remain unattainable in most urban settings and villages especially in the south-east and the northern territories of the country. This has also been ignited by the negative politics and exploitation of natural resources of the Central Africans. The absence of institutions that support the rule of law and accountability has led to the scramble for scarce basic services and opportunities, and this often fuels inter-communal violence – forming a vicious cycle which has led to indignation and armed conflicts. In reverse, this has led to destruction of the hardly available governance mechanisms and infrastructures (Glawion 2022, 30-31).

Armed groups control vast territories in CAR especially in rural areas where state authority is completely non-existing, and that provided a window for the groups to execute their will in the occupied local communities leading to abuse of civilians in some instances with zero accountability (Glawion 2022, 35-40).

The 2013-2014 political violence further led to the collapse of public order, the rule of law and accountability. Institutions that promote rule of law and accountability namely, prisons, court buildings and independent commissions were destroyed, consequently making essential services non-available beyond the capital, Bangui. Perpetrators of serious crimes were never held accountable for years and delays eroded the public trust in the justice system. The 2019 Political Agreement for Peace and Reconciliation in the Central African Republic (APPR-CAR) signed between the government and fourteen armed groups which prioritised the issue of impunity despite the poor incorporation of armed groups representatives with serious human rights violations into the government was viewed by some as 'risky' and would translate into 'more impunity as a price for peace' (Caus 2021, 105).

CAR has in recent years become a harbour of mercenaries and militant activities notably the Russia's Wagner Group and other home-based outlaws whose activities have for years contributed to an already fragile and a hailing nation. This led to the deterioration of the rule of law and accountability in CAR. On a broader basis, the concept of the rule of law and accountability reinforce people centred policies, norms, institutions and processes should constitute the core values which every individual in any modern society or state needs to live peacefully (Charson and Lechner 2025).

As illustrated above, the rule of law and accountability are very complex in CAR for the simple reason that the political instability has not provided a stable ground for such important principles of governance and constitutionalism to be realised.

3. In-depth analysis of constitutionalism, rule of law and accountability in CAR

In 2014, the UN Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA) was formed. MINUSCA was deployed in CAR following a total collapse of public order. The 2013-2014 political violence created a governance vacuum which resulted from frequent and open armed confrontations which further deteriorated already weakened governance structures and institutions, leaving little stability except in a few areas. The government would not successfully hold to account those responsible for the systematic human rights violations and damages to personal properties. To salvage the country from total collapse, the UN stepped in and helped the government to rebuild the criminal justice mechanisms to enhance access to justice, provision of technical support to the government ministries, renewal of the legal framework and policy, capacity-building for the judges and other important actors in the justice sector (Majangwa 2016).

The assistance was followed by the restoration of the physical infrastructure by other external partners and MINUSCA. Between 2020 and 2024, the CAR government undertook a more consultative engagement with international and local partners to develop and adopt the first national justice sector policy which outlined strategic direction for the rule of law and accountability in the country (Cause 2021, 103).

The policy also urged for the independence of the arms of government and adherence to the principles of separation of powers as well as checks and balances, to ensure CAR's transition to the rule of law and accountability. In 2015, there was great progress in the justice sector, as two

of the three courts of appeal in Bouar and Bangui were re-established once again. These courts are vital for a progressive realisation of the rule of law and accountability since they tried some capital offenses which attract ten or more years imprisonment for the convicts. The Special Criminal Court (SCC), which became operational in 2018, was established to investigate and prosecute violations of international humanitarian law and the international human rights law. It was a hybrid tribunal and formally integrated into the country's judiciary and operated in complementarity with the International Criminal Court (ICC) and national courts (Labuda 2017). Under the SCC, crucial units that would ensure rule of law and accountability – namely the special lawyers unit, special prosecutor and a special police unit – were established.

SCC also faces serious under-funding with an initial aspirational annual budget of USD 13 millions (Caus 2021, 111). Out of this, it received approximately USD 8 million per annum since its establishment. The funds largely come from MINUSCA's budget and the remainder comes from the European Union. The budget deficit has had serious consequences on the functioning of the court to ensure access to justice, rule of law and accountability.

CAR also initiated transitional justice processes to support priorities on national reconciliation, and this included the establishment of the justice and truth commission – known as the *Commission vérité, justice, réparation et réconciliation* (CVJRR). The 2019 peace agreement was a crucial step towards peace in the Central African state although the process received several criticisms on the inclusion of armed group leaders into the government. This led to the perception of 'de facto impunity' and corroded the nation's trust in the credibility of the fight against impunity and the popular demand for the rule of law and accountability (Amanda and Knoope 2021, 1-10).

Although the three constitutionalism principles outlined by Dicey have received numerous criticisms, they remain solid when it comes to ensuring the overall reign of the rule of law and accountability. The core elements of constitutionalism are necessary for the rule of law and accountability to exist. These elements are:

- separation of powers
- the recognition and protection of fundamental rights and freedoms
- an independent judiciary
- the control of the constitutionality of laws
- the control of the constitutional amendments
- institutions that support democracy

They are discussed below and contextualised within the current reality in CAR.

3.1. Separation of powers

As Lord Acton observed in the past century, 'all power tends to corrupt, and absolute power corrupts absolutely' (Fombad 2008, 187). The abuse of the often-exorbitant powers that many African leaders arrogated to themselves in the early 1960s and even now have been one of the major causes of the continent's woes and CAR was not spared. Separation of powers in CAR has followed the dogmatic constitutional division of public power among the executive, the judiciary and the legislature (Fombad 2008).

In Ndele, the rebels exploited the state weakness, and this enabled them to establish a parallel government for seven years, from 2013 to 2020 (Glawion 2022). Such a failure by the government to have full control of the country undermines the primary purpose of the rule of law and accountability which advocates for exercise of public power solely among the three arms of the government and the established institutions (Nwabueze 1973, 17).

3.2. The recognition and protection of fundamental rights and freedoms

The protection of fundamental rights and freedoms is by no doubt a standard of the rule of law and accountability. The referendum process, undertaken by Touadera and his party, the United Hearts Movement, was characterised by abuse and infringement of both civil and political rights and the independence of the judiciary was as well tested (Africa Intelligence 2025).

The then Constitutional Court president, Daniele Darlan who pronounced the referendum process as 'unconstitutional' was forced into retirement by the Public Service Ministry on the ground that 'she had reached the retirement age' which was blatantly 'an iron fist in a velvet glove' by the political class. The initiative by the said ministry was swiftly followed by a presidential decree, which called for the removal of justice Danielle from office and the newly appointed court president declared the process as constitutional. During the referendum, members of the opposition, civil society and journalists were threatened, blackmailed and labelled as 'collaborators with the rebel movements' (Mudge2024).

3.3. The independence of the judiciary

The independence of the judiciary is usually evaluated using two key steps, that of personal independence and functional independence. The former is sometimes referred to as relational

independence of the judiciary and is also determined by factors such as the nature of judicial appointments and the terms and condition of services (Fombad 2008, 188-189). The CAR judiciary is far from achieving the bare minimum of what would be qualified as 'independence'. It largely depends on the generosity of international development partners who have their own challenges such as the 'stop work order' by President Trump for the United States Agency for International Development (USAID) funded projects globally. The lack of fiduciary and personal independence hinders the judiciary from effectively carrying out its mandates and this hinders access to justice, rule of law and accountability to prevail (Caus 2021, 111).

3.4. The control of the constitutionality of laws

A constitution has been described as a 'biography' of a nation and it is only as good as the provided mechanisms in it for ensuring that its provisions are properly implemented and that any violations are properly sanctioned (Wahiu 2017, 35-38). Fombad is of the view that, 'an important bulwark of constitutionalism is therefore the existence of an efficient and effective mechanism for controlling and compelling compliance with the letter and spirit of the constitution' (Fombad 2017, 52). The Mo Ibrahim Foundation ranked CAR at position 49 out 54 in Africa on good governance rating in its 2024 report (Mo Ibrahim Foundation 2024). Although there has been slight progress in keeping the peace under President Touadera since he came to power in 2016, the country still wallows in extreme poverty and high inflation. CAR was ranked in position 149 out of 180 worldwide by Transparency International in the fight against corruption with no change since 2023 (Transparency International 2024).

3.5. The control of the constitutional amendments

A constitution should be an enduring document and cannot be treated just like any other legislation. It is a law by definition but unlike any other law. It is often implicitly or explicitly called the 'supreme law' of the land and the will of the sovereign will be subverted if it can be altered casually, easily, carelessly, by a subterfuge or by implication through the acts of a few people holding leadership positions (Fombad 2008, 192). In short, the more flexible a constitution, the more problems the country would face. The Central Africa Republic has changed its constitution seven times since it attained independence. The seven constitutional changes were never a public initiative but came as a result of civil wars, coups and such processes often buried accountability and the rule of law (Siradag 2016).

3.6. Institutions that support rule of law and accountability

Institutions such as Human Rights Commission, Public Prosecutor, Electoral Commission among others need to be strengthened in CAR as they are instrumental in implanting and sustaining rule of law and accountability in CAR. Further, the country can benchmark on how these institutions have led at the front in order to buttress rule of law and accountability by drawing lessons from South Africa's successful contributions to the history of constitutionalism to ensure rule of law and accountability. There is a need to establish a solid basis on which a constitutional democracy can be crafted and transform the constitution into a living document and make it available so that people may defend their rights (Fombad 2008, 194).

4. Conclusion

The realisation of the rule of law and accountability remain largely beyond reach in CAR and the absence of the rule of law and accountability supporting institutions as manifested by the legal principles and elements of constitutionalism provide a gap for opportunistic elements. The past historical challenges in CAR cannot be ignored since they largely form part of the national struggles as well as providing opportunities for learning to inform future decisions of the country. The politics of CAR also need to be predictable, thereby ensuring trust building among the political class and the public.

The African Union (AU) and the Economic Community of Central African States had a shared responsibility and led the peace process in CAR in 2013, during which AU showed the ability to lead a successful mediation. Based on this successful mediation story, the AU should mobilise resources to fill the void that has been affected by international donors, provide the necessary support and pressure so that the relative peace and stability that the country now has since the end of 2013-2014 and the signing of APPR-CAR does not go down the drain again as CAR heads for elections. Rule of law and accountability can only become a reality when governance is anchored on the respect of the constitution and the law. The political class in CAR must therefore, craft a participatory government that recognises the political and socioeconomic realities that exist in the country, and this should also inform the 31 August 2025 elections.

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Beyond Illusion: Democratic Consolidation in Chad's Challenging Landscape

Barbara Can Lamara

1. Background

Chad's political history since independence has been characterised by constitutional instability, military rule, and disputed electoral processes (EISA 2024). The country is in Central Africa, situated in the Sahel region, and is the continent's fifth largest country (The Conversation 2024). Chad became a French colony in the early 20th century, marking the beginning of its formation as a nation (SAHO 2025). The country faces security challenges as a result of conflicts in neighbouring countries and continuous increase in the number of refugees from Sudan, the Central African Republic, and Nigeria (World Bank 2024).

According to the World Bank, 44.8% of the population in Chad lives below the national poverty line (World Bank 2024). The country has significant gender inequalities and was ranked 144th out of 146 countries by the Global Gender Gap Index of the World Economic Forum in 2024 (World Bank 2024). Chad has a diverse population with over 120 languages and dialects, with French and Arabic as the official languages (Yeboua and Chipanda 2025, 11). The estimated population is 18.5 million, with a significant youth bulge at 51% (Yeboua and Chipanda 2025, 12). Notably, apart from the first President, François Tombalbaye, and the current President, Mahamat Itno Déby, all the other presidents of Chad have been linked to coup d'états (Hansen 2020). Democratic consolidation is thus a critical process for Chad as it transitions from authoritarian rule.

Suffice to say, democratic consolidation is a 'type of regime transition whereby new democracies evolve from fledgling regimes to established democracies, making them less at risk to fall back into authoritarian regimes' (Bozonelos 2022). This chapter therefore discusses the country context to give a background to some of the challenges hindering democratic consolidation and deciphers opportunities that the country can capitalise on to realise democratic consolidation. The chapter also identifies the legal framework relevant for democratic consolidation in Chad. By analysing the complexities of Chad's democratic landscape, this chapter aims to contribute to the ongoing debate on how to support democratic consolidation in challenging contexts.

2. Country Context: From Independence to Present

Chad gained independence on 11 August 1960, and François Tombalbaye became the first President (Zuber 2022). Immediately, he assumed the office of the President, he centralised all decision-making powers to himself (SAHO 2025). In 1962, all political parties except his Chadian

Progressive Party were banned. Moreover, the next year he dissolved the National Assembly and created a Special Criminal Court to investigate and bring criminal charges against his opponents (Zuber 2022). Indeed, by 1964, many of the political opponents were either imprisoned or exiled. This undermined the rule of law and contributed to riots, especially in Northern Chad, which had been marginalised (Zuber 2022). In 1965, armed rebel factions emerged in the northern region to oppose the central government. Backed by the French Foreign Legion, Tombalbaye waged a guerrilla campaign against Moslem rebels originating from the country's northern and eastern deserts. The worsening situation under his rule pushed the Chadian army and police to surround his residence and request his surrender. Upon his refusal and resistance, he was assassinated in 1975 (Hansen 2020).

After the overthrow of Tombalbaye, Chad experienced military rule. General Felix Malloum, who had previously been promoted to full General in the army but later stripped of his rank because of 'political sorcery', became the leader of the military government in 1975 (Hansen 2020). Malloum was also overthrown by Goukouni Wedei in another coup in 1979. Wedei's rule did not last as he was also subsequently overthrown by Hissène Habré in 1982 (SAHO 2025).

Hissène Habré was president until 1990 when he was overthrown in a coup d'état led by one of his close army commanders Idris Déby Itno (Neldjingwe 2011, 185). Habré's rule was characterised by autocratic rule, single party system and gross violations of human rights. After he was overthrown, Habré fled to Senegal for safety. A complaint anchored on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and international customary law was then filed before the Dakar *Tribunal régional hors classe* against him by some Chadian victims and the Chadian Association of Victims of Political Repression and Crime (AVCRP) (Neldjingwe 2011, 185). Senegal referred the matter to the African Union (AU) so that the issue of jurisdiction could be determined. The AU then set up a Committee of Eminent African Jurists that recommended that Senegal was the most suitable country and that an ad hoc tribunal could be set up to try Habré (Neldjingaye 186-187). The Extraordinary African Chambers, which was set up, tried Habré and sentenced him to life imprisonment after he was found guilty of crimes against humanity, war crimes and torture committed in Chad during his regime (Amnesty International 2016). The trial of Habré is very significant in demonstrating the role of international law, particularly universal jurisdiction in holding presidents accountable for gross human rights violations. Furthermore, the case also exemplified the role that can be played by the AU and other states such as Senegal in this instance to provide justice to victims in Chad.

Idriss Déby Itno's rule after Habré lasted more than 30 years. Itno's rule was characterised by authoritarianism, corruption, and seeking external legitimacy over democracy (McDonald 2025). After forcefully seizing power from Habré, Idriss Déby Itno was designated the interim president and in 1996 when a new Constitution was approved, Idriss Déby Itno was elected president in Chad's first multiparty presidential election (Asala and Africanews 2021). Although the 1996 election was marred with allegations of electoral fraud, Idriss Déby Itno was re-elected in 2001, still amidst widespread voting irregularities. After he had served his two terms as allowed by the Constitution, he facilitated a constitutional referendum to eliminate presidential term limits to allow him to contest again in 2006 (Asala and Africanews 2021). His rule was characterised by corruption, gross human rights violations, and coup attempts that later led to his death (McDonald 2024).

After the death of Idriss Déby Itno in 2021, his son, Mahamat Idriss Déby took over power under the Transitional Military Council (World Bank 2024). During this time, the Constitution was suspended and an 18-month transition period was initiated. The period was again extended by two years and this led to protests on 20 October 2022 against Mahamat Idriss Déby taking over as interim president. The protests resulted in the death of 218 people hence the day being referred to as Black Thursday (McDonald 2024). Besides, a constitutional referendum was held in December 2023 and Chad's new Constitution was approved, leading to a presidential election held on 6 May 2024 (World Bank 2024). The interim president, Mahamat Idriss Déby emerged as the winner in the election (Human Rights Watch 2024). However, the elections were reported as violent, and an opposition leader, Yaya Dilo, was killed by members of the security forces.

3. Legal Framework Relevant for Chad's Democratic Consolidation Process

Chad has legal obligations to promote democracy at international, regional, and national levels. The state is a party to the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights, and the African Charter on Democracy, Elections and Governance (ACDEG).

Article 25 of the ICCPR could be referred to as the foundation of democracy in international law as it explicitly recognises the right of all individuals to participate in the conduct of public affairs, the right to vote and contest, and the right to have access to public service. In General Comment no. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, the Human Rights Committee (HRC) expounds more on article 25 of the ICCPR that

states must ensure that all persons entitled to vote can freely vote with any intimidation or coercion (paragraph 11).

According to the HRC, the right to freedom of expression, assembly and association should be fully protected (Paragraph 12). This right is also guaranteed under article 22 of the ICCPR, including the right to operate political parties. The right may only be restricted by law and in the 'interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others' (see also articles 10 and 16 of the African Commission on Human and Peoples' Rights).

The ACDEG obliges Chad as a state party to respect human rights and democratic principles and commit to promoting democracy and the rule of law (articles 2 and 3). Article 8 of the ACDEG provides for the elimination of all forms of discrimination based on political opinion, gender, ethnic and religious grounds, among others. Additionally, women should enjoy equal rights to men, including equality in the right to vote (article 2 of the ICCPR and article 4 of the CEDAW). This may necessitate special measures to ensure that women can participate in public affairs to achieve fairness and equity while making progress towards democratic consolidation. Chad must therefore undertake programmes that promote democracy, equality and peace through good governance, strengthening political institutions, creating conducive conditions for civil society organisations, as well as integrating civic education in the curricula (article 12 of the ACDEG).

At the national level, article 1 of the 2023 Constitution explicitly states that Chad is a sovereign, social Republic founded on the principles of democracy, the rule of law, and justice. Moreover, article 4 guarantees the right of political parties and groupings to carry out their activities lawfully with respect for the principles of national sovereignty, territorial integrity, national unity, and pluralist democracy. Chadians above eighteen years of age are also eligible to vote under the conditions determined by law. Remarkably, article 7 amplifies the principle of separation of powers, which is a key tenet in a democratic society.

Furthermore, article 13 ensures that citizens are recognised and able to exercise their fundamental rights and freedoms according to the conditions and procedures established by the Constitution. The Constitution therefore promotes equality under the law regardless of sex (article 14) and article 28 guarantees the freedom of opinion and expression, press, association, assembly, movement and demonstration. The Constitution acknowledges the role of the state in encouraging women's participation in the democratisation discourse and therefore obliges the state to promote the political rights of women through better representation in elected assemblies, institutions,

and public administrations (article 34). Commendably, article 67 limits the presidential term limit to a five-year term, and a president may be re-elected once for a consecutive term.

In recapitulation, Chad has a solid legal framework that would significantly contribute to its progress towards democratic consolidation. The fact that the state has ratified key human rights instruments and safeguarded human rights in its Constitution is a great step. However, the implementation and enforcement of the laws is still problematic, and this may be attributed to some of the challenges discussed hereunder.

4. Challenges Hindering the Realisation of Democratic Consolidation in Chad

Political instability has been highlighted as the major obstacle to democratisation, hence hindering the progress towards democratic consolidation (GSDI 2025). Chad is also reported to have experienced one of the longest civil wars in Africa (SAHO 2025). The country's history of ethnic conflicts and regional divides has also greatly contributed to complicating the democratisation process (IMF African Department 2019). The situation is exacerbated by Chad's geographical location in the Sahel region, which partly contributes to its delayed realisation of democratic consolidation. The Sahel region has experienced political instability in recent years with military coups taking place in Mali, Guinea, Burkina Faso and Niger (Federal Ministry Republic of Austria 2024).

Moreover, Chad is a poor country with limited infrastructure and resources. The country experiences high levels of poverty and inadequate access to education and healthcare. This has hindered the formation of a functioning democratic system, as citizens are unable to participate fully in political processes. Without the realisation of socioeconomic rights such as basic healthcare, education services, and infrastructure, it is hard for the citizens to focus on building strong institutions and hold their leaders accountable.

One of the key challenges facing Chad's progress to democratic consolidation is the legacy of authoritarian rule. Chad has predominantly been ruled by military dictators since post-independence and these have limited the exercise of crucial human rights such as freedom of expression, association, and assembly, which are key in a democracy. This instilled fear and repression among the citizens, hence hindering the growth of democratic institutions and a vibrant populace (IMF African Department 2019).

The conversation about Chad's progress toward democratic consolidation is filled with contradictions and issues that deserve thorough analysis. Idriss Déby Itno's son, Mahamat Déby, winning the presidency of Chad presents a facade of transition rather than a meaningful shift

toward democracy (McDonald 2024). The international community's cautious endorsement of this transition overlooks the considerable domestic unrest and violent protests, reflecting a population that is increasingly disenchanted with the existing situation. This turmoil not only emphasises the deep-rooted authoritarianism that has characterised Chadian politics but also prompts critical questions regarding the possibility of authentic democratic reform in such conditions.

Furthermore, Chad's 2024 elections face legitimacy concerns due to the incumbent's dominance over the electoral processes (Siegle and Cook 2024). This situation demonstrated how entrenched military governance continues to hinder democratic dreams. In the absence of competitive elections and a shared dedication to uphold democratic standards, any indication of progress might be merely illusory and a perpetuation of neopatrimonialism instead of a genuine move towards democracy. Therefore, although there are opportunities for democratic consolidation theoretically, they are largely unrealised without real reforms and societal readiness for change (Siegle 2024).

5. Capitalising on Opportunities for Democratic Consolidation in Chad

The criteria for determining whether democratic consolidation is being realised has been set by some scholars. According to Bozonelos and others, the two potential indicators include the two-election test and the longevity test (Bozonelos and others 2022). The two-election test happens when a government that was freely and fairly elected is defeated in a subsequent election, and both sides acknowledge the outcome of the election. Additionally, the longevity test is passed if a country has been able to carry out free and fair elections for an extended period, like at least two decades. Although these tests have also been criticised, they offer some guidance in this instance on assessing the depth of Chad's progress towards democratic consolidation (Bozonelos 2022). From the foregoing, it is clear that Chad does not pass the test of democratic consolidation and raises the question of what needs to be done so as to contribute to the country's realisation of democratic consolidation. It is against this backdrop that this chapter highlights some of the opportunities.

Chad, under the incumbent President Mahamat Déby's rule has held a national dialogue, referendum, and election, albeit characterised by violence. This at least paved the way for civil rule and a renewed hope towards democratic consolidation (McDonald 2024). Additionally, the end of the defence pact between Chad and France also marks a significant turning point for the country as it marks the end of Western influence and opens an opportunity for the people of Chad to truly decide what benefits them (The Conversation 2024). France depended on its 'colonial

pacts' with former colonies to influence their monetary policies and defence agreements, thereby restricting their sovereignty. As such, ending such pacts is a key milestone for Chad to move forward as a fully independent nation.

Chad could also leverage its natural resources, such as oil and minerals, to invest in its development and strengthen its democratic institutions. By investing in education, healthcare, and infrastructure, Chad can create the conditions necessary for a thriving democracy to take root. Furthermore, by promoting economic growth and diversification, Chad can reduce its dependence on oil revenue and create a more sustainable and inclusive economy, thereby empowering its citizens and promoting a sustainable democracy (IMF African Department 2019).

Given that Chad has a youth bulge at 51%, youth inclusion and political participation should be encouraged. Chad should adopt youth-inclusive legal frameworks that mainstream the role of youths in promoting democracy. Additionally, the government should empower youths through creation of job opportunities and income-generating activities. Providing youths with jobs and supporting their business enterprises plays a big role in laying a foundation for their involvement in politics and determining the future of the democratic consolidation process (Mengistu 2017, 4). Furthermore, women and other marginalised groups should also be included in the democratisation agenda to promote inclusivity. The government and civil society organisations should promote civic education and encourage women to register as voters and participate as candidates in elections as well.

The chapter agrees with McDonald's proposal that for Chad to stabilise and meet its citizens' needs, the regime of Mahamat Idriss Déby must depart from the country's history and enhance representation and transparency in government processes so that the citizens can actively participate and contribute to their governance (McDonald 2024, 1769).

6. Conclusion

Chad's progress towards democratic consolidation is at a critical stage, especially after the 2024 presidential elections. Despite the country's efforts towards democracy, there are significant systemic issues that need to be addressed. Chad should capitalise and leverage some of the opportunities presented to address some of the challenges, hence tackling the systemic issues. Laudably, the legal environment in place is adequate to facilitate the path to democratic consolidation. The civil society organisations can engage with the international and regional human rights system and encourage state reporting. However, activism should be done to encourage the state to ratify the Protocol to the African Charter on Human and Peoples' Rights on

the Rights of Women in Africa so as to promote women participation in the democratisation process. This can be achieved through collaborations with international and regional actors and civil society engagement.

Additionally, the 2023 Constitution should be promoted so as to strengthen the protection of human rights and the building of democratic institutions, which are key factors in the realisation of democratic consolidation. Ultimately, Chad's democratic consolidation process requires a sustained commitment to democratic elections, democratic principles and values, human rights, and the rule of law. If the country prioritises these, then it could become a stable and prosperous democracy serving as a model in the Sahel region.

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Consolidating Democracy in Côte d'Ivoire: An Analysis of the Ivorian Electoral and Civic Space

Ady Namaran Coulibaly & Armel Olivier Yapi

1. Introduction

Since the advent of the modern state, democracy has been defined as the power of the people, by the people and for the people (Schumpeter 1942). Democracy is based on principles such as popular sovereignty, political pluralism, separation of powers and respect for fundamental freedoms (Dahl 1989). Elections are an essential component of a democratic system. They constitute both a barometer of democratic vitality and are key to legitimising state power (Diamond 2008).

The West African nation of Côte d'Ivoire, despite having a political trajectory marked by tensions, conflicts and difficult transitions, has regularly held elections since its independence in 1960 (Bah 2010). International rankings such as the 2022 Democracy Index of the Economist Intelligence Unit and surveys conducted by Afrobarometer in 2021 place Côte d'Ivoire among hybrid regimes, reflecting a reality contrasted between a democratic legal framework and the persistence of authoritarian or exclusive practices. This paradox raises a key question concerning the extent to which electoral processes in Côte d'Ivoire contribute to the consolidation of a stable, inclusive and legitimate democratic regime.

Through a legal, political and societal analysis, this chapter will examine, on the one hand, the normative and institutional efforts towards the entrenchment of democracy in Côte d'Ivoire, and, on the other hand, the structural and cultural limits that hinder the establishment of a truly participatory democracy. The overriding objective is to highlight the strengths and weaknesses of the Ivorian electoral system vis-à-vis the principles of democracy.

2. Institutions and Instruments Shaped by Democratic Principles

Côte d'Ivoire's democratic architecture is based foremost on a legal and institutional foundation aligned with the principles of the rule of law. These foundations reflect the country's formal adherence to universal democratic values, as enshrined in national and international texts. The recognition of this democratic foundation is particularly manifested through the adoption of reference legal texts and the establishment of institutions demonstrating a desire to be anchored in international standards. Ivorian democracy is based on a legal foundation aligned with

international standards. Côte d'Ivoire is a party to several international instruments enshrining democratic principles, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Democracy, Elections and Governance, the African Charter on Human and Peoples' Rights.

This commitment is explicitly affirmed in the preamble of the New Ivorian Constitution of 2016 revised in 2020, which recognises the primacy of international commitments in the areas of democracy, governance and human rights. Article 123 of the Constitution integrates the treaties ratified into the Ivorian domestic law. The 2016 Ivorian Constitution, revised in 2020, marks a step forward. It enshrines and strengthens the fundamental rights of citizens (gender equality, increased political participation of women with a quota in elected assemblies).

The electoral texts in force, such as the Electoral Code revised in 2020 and Law No. 2019-708 on the restructuring of the Independent Electoral Commission (IEC), are proof of efforts deployed to organise elections in a structured, pluralistic and transparent manner. The principle of impartiality of the IEC is also mentioned in the law.

Overall, the texts governing electoral processes in Côte d'Ivoire demonstrate a legal will to comply with international democratic standards, laying the foundations for a credible electoral system, although confronted with limits in its application.

2.1. Tangible Efforts Towards Entrenchment of Democratic Principles

Beyond the legal texts, Côte d'Ivoire has initiated, over the years, concrete efforts to translate democratic principles into institutional and social contexts. Among the notable efforts was the creation of an IEC in 2001. Prior to the establishment of the IEC, elections were organised directly by the Ministry of Interior, and later by ad hoc committees whose membership stirred several controversies. The institutionalisation of a permanent body in charge of organising elections offered an opportunity to ensure that the government in power does not interfere with electoral processes, in accordance with regional and international democratic standards.

However, the composition of the IEC has been contested by various civil society organisations (CSOs), especially a local NGO called Action for Human Right Protection (APDH). Furthermore, in 2016, the African Court on Human and Peoples' Rights ruled that the country had violated its obligation to create an IEC that was independent and impartial (ACHPR, 2016). Despite a restructuring of the IEC in 2019, concerns remain about its impartiality, particularly because of the appointment of its members by presidential decree.

The role of civil society as a key player in Côte d'Ivoire's democratic system must also be highlighted. Côte d'Ivoire has recorded significant progress in efforts towards enhancing citizen participation. Law n°2013-867 of 23 December 2013 on the Access to Information of Public Interest gives citizens a right of scrutiny over public management, strengthening transparency and accountability. The establishment of the Commission for Access to Information of public interest (CAIDP) thus allows individuals and CSOs to hold the administration accountable on matters of general interest.

Ivorian civil society is also playing an increasing role in the democratic process. It monitors the electoral process through independent national observation, contributes to the training of citizens in political life, and does not hesitate to seize the Constitutional Council in case of violation of fundamental rights and freedoms. Civil society organisations such as the Platform of Civil Society Organizations for the Observation of Elections in Côte d'Ivoire (POECI), Indigo Côte d'Ivoire, and the West Africa Network for Peacebuilding (WANEP) have established themselves as credible actors in the civic space.

During the presidential elections of 2015 and 2020, these organisations mobilised thousands of local observers across the national territory. These observers had been trained using methodologies inspired by international standards. For instance, in 2020, Indigo Côte d'Ivoire trained and deployed citizen observers to produce real-time data on the opening of polling stations, compliance with procedures, and polling security.

Since 2011, Côte d'Ivoire has embarked on a gradual liberalisation of its media landscape, fostering greater diversity of opinions and sources of information. The establishment of the High Authority for Audiovisual Communication (HACA) by Decree n°2011-475 of 21 December 2011, followed by the adoption of Law n°2017-868 of 27 December 2017 on audiovisual communication, has strengthened the legal framework governing press freedom and media pluralism.

In its 2023 annual report, HACA revealed that there were 763 television and radio broadcasts, 281 community radio stations, and 194 online media which represented an increase of 60% for satellite national television stations, 15% increase in the number of community radio stations from the data recorded in the previous year. This reflects the growing trend of expansion and growth of the audiovisual landscape in the country.

However, while Côte d'Ivoire has a normative and institutional framework in line with democratic standards, the reality of its implementation reveals structural limitations and persistent tensions.

These tensions reflect the challenges of effectively anchoring democracy in political, social and institutional practices.

3. Hurdles on the Path to Building an Effective and Efficient Democracy

Despite normative and institutional advances in favour of democracy, the implementation of democratic principles is hindered by multiple structural and political challenges. These challenges jeopardise the effective consolidation of the Ivorian democratic system. Electoral processes, when conducted improperly, crystallise tensions and reveal the limits of democratic inclusiveness. Although elections are held in Côte d'Ivoire, they remain marked by contested practices, low citizen participation and a widespread perception of imbalance.

The electoral process in Côte d'Ivoire is highly centralised around the executive. The organisation of elections is formally decided by presidential decree, as provided for in article 33 of the Electoral Code. Thus, the convening of the electorate, the dates of the elections and the implementation of procedural reforms are directly the responsibility of the President of the Republic. This situation creates an institutional imbalance, as it gives the Head of State decisive influence on the electoral calendar, thereby restricting and limiting the negotiation opportunities of other political forces.

An emblematic example of this centralisation is the implementation of the citizen sponsorship system, or 'parrainage' in French, introduced in 2020 by decree n°2020-306, without prior national consultation. The absence of consultation contradicts the principles contained in the Economic Community of West African States (ECOWAS) Additional Protocol on Democracy and Good Governance (2001), which states that 'any substantial reform of the electoral law must be the subject of a consensus among the main political actors, at least six months before the elections' (article 2, ECOWAS, Protocol A/SP1/12/01 on Democracy and Good Governance). The Carter Center rightly stated in its 2020 report that 'The electoral decision-making process in Côte d'Ivoire remains dominated by the Executive, with few consultation or inclusion mechanisms'.

The 'parrainage' policy requires that every presidential candidate gather signatures of at least 1% of the registered electorates in 17 out of the 31 regions across the country, to be eligible. Although the policy was put in place to address the unbridled proliferation of candidates, enhance competitiveness and deepen the quality of elections, the lack of transparency and accountability in the process of validating sponsorships undermines the credibility of the approach and does not align with inclusive democratic practices (Bakare 2023).

Another challenge that impacts on the country's democratic efforts is the composition of the IEC. The IEC, although institutionalised in Côte d'Ivoire since 2001 and restructured in 2019, continues to be the subject of recurrent criticism over its lack of independence. In theory, it is supposed to be an impartial authority responsible for supervising all stages of the electoral process. In practice, it remains largely dominated by representatives of political parties, especially those of the presidential majority.

This capture of the electoral institution by political actors considerably limits the wriggle room of CSOs, which have only a symbolic role within the IEC. Thus, civil society, which is a key actor of democratic transparency, finds itself instrumentalised or neutralised, rather than associated with major decisions.

In 2016, the African Court on Human and Peoples' Rights had already ruled that the IEC, in its previous configuration, violated the obligations of neutrality imposed on such a body. Although the 2019 reform brought about some commendable adjustments, it did not fundamentally change this perception of political instrumentalisation.

By way of comparison, in other West African countries such as Ghana which is a model of democracy on the African continent, the Electoral Commission is entirely depoliticised. It is composed solely of judges and experts appointed on the basis of their competence and probity, and not on the basis of political affiliation. This model, recognised as a good democratic practice in West Africa, guarantees a higher level of trust of citizens in the electoral institution.

To strengthen the credibility of elections in Côte d'Ivoire elections, an ambitious reform could consist of completely dissociating the IEC from political parties, by integrating a majority of actors from the judiciary, civil society and academia.

Despite the essential role that CSOs play in consolidating democracy, notably through citizen monitoring, civic education and electoral observation, their capacity to contribute meaningfully to the electoral process is hindered by the legal and institutional framework. The adoption of Ordinance No. 2024-368 of 12 June 2024 on the organisation of civil society has raised serious concerns. Presented as a modernisation of the 1960 framework, it actually introduces provisions deemed liberticidal and ambiguous, according to CSOs and human rights experts. For instance, article 8 prevents an organisation from carrying out any activity for two months after its registration, limiting its responsiveness (contrary to the African Commission on Human and Peoples' Rights guidelines on freedom of association); article 12 imposes a morality inquiry on CSO leaders, the criteria of which remain unclear and subjective – with no guarantee of

participation or recourse for interested parties in the event of an adverse decision. Lastly, article 22 allows the dissolution of a CSO by ministerial decree on vague grounds such as 'undermining social cohesion' or 'discrediting institutions,' without a prior judicial decision. This undoubtedly constitutes an authoritarian drift contrary to the African Charter on Human and Peoples' Rights.

CSOs in Côte d'Ivoire have vehemently stood against this approach, which they consider as a threat to their legal existence. Several citizen platforms (WANEP, Civil Society Coalition for Peace and Democratic Development in Côte d'Ivoire (COSOP-CI), Group of Ivorian Human Rights Actors (RAIDH), Ivorian Coalition of Human Rights Defenders (CIDDH), among others) demanded the annulment of this order or its thorough revision.

In effect, this law accentuates the marginalisation of CSOs within electoral institutions. For example, the IEC, which is supposed to integrate civil society, remains essentially controlled by representatives of political parties, limiting the scope of independent citizen contributions. Contrary to the Ghanaian model, Côte d'Ivoire does not yet offer a framework where non-partisan actors, such as CSOs or judges, actually steer elections.

Trends in voter turnout, especially when monitored over some years, is usually an indication of the strength of the democratic system in a country. In Côte d'Ivoire, the growing disinterest of citizens in elections in Côte d'Ivoire is manifested in a continuous fall in turnout. During the 2020 presidential election, official turnout was 53.90%, compared to almost 80% in 2010, reflecting a widespread loss of confidence in electoral institutions. In some communities, turnout rates below 20 % were recorded, amplified by calls for boycott of the elections and security tensions.

A key contributor to low voter turnout is the lack of consensus around the electoral list, which is regularly at the heart of challenges. Although the electoral code provides for an annual revision, its implementation remains non-systematic and inaccessible, especially for new adults. Many are not informed of the periods of enrolment, or do not have the required documents (notably the certificate of nationality, which is difficult to obtain in rural areas).

Added to this is the observation of a fixed legal and institutional framework, which does not promote inclusion or electoral mobilisation. Several political dialogues took place between 2019 and 2022. One of these dialogues, hosted by the Ivorian Minister of Interior and Security in March 2022, highlighted the need to restructure the IEC while ensuring equitable representation; the improvement of the 'parrainage' system and the revision of the electoral list annually as stipulated in the electoral code.

However, these recommendations have not resulted in substantial changes, strengthening the perception that electoral processes in the country are non-participatory. Furthermore, by deploying exclusionary practices, the IEC is failing to abide by ECOWAS standards, the African Charter on democracy, or the African Union's Guide of Good Electoral practices in Member States.

3.1. A Weak and Fragile Democratic Culture

While multi-party politics and elections are visible indicators of democracy, their existence alone does not guarantee an entrenched democratic culture. In Côte d'Ivoire, the behaviour of political actors, the balance of power, and the happenings during the post-election period demonstrate the fragility of a democratic culture still under construction.

The absence of an entrenched democratic culture and weak institutions have led to a series of major electoral crises in Côte d'Ivoire. The 2000 presidential election was marked by the exclusion of major candidates like Alassane Ouattara, triggering a crisis of legitimacy. The post-election crisis of 2010-2011, following the contestation of the results between Laurent Gbagbo and Alassane Ouattara, was one of the bloodiest. More than 3,000 people lost their lives and over 150 women were raped. In 2020, President Ouattara's candidacy for a third term, although validated by the Constitutional Council, was strongly contested. The protests that followed resulted in deaths and injuries. These episodes reflect a structural difficulty in organising free, inclusive and universally accepted elections. They reinforce the perception that power is not won by the ballot box but by confrontation or instrumentalisation of institutions.

The public sphere in Côte d'Ivoire remains characterised by a weak consolidation of democratic norms. In the political arena, opposing voices struggle to be recognised as legitimate institutional actors, often perceived as rivals that ought to be marginalised or even neutralised. This state of affairs is also evident within political groups, where the deficit of internal democracy is evident. Decision-making is usually centred around party heads and leading figures, with little space for participation.

This situation has repercussions on the media, which is often the scene of polarised, emotionally charged narratives. Several structural factors contribute to this, such as the insufficient training in democratic citizenship, the absence of institutionalised mechanisms for dialogue between socio-political actors, and the instrumentalisation of community groupings for political purposes.

Moreover, studies have highlighted the partisan nature of certain public speaking spaces, such as 'agoras' and 'parliaments'. Initially conceived as popular forums for free expression and

confrontation of ideas, these places have, in many cases, been taken over by political parties, who have turned them into propaganda spaces, thus reducing the diversity and quality of democratic discourse.

The stifling of opposing views and opinions has contributed to a weak and fragile democratic landscape. In theory, article 20 of the Ivorian Constitution guarantees the right to protest. In practice, the Ivorian authorities have tended to frequently limit this right during certain periods, especially elections, by invoking threats to public order. This lack of institutional mechanisms to express political disagreements pushes some actors towards radicalisation, abstention or boycott. The absence of a formal space for mediation also leads to the violence being used to express dissent.

4. Conclusion

An analysis of Côte d'Ivoire's democratic journey reveals a disconnect between formal adherence to democratic norms and their substantive implementation. Although the country has adopted institutional mechanisms inspired by international standards, lapses in their structure and functioning reveals a democracy that is still partially procedural, vulnerable to political influence and institutional capture.

Electoral processes, while indicative of a pluralist political life, struggle to produce a lasting consensus. In Côte d'Ivoire, instances of low turnout, recurrent contestation and the lack of inclusion of dissenting voices reflect a system in which the electorate is mobilised but rarely heard. From this perspective, the democratisation of the civic space appears to be a solution to embracing diverse opinions. It is not just a question of guaranteeing access to the ballot box, but of strengthening citizens' ability to participate in public affairs in an informed, structured and protected way.

This will require that efforts be made to ensure that regulatory and supervisory institutions focus primarily on their *raison d'être* and are devoid of politics to a large extent; and, protecting civil liberties against opportunistic restrictions and recognising civil society as an actor in the legitimisation and monitoring of democracy, not as an auxiliary to power.

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The State of Democracy in the Republic of Congo since Its Independence

Munguiko Muliri Ramadhan

1. Introduction

This chapter examines the evolution of democracy in the Republic of Congo (Congo-Brazzaville) since its independence, focusing on the democratic transition, consolidation of democracy and political pluralism which led to the power transfer in the country. It also assesses the separation of powers within the country's institutions as crucial for the rule of law and the political accountability of institutions, and addresses the issue of human rights in various constitutions that the country has known.

Indeed, after the second World War, a vast decolonisation movement swept across Africa. This led to Congo-Brazzaville gaining independence on 15 August 1960. However, the new nation's early years were marked by increasing political instability. In August 1963, a social revolution broke out, leading to the resignation of the first President of the Republic. Provisional institutions were established, and the former President of the National Assembly, who had taken the reins of the country, was overthrown by a military insurrection led by Army officers in July 1968. One of these officers then seized power and founded the *Parti Congolais du Travail* (PCT), which has remained in power ever since (Kiriakou 2015).

Between 1969 and 1979, the country experienced a decade of extreme political and institutional instability. This period was marked by a succession of coup attempts and a flurry of constitutional texts, reflecting the absence of a stable legal framework. The Congolese institutional landscape at the time was characterised by the emergence of power bodies lacking popular legitimacy. These entities exercised their authority in the name of the Party-State, the PCT, in defiance of democratic principles (Dia 2010).

With the winds of democratisation blowing across Africa in the early 1990s, a National Sovereign Conference (CNS) was convened in Congo-Brazzaville in 1991, with the aim of putting an end to political and institutional instability and the single-party regime in order to establish a multi-party democratic system. This initiative paved the way for a period of transition, culminating in the drafting of the Constitution in March 1992 and the organisation of inclusive, free and transparent elections in August, at the end of which the opposition leader was elected to lead the country for a five-year term, thus marking the end of the Party-State. However, this hope for

democratic renewal was short-lived, as it was brutally interrupted by a devastating civil war, lasting from June to October 1997, which brought the PCT back to power (Ngouari 2006).

A referendum was held in 2002 which led to the adoption of the Constitution of 20 January 2002, which established a seven-year presidential term, renewable only once (article 57, Constitution 2002). In 2015 and given that the President, in power since 1997, had exhausted his two constitutional terms and reached the age limit of 70, he could no longer run for office (article 58, Constitution 2002), held a controversial referendum in October 2015, which led to the adoption of a new constitution which established a five-year presidential term, renewable twice (article 65, Constitution 2015) and removed the maximum age limit from the eligibility criteria for the President of the Republic. In March 2016, he won the presidential election in the first round with 60.1% of the vote (Perspective Monde 2016), and in 2021, he was re-elected in the first round with a large majority of 88.4% of the vote, despite fraud accusations and challenges from opponents (Le Monde 2021). With next elections scheduled for next year, in 2026, when he will be 83 years old, he has said nothing so far about his political future and could be a candidate for the third and final constitutional term. And in case he runs in next elections, and he is re-elected, the question is whether he will be able to leave the political scene or will make yet another change to the Constitution to allow him to remain in power until his death.

2. Democratic transition, consolidation of democracy and political pluralism

The history of democracy in Congo-Brazzaville, since its independence in 1960, has been a complex trajectory, marked by periods of authoritarian regimes and attempts at democratic transitions. Indeed, upon gaining independence, the country experimented with one of the components of democracy, which is the multi-party system (article 5, Constitution 1961). Quickly, this experience was cut short, following the option taken by the leaders of the time for a single party (Ngoma, 2014). This is how the political parties were dissolved by decree n°62-207 of 31 July 1962 taken by the government of President Fulbert Youlou who wanted to make the *Union Démocratique de Défense des Intérêts Africains* (UDDIA) a single party (Kiriakou, 2015). The National Assembly thus adopted the Law No.14-63 of 13 April 1963, establishing the single party, and in 1964, the National Revolutionary Movement (MNR) was created and established as the single party, and the PCT in 1969 (Iloki & Ngouonimba 2006).

With the democratic movement emerging from Eastern European countries, there was the consecration of multipartyism by article 26 of Law No.026 of 8 December 1990 revising certain provisions of the 1979 Constitution. This democratic momentum will be reinforced by the national consensus resulting from the CNS and the 1992 Constitution having allowed the organisation of

the only inclusive, free, transparent and peaceful elections in the history of the country in 1992 which, unfortunately, will be broken by the coup d'état of 1997 which decapitated democracy in the country (Bishikanda 2022).

The 1992 Constitution provided guarantees for the sustainability of democracy, including an independent judiciary responsible for ensuring the fairness and impartiality of justice, a strong Constitutional Court vested with the role of guardian of the Constitution, and recognition of the population's right to insurrection in the event of a coup d'état or tyrannical exercise of power (Bankounda 1999). However, the constitutional reforms of 2002 and 2015, instead of being part of the democratic achievements consolidation, annihilated the progress of the 1992 Constitution. The proof is that Congo-Brazzaville is rated 2.79 (131st in the world and 29th in Africa), with regime type 'Authoritarian' (Economist Intelligence Unity's Democracy Index 2023).

3. Electoral processes and transfer of power

The transfer of power guarantees respect for the will of the people as expressed in elections. It guarantees political alternation, avoids conflicts linked to succession to power and reinforces the stability of institutions. It also allows a renewal of ideas and policies to meet the expectations of citizens. However, elections, peaceful and transparent transfer of power remain a major challenge for the country where elections have often been marred by controversy and disputes. While the first President, Fulbert Youlou, was elected in 1960 by the National Assembly after the 1957 legislative elections that occurred during decolonisation, most of subsequent elections have frequently been plagued by fraud accusations (TLP-Congo 2020).

Despite its first Constitution adopted in 1961 which established elections as the sole means of attaining power, the new state soon experienced socio-political crises marked by violence, beginning with a popular revolt in August 1963 that led to President Youlou's resignation and the subsequent indirect election of Alphonse Massamba-Débat as President (TLP-Congo 2020). Some years later, in 1968, an Army officers' insurrection led to President Alphonse Massamba-Debat's resignation. Subsequently, the National Council of the Revolution (CNR) proclaimed Marien Ngouabi as the new President of the Republic (Perspective Monde 1968). Later, President Marien Ngouabi was assassinated in March 1977 and the PCT Military Committee of the Party (CMP) seized full power, militarising the regime. In March 1979, Denis Sassou Nguesso, the CMP's first Vice-President and Minister of Defense, was appointed President of the Republic by the PCT during an extraordinary Congress (TLP-Congo 2020).

Following the 1991 CNS consensus, a new Constitution was adopted by referendum in March 1992, which established a multi-party democratic system and provided for various elections held

the same year. These elections which are considered the only inclusive, free, fair, and transparent elections in the country's history to date, allowed Pascal Lissouba to be elected President of the Republic, defeating the incumbent Denis Sassou Nguesso, who finished third (Ngoma 2014). Unfortunately, political disputes escalated into a civil war, culminating in a coup d'état in June 1997, which facilitated Denis Sassou Nguesso's return to power (Jecmaus 2013). The 2002 Constitution which set presidential terms at seven years with a two-term limit (article 57), and a 70-year age limit for candidates (article 58), enabling Denis Sassou Nguesso to stay in power.

The peaceful transfer of power dream in the country receded when, at the end of constitutional terms and to remain in power for long time, a controversial referendum adopted a new Constitution in 2015, changing the presidential term to five years with a three-term limit (article 65) but removing the age limit for candidates. It allowed Denis Sassou Nguesso to run for three terms and to be elected in 2016, reelected in 2021 and staying eligible for next elections. Furthermore, the 2015 Constitution is not immune to political manipulation to enable the President to remain in power for many years. Indeed, the limitation on presidential terms is not protected from revision, as outlined in article 240.

Transfer of power through coups d'état and elections that are often marred by fraud and contestations are evidence of a fragile democracy in Congo-Brazzaville, since they limit the entrenchment of effective democracy, because without a real transfer of power, elections lose their democratic meaning. Electoral disputes and the lack of consensus on the legitimacy of elections are symptoms of a fragile democracy, where the rules of the democratic game are not perceived as fair and respected by all.

4. Separation of powers

The separation of powers guarantees the balance and mutual control of institutions and prevents the concentration of power in the hands of a single institution. It protects individual freedoms, limits abuses of power and ensures fair and transparent governance in democracy. In Congo-Brazzaville, the separation of powers was largely non-existent from the establishment of the single-party system until the multi-party system of the 1990s. This period was marked by authoritarian regimes and a party-state system, in which all powers were highly centralised in the hands of the President of the Republic and the ruling Party. State institutions, including the Judiciary and legislature, were subordinate to the party. It was so until the 1991 CNS that attempted to restore the balance of powers in the country, although the political reality has often been different (Yengo 2016).

This is how constitutionally, the Parliament cannot pass a law whose purpose is to modify a court decision, to provide the solution to an ongoing trial, or to obstruct the course of justice

(Constitution 2015, article 169) and the Government cannot oppose the execution of a court decision (Constitution 1992, articles 130 and 131). Also, the Judiciary cannot encroach on the powers of the legislative or executive branches (Constitution 1992, article 132), its role being limited to ruling on disputes arising from the application of the laws and regulations and to make its decisions in the name of the Congolese people (Constitution 1992, article 133 and Constitution 2015, article 168).

However, while it is established that the President of the Republic guarantees the Judiciary independence through the High Council of the Judiciary (Constitution 1961, article 60; Constitution 1963, Article 67; Constitution 2002, Article 140 and Constitution 2015, article 171), there is a fear that this independence could be questioned due to the strong influence of the executive within it, the President of the Republic being the President of the High Council of the Judiciary (Constitution 2015, articles 91 and 171).

Although the separation of powers is constitutional in the country, the reality shows a strong domination of the executive power over the other institutions. Parliament is often perceived as dependent and the Judiciary lacks independence, which undermines democratic functioning by reducing transparency, fairness and public confidence. It can also be said that the lack of transparency that has characterised elections in the country over the past 20 years has significantly undermined the Parliament legitimacy, which is appointed by the ruling regime. The monochromatic Parliament thus presents itself as a sort of sounding board for the executive branch and an obstacle to the effectiveness of the separation of powers.

5. Rule of law and accountability

The rule of law guarantees that all citizens, including those in power, are subject to the same laws, respect them and enforce them in the interests of all. Despite being established by all the Constitutions after 1991, the rule of law still raises questions today given the interference of members of the executive in judicial affairs in Congo-Brazzaville (TLP-Congo 2020).

The country's first decades were characterised by political instability and the establishment of a single-party regime, limiting individual freedoms and the Judiciary independence. Congolese justice has not yet fully survived the practices of the past from the single party era, when it was totally politicised and characterised by the creation of political jurisdictions, notably the 1969 Revolutionary Court of Justice, whose mission was to judge crimes and offenses against the revolution, and other martial jurisdictions in which judges are no longer bound by anything other than the party authorities injunctions. Thus, a justice of revenge, of settling scores, a summary justice was established, where neither the law nor the dignity of the human person are not respected (TLP-Congo 2020).

It had to wait for the 1991 CNS which marked a significant attempt towards reestablishing the rule of law, with the adoption of a new Constitution and the emergence of a more independent Judiciary. However, the 1997 Denis Sassou Nguesso return to power, led to a new concentration of executive power and concerns about the effectiveness of the rule of law in the country (Malekat 2020).

It was up to the Constitutional Court to properly play its role as regulator of public powers (Constitution 2015, article 175), by ensuring that the principles of the separation of powers and the rule of law are respected in both letter and spirit. However, the Constitutional Court composition, with three members appointed by the President of the Republic, the Presidents of the Senate, the National Assembly and the Bureau of the Supreme Court, two members each (Constitution 2015, article 182) and the appointment of its President, with a casting vote in the tie case, by the President of the Republic (Constitution 2015, article 183) make it, in practice, a highly politicised judicial body.

As for executive accountability, it was non-existent under single-party regimes in which the executive dominated the legislative and judicial powers, human rights and individual freedoms were restricted, which limited the ability of citizens to hold governments accountable. Under post-CNS regimes, no significant progress has been made, due to the centralisation of power and the absence of independent oversight mechanisms. Indeed, the President of the Republic appoints the members of the government and determines their responsibilities. The latter are accountable to him and he terminates their functions (Constitution 2002, article 74) while himself is not accountable to Parliament. The Parliamentarian exercises informational means over the government, without the possibility of sanctions in the event of failure (Constitution 1963, article 50) or control means, which could incur liability in the event of failure (Constitution 2015, article 107). Congolese parliamentary history nevertheless shows that no member of the government has seen his political responsibility engaged before Parliament and lost his governmental post at the end of the process of his impeachment even when the facts were serious.

The lack of accountability, favoritism and impunity undermine confidence in the rule of law and hinder the consolidation of a functional democracy, where the rights of all citizens are guaranteed and where power is exercised in accordance with the law and in the public interest.

6. Human rights

Human rights guarantee the freedom, dignity and equality of all citizens. Respect for human rights is essential to democracy in that the failure to respect human rights weakens democracy by limiting citizens' participation and creating a climate of fear and mistrust.

Human rights in Congo-Brazzaville have been recognised according to whether one adheres to the liberal or Marxist conception of human rights. The liberal conception is conveyed by the Constitutions of 1961, 1963, 1992, 2002 and 2015. It postulates that the State is only a regulator of behaviour so that the enjoyment of rights and freedoms has no limits other than those that ensure the enjoyment of the same rights and freedoms for others. The only restrictions on freedoms are those provided for by the law, which itself is the emanation of the sovereign through its representatives, the Parliamentarians. All these Constitutions reaffirm the opposition of citizens to access to power by force and its exercise in a tyrannical manner (Constitution 2002, Preamble), and disobedience to orders that violate human rights (Constitution 2002, article 10). The Marxist conception of human rights is conveyed by the Constitutions of 1969, 1973 and 1979 and by the Acts of the National Council of the Revolution, the PCT Statutes and Constitutive Congress works. They postulate that the State is no longer only a regulator in the enjoyment of fundamental rights and freedoms, but gives direction in accordance with the ideology of the Party-State. Thus, several fundamental rights and freedoms (right to work, freedom of association, right to strike, freedom of association, freedom of expression, among others) are only exercised within the framework of organisations affiliated to the Party. In reality, this ideological orientation contributes to a certain restriction of freedoms and even the negation of certain fundamental rights. This is how public demonstrations considered to be civil disobedience are prohibited (Constitution 1969, article 29) and repressed (Constitution 1973, article 29).

In addition, from independence until the CNS, human rights were virtually unknown to the public opinion majority, because the first Constitutions, particularly those of 1961 and 1963, did not provide for mechanisms for their promotion or dissemination. There were also no specific legal texts on fundamental human rights and freedoms, nor was there any civil society working on the human rights defence, with the ideals conveyed by the Party-State taking precedence over other values.

At the holding of the 1991 CNS, the emergence of the first human rights defence organisations appeared. On the legal level, new texts on the human rights protection were adopted. This was the case of the Charter of Rights and Freedoms adopted in May 1991, which would feature prominently in all subsequent Constitutions. This is how respect for the dignity and sacredness of the human person and respect for the right to life emerged as the foundation of all other fundamental rights in the country (Constitution 1992, article 10 and Constitution 2002, article 7). Also, all the Constitutions that governed the country after 1991 formally prohibit torture (Constitution 1992, article 16; Constitution 2002, article 10 and Constitution 2015, article 11) and

the death penalty, the last executions of which date back to 1982, was abolished by the 2015 Constitution (article 8).

To promote these fundamental rights and freedoms so that they are internalised by the population, several independent institutions have been established. This is the case, in particular, of the National Commission for Human Rights (Constitution 2002, article 167 and Constitution 2015, article 214), responsible for monitoring the promotion and protection of human rights; the Mediator of the Republic (Constitution 2002, article 163 and Constitution 2015, article 200), responsible for simplifying and humanising relations between the administration and the citizens; the Higher Council for Freedom of Communication (Constitution 2015, article 2012), responsible for ensuring the proper exercise of information and communication freedom, among others.

To ensure the enjoyment of rights for people deemed 'vulnerable', the 2015 Constitution provides for the creation of certain specific bodies whose role is to issue opinions and make proposals to the Government with a view to encouraging it to take special or corrective measures. This is the case of the Women's Advisory Council, responsible for issuing opinions on the status of women and making suggestions to the Government aimed at promoting the integration of women in development (article 232) and the Advisory Council for People Living with Disabilities, responsible for issuing opinions on the status of people living with disabilities and making suggestions to the Government aimed at better care for people living with disabilities (article 234).

Unfortunately, despite the establishment of all these institutions, reality shows that the culture of human rights is slow to take root in Congolese society. The causes are numerous: lack of awareness of human rights by the population majority; ignorance of the remedies to be used in the event of a violation; delays in the implementation of legal procedures; lack of confidence in the judicial and administrative apparatus suspected of being corrupt; the control of the government over the judicial system which means that many citizens do not believe in the Judiciary independence, etc. (CAD 2024).

7. Conclusion

At its independence, Congo-Brazzaville attempted to experiment democracy through a multi-party system. Unfortunately, this experience was short-lived with the introduction of a single-party system that led to political intolerance characterised by assassinations, political repression and imprisonment, forced exile, violations of citizens' fundamental rights and freedoms, and the widespread and recurrent embezzlements of public funds.

The post-CNS transition period was the first step in the country's democratisation. While not perfect, it was satisfactory in light of the expectations arising from the Congolese peoples' clear choice for democracy. The advent of democracy had given rise to much hope among the Congolese

people, who reasonably expected an end to all the failings and abuses of the single-party system, so that the Congo could finally embark resolutely on the path to true democracy, good governance, and development.

However, the avidity of power and the temptation to confiscate it have led to abuses of all kinds, resulting in the disenchantment of the Congolese people, who is now facing a façade of democracy, a democracy of mere speeches and incantatory slogans. It is a democracy in which the Constitution is regularly trampled underfoot by those in power, the fundamental rights and individual freedoms are blithely violated, political opponents are regularly persecuted and imprisoned, the state media are controlled by those in power, the cult of personality is taken to the extreme, and leaders miss legitimacy, since the majority of them are not the emanation of the primary sovereign will validly expressed in the ballot boxes.

In order to improve the state of democracy in Congo-Brazzaville, a constitutional reform that must unambiguously prohibit any initiative to revise the presidential term number and limit; the setting of an age limit for standing for presidential election; and the consolidation of social and political checks and balances should be implemented in the country.

The Constitutional Court as the main guardian of democracy, in order to put an end to its politicisation should be reorganised. To achieve this, its members should be appointed by their peers, in particular University Law Professors, the Bar Association and the High Council of the Judiciary, three from each professional category, for a non-renewable term. The President of the Court elected by his colleagues should automatically be the President of the High Council of the Judiciary, the body responsible for managing the magistrates career, in order to guarantee the Judiciary independence and combat corruption and other abuses in the judicial system.

Courageous reforms to guarantee an effective separation of powers and strengthen the independence of institutions should be implemented. To achieve this, the electoral law and the Independent National Electoral Commission should be reformed to guarantee inclusive, free, transparent and fair elections; policies and laws to guarantee the respect for human rights, including peaceful demonstrations and freedom of expression, assembly and association should be adopted and effectively enforced.

The awareness and mobilisation of the people to fight for democracy by opposing to constitutional change aimed at maintaining in power, and by holding accountable those in power should be raised in the country. The cooperation with international organisations and bilateral partners to support efforts to democratise, promote human rights and others reforms, in particular the Judiciary, Police and Army reforms so that they are republican, neutral and impartial, free from political struggles should be strengthened. Also, mechanisms to monitor and evaluate the

progress made on democracy, human rights and justice, so that corrective measures can be taken and progress consolidated should be set up.

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The Democratic Cost of Indefinite Rule: Examining the Removal of Presidential Term Limits in Djibouti

Neville Mupita

When executive power is regulated through constitutions, in the form of presidential term limits, it is done to foster crucial democratically progressive institutions and ensure political stability. The limitations are crafted to avoid the rule of man triumphing over the rule of law, to facilitate a peaceful transition of power and control, thus diminishing the likelihood of rebellion, and to safeguard from tyranny that stems from the unchecked incumbent advantage. A democratic cost is attached to the lack thereof, meaning corruption thrives, civil liberties are ignored, and conflicts become the norm. This stands in stark contrast to the aspirations of the late 20th-century democratisation wave, which sought to entrench term limits as a safeguard against precisely these outcomes. While in the late 20th century, the wave of democratisation brought term limits to the African continent, a trend of their evasion or removal has emerged, backsliding on progress. This chapter focuses on Djibouti, where once constitutionally enshrined presidential limits were removed, paving the way for indefinite rule. It examines the impact that the removal of the presidential term limit has on democratic institutions, the political landscape, and civil liberties.

1. The Rationale for Term Limits: Guarding Against Indefinite Rule

Term limits and their importance concerning democratic governance are multi-layered and vital for multiple reasons. Firstly, they provide a peaceful facilitation of periodic change in leadership that is guaranteed. This enhances the possibility of a multi-party system, which is an important feature for a democratic polity. The lack of term limits gives the incumbents an advantage, making electoral changes difficult (Abebe 2021, 3). The peaceful transfer of power is regarded as a fundamental aspect of a democratic system and a vital element of responsible governance. The "two-turnover test," which examines whether power changes hands peacefully on two occasions, has become a defining characteristic of a functioning democracy. Additionally, one of the primary justifications for implementing term limits in the early 1990s was to avert the risk of arbitrary and violent rule, frequently linked to lifelong presidencies (Heyl and Llanos 2022, 1-2). Term limits are designed to promote the rule of law over the rule of man (McKie 2019, 1504). The absence of term limits can lead to the “big man” syndrome, where informality trumps formal institutions (Vencovsky 2007, 15). Extended time spent in office leads to a greater centralisation and personalisation of authority, along with a deeper entrenchment of informal patronage networks. This results in an accountability deficit that fosters increased corruption (Vencovsky 2007, 15).

Some authors argue that leaders who evade term limits tend to oversee increasingly repressive, corrupt, and unstable governments (Siegle and Cook 2021, 468). Leaders who evade term limits tend to remain in office three to four times longer than leaders in countries that enforce them, this prolonged tenure is associated with higher levels of corruption. (Siegle and Cook 2021, 470).

Maintaining and restoring term limits in Africa, accordingly, has implications for broader African goals of greater democratisation, development, and security (Siegle and Cook 2021, 470). Term limits can contribute to the institutionalisation of political power. The evasion of term limits is linked to a broader pattern of undermining the rule of law and weakening democratic institutions (Siegle and Cook 2021, 470) . Rebuilding these institutions and norms surrounding term limits is central to Africa realising its democratic aspirations. Furthermore, instances where leaders adhere to constitutional term limits may establish precedents that define acceptable behaviour. This adherence to term limits could serve as a significant reference point, potentially complicating future attempts to secure popular and international support for third-term initiatives.

Finally, limits on executive power, particularly presidential term limits, are considered essential for strengthening democracy in countries transitioning from authoritarian regimes (McKie 2019, 1504). They are designed to guard against the tyranny that the unlimited incumbent advantage can enable. In essence, term limits are a fundamental mechanism for promoting democratic values, ensuring leadership accountability, and fostering a stable and equitable political environment by preventing the entrenchment of power in the hands of a single individual for an extended period. Their presence and adherence are often indicative of a stronger commitment to democratic principles and a more developed democratic culture.

2. Djibouti's Trajectory: From Limits to Indefinite Tenure

Djibouti's post-independence political history, like that of many African states, began with the dominance of a single party. The country's state-building process was influenced by the colonial power, France, which perpetuated friction between the Afar and Issa-Somali ethnic groups to prolong its rule and ensure continued presence after independence (Arts4Refugees 2025). This dynamic led to the imposition of one ethnic group's superiority, with the dominant group (implicitly the Issa-Somali) occupying important government posts and securing colonial backing, while the subordinate group (the Afars) faced ‘double oppression’ (Abdallah 2008, 269). This ethnic tension continued after independence, hindering the achievement of democracy and unity.

In 1982, Hassan Gouled Aptidon became Djibouti's first president. A significant political transition occurred with the approval of a multi-party system by the 1992 constitution. This constitution also introduced presidential term limits, specifically limiting the president to two six-year terms (Metelits and Matti 2013, 9). Scholars like McKie have described the process of constitutional revision in Djibouti during this era as a controlled constitution-writing process, unilateral by one party, rather than a cooperative effort between multiple groups (McKie 2017, 445). Despite this controlled process, term limits were included, perhaps reflecting the dynamics described by many scholars, where term limits were adopted even in controlled transitions, potentially as an insurance mechanism if the ruling party perceived future electoral uncertainty.

When Ismail Omar Guelleh succeeded his uncle, Hassan Gouled Aptidon, as president in 1999, there were initial indications that Djibouti was moving in a more democratic direction (Metelits and Matti 2013, 8). Guelleh reportedly vowed an "American-style campaign" with public debates and granted media coverage to the opposition (Metelits and Matti 2013, 8). Institutions suggesting increased transparency and democratisation were established. However, the period following 1999 saw a shift from initial democratic reforms to increasing authoritarian consolidation. In 2010, the presidential term limits, previously enshrined in the constitution, were eliminated (Metelits and Matti 2013, 8). It is reported that such a constitutional amendment was passed through pressure on the parliament by President Guelleh (Freedom House 2024). At that time, the Union for a Presidential Majority (UMP) held all 65 parliamentary seats in the National Assembly due to electoral boycotts in the previous 2003 and 2008 legislative elections made it readily adopted (Cher 2017, 143-161). Moreover, the 1992 Constitution's provisions limiting presidential terms were not included in the list of immutable principles, making it possible to amend them (Cher 2017, 143-161). This crucial change paved the way for President Guelleh to seek and win a third term in 2011, a fourth term in 2016 and a fifth term in 2021, making him one of the longest-serving presidents in Africa (Peter 2024). This removal of term limits marked a significant reversal, aligning Djibouti with the pattern of deteriorating term limit norms observed across Africa since the late 1990s, although Djibouti's removal occurred slightly earlier in 2010.

The decision to remove term limits was not unopposed. Mass protests erupted in 2011 against President Guelleh seeking a third term (Al Jazeera 2011). These protests, involving stone-throwing and burning vehicles, were met with government force, including tear gas and arrests. The government banned all opposition meetings and demonstrations in response, actions described as being in contravention of Article 15 of the Constitution (Human Rights Watch 2011). Such public protests and legal challenges are a common response when African leaders subvert

the democratic process by changing constitutions for extended tenure (Ani 2021). While domestic resistance is the foundation for future reforms, it has not always been sufficient to block term limit evasions in some African countries, including Djibouti. The removal of presidential term limits in Djibouti and the subsequent extension of President Guelleh's tenure are strongly linked to a notable deterioration in the quality of democratic governance.

3. The Democratic Costs: Institutions under Strain

Even after term limits are evaded, incumbent leaders frequently falsify election results to maintain their positions. In 2020, impartial observers evaluated the results of 11 elections conducted since 2015 in 13 countries where leaders circumvented term limits, finding them questionable (New York Times 2020). Such manipulation means leaders remain in power without a popular mandate. Djibouti's 2011 presidential election, which allowed Guelleh to secure his third term after term limits were removed, was won with 80.6 % of the vote, but was marked by allegations of voter intimidation and rigging (BTI 2024). However, the African Union (AU) mission, along with the other international observers, declared the election to be peaceful, calm, fair, transparent, and held in dignity (IGAD 2011).

Since the 2013 elections, there have been repeated calls for reform of the National Independent Electoral Commission (CENI), which has been accused of bias and lacking independent oversight. However, the government has maintained that the existing framework is sufficient. Due to the perceived lack of fairness and transparency in the electoral process and the failure to implement promised reforms, major opposition groups have frequently boycotted elections. For example, in 2023 majority of opposition parties chose to boycott the elections, asserting that the ruling UMP was assured a dominant victory (International IDEA 2023). As a result, the UMP secured 58 of the 65 available seats, with the opposition party, the Djiboutian Union for Democracy and Justice (UDJ), obtaining the remaining seven (Freedom House 2024). Political competition and citizen participation remain constrained in Djibouti, with the legislative branch failing to operate independently (BTI 2024). Instead, the legislature is described as effectively acting as a rubber stamp for the executive (Metelits and Matti 2013, 12). Although elections are held regularly, the overwhelming dominance of the UMP led by the RPP and the president's consolidated power significantly undermines the effectiveness of democratic institutions. This lack of legislative oversight and accountability is a significant democratic cost.

The judiciary in Djibouti is reported to lack full independence from the executive and legislative branches of the government, making it vulnerable to political influence (United States Department of State 2022, 5). Moreover, it is reported to be susceptible to bribery and corruption, leading to routine disregard of constitutional provisions and rights, with state security forces habitually detaining people without warrants and holding them beyond the legal limit (United States Department of State 2022, 5). A weak and compromised judiciary undermines the rule of law and removes a critical check on executive power. An example is the case of Mohammed Omar Nour, arrested in March 2022 for criticising a court process and sentenced to six months for inciting violence (United States Department of State 2022). While eventually pardoned, his arrest and swift sentencing for speech-related offenses highlight the judiciary's role in enforcing political control.

Despite constitutional provisions for freedom of speech and the press, these are not a reality in Djibouti. The 2025 World Press Freedom Index has ranked the country 168 out of 180 countries, with the government reported to deploy draconian tactics, which include attacks and arrests on the media (Reporters Without Borders n.d.). Following the closure of one newspaper for reporting on corruption, there has been no independent media (Human Rights Watch 2011). Moreover, the state owns the main media outlets, employing the staff directly. Therefore, reporting on sensitive topics like corruption or crimes by government officials can lead to imprisonment, exile, and fines (Freedom House 2024). The lack of independent media severely restricts the flow of information, civic education, and the ability of citizens to hold power accountable.

The overall effect of this institutional weakening is a significant reduction in civil liberties. Djibouti's Freedom House classification changed from “partially free” to “not free” following the 2011 election, where President Guelleh secured his third term after term limits were removed (UN Watch Database n.d.). This change is consistent with the pattern observed in other countries where term limits were removed.

4. Corruption, Patronage, and Development Costs

Beyond the institutional decline, prolonged presidential tenures are strongly linked to increased corruption (Siegle and Cook 2021, 467). Scholars have highlighted that patronage networks tend to grow more costly the longer a leader remains in office, leading to ever greater diversions of state resources (Siegle and Cook 2021, 471). In Djibouti, foreign aid and other easily corruptible revenues provide a strong incentive for the ruling elite to remain in power (Metelits and Matti

2013, 24). These funds can bypass public scrutiny and contribute to the stagnation of public sector and education system development, thereby hindering the emergence of an educated populace better equipped to demand accountability. Djibouti is notably the largest per capita recipient of US and French foreign aid in Africa, and it hosts several foreign military bases (Metelits and Matti 2013, 2), suggesting significant revenue streams linked to its geo-strategic importance. The diversion of state resources through growing patronage networks under prolonged rule contributes to lost development (Siegle and Cook 2021, 481). Furthermore, leaders seeking indefinite rule are often motivated by a desire to protect themselves from investigation and prosecution for past corruption and abuse of office (Abdulyakeen 2023, 39). Staying in power allows them to continue controlling the system and evade accountability.

5. Summary of Erosion of Human Rights in Djibouti

Under the protracted rule of President Ismail Omar Guelleh, in office since 1999 without facing term limits, Djibouti has witnessed a significant erosion of fundamental human rights, contributing substantially to the "democratic cost" of indefinite leadership. The country's civic space is currently classified as "closed" by the CIVICUS Monitor, indicating the existence of severe restrictions on civil liberties (Defend Defenders 2023). Despite accepting numerous recommendations during its Universal Periodic Review (UPR) cycles related to civic space, the government has consistently failed to implement them, particularly concerning freedom of expression, association, and peaceful assembly. This failure reflects a persistent pattern of unwarranted restrictions on civil society (Defend Defenders 2023).

Freedom of expression and media freedom are severely curtailed in Djibouti, both in law and practice, despite constitutional guarantees. Defamation is criminalised, with penalties including imprisonment, and laws specifically criminalising 'offending' the president, granting the government significant discretion to control media content and ownership (Defend Defenders 2023). Journalists and critics face prosecution, arrests, and harassment for covering sensitive topics or expressing critical opinions. Internet access has also been restricted at times, further limiting the free flow of information. A clear example is Mohamed Ibrahim Waiss, a radio journalist for the opposition online station *La Voix de Djibouti* (The Voice of Djibouti), who was arrested in August 2014 while covering a demonstration by an opposition coalition protesting a lack of basic services and democracy (CPJ 2014). He was subsequently accused of incitement and publishing false news on social media under the Computer Crime Act, held at Gabode Prison, and reported to have been beaten by police, causing injuries to his eyes and back, and denied access

to medical treatment and his lawyer (CPJ 2014). This incident was part of a pattern of harassment against Waiss and his station, which had previously seen him arrested for similar coverage and other journalists jailed without charge or beaten and detained (CPJ 2014). Furthermore, in March 2023, the International Federation for Human Rights (FIDH) experienced direct suppression when its Vice-President, Alexis Deswaef, and a program officer were arrested and expelled from Djibouti despite having valid visas, just days into a mission to assess the human rights situation and meet with civil society and opposition leaders (FIDH 2023).

Similarly, freedom of association faces serious obstacles. The government has repeatedly prevented opposition political parties from operating freely, sometimes denying registration or even deregistering them (Defend Defenders 2023). Conditions in the law relating to political parties severely limit the potential for a robust political opposition. Human rights associations and trade unions also encounter significant difficulties in registering and operating freely. The registration process for unions is onerous and subject to government discretion, often disadvantaging independent labour groups (OHCHR 2018). Opposition parties and dissenters are subjected to constant harassment and threats.

The right to peaceful assembly is also restricted in practice (Defend Defenders 2023). While some legal provisions exist, others, like the Penal Code and public order regulations, impose limitations such as notification or prior authorisation requirements (Defend Defenders 2023. Crucially, the authorities have frequently used disproportionate and excessive force, including live ammunition and teargas, to disperse protests, resulting in injuries and deaths (PolicingLaw n.d.). Protesters and opposition figures have been arbitrarily arrested and detained following demonstrations.

Human rights defenders, civil society activists, and journalists are particularly targeted, facing harassment, intimidation, physical attacks, arbitrary detention, and judicial persecution (United States Department of State 2022, 3). There is a lack of specific legal protection for human rights defenders. Individuals advocating for human rights or perceived as critical of the government have faced detention, confiscation of travel documents, or deportation (United States Department of State 2022, 5). These actions appear to be aimed at stifling dissenting voices and maintaining the ruling party's dominant position.

6. Charting a Democratic Path

Looking at Africa’s broader political stability, a strong majority of citizens hope for democracy, and there is a certain level of understanding of how the removal of term limits fosters an unhealthy

political economy. At the heart of Africa's democratic aspirations is the need to rebuild the norms and institutions regarding term limits, as mentioned in this chapter. These will then create a breeding ground for greater levels of transparency, stability and broad-based-development. Almost always, the removal of term limits is accompanied by other democratic deficiencies. These include the restriction of civil society, the opposition and the media, the controlling of the electoral management bodies and the courts. The strengthening of democracy in Africa will benefit from the reversal of the evasion of term limits.

Regional and international actors must assume a more prominent role. Historically, the African Union (AU) and regional coordinating bodies have taken a strong stance in advocating for the respect of term limits, in alignment with the AU's Charter on Democracy, Elections, and Governance. It is crucial to rebuild these regional norms and restore the credibility of these organisations. Empowering the African Union's Peace and Security Council (PSC) to identify instances of violations regarding term limit norms could initiate actions such as mediation, membership suspension, non-recognition, and sanctions.

Active oversight and vocal opposition from civil society and opposition parties are essential when actions to undermine term limits are undertaken. Such concerns can inform the wider public and the international community. Furthermore, enhancing civic education regarding the significance of term limits is essential for rallying public backing. Various groups- including media, professional associations, religious leaders, youth organisations, and civil society- should comprehend and promote awareness of the detrimental effects of extended presidential terms.

A crucial initial step is to reinstate constitutional term limits in Djibouti, establishing a finite, legal duration for presidential tenure and counteracting 'president-for-life' norms. It is essential to reject the 'Resetting the Clock' tactic; the principle that constitutional reforms should not reset term limits must be firmly upheld in domestic, regional, and international discussions.

It is important to recognise that achieving these reforms in Djibouti will likely require sustained and coordinated efforts from domestic actors, as well as consistent pressure and support from the regional and international community. The geo-strategic importance of Djibouti to international powers has historically complicated their willingness to strongly censure the regime's democratic shortcomings. Therefore, a shift in international priorities or a stronger, unified stance from the AU and other regional bodies could be influential.

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The Erosion of Democracy in Democratic Republic of Congo: Repressive Legislations, Judicial Manipulation, and Executive Overreach

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1. Introduction

The 2006 Constitution as amended by Law No. 11/002 of 20 January 2011 revising certain articles of the Constitution unambiguously establishes the Democratic Republic of the Congo (DRC) as an independent, sovereign, social, democratic, and secular State founded on respect for the rule of law (DRC Constitution, Preamble and Article 1), the separation of powers (DRC Constitution, Title III), political pluralism (DRC Constitution, Article 6 & 8) and the protection of fundamental rights (DRC Constitution, Title II). Human rights principles are further bolstered by its accession to numerous international treaties,[2] that form part of domestic law (DRC Constitution, Article 215) and reinforce and complete the constitutional of human rights guarantees (Sindani 2025). These instruments impose obligations on the state to respect, protect, and fulfil human rights (Murray 2019, 16-43), requiring, *inter alia*, the enactment of laws and policies that safeguard civil liberties and ensure an open civic space. However, the mere inclusion of such rights within the constitutional and international human rights texts is insufficient to ensure their effective implementation (Wetsh'Okonda 2006). For a right to be genuinely guaranteed, it must be accessible and exercisable by every citizen, and a robust legal and institutional framework must be established to safeguard it against any infringement while providing effective avenues for redress in the event of violations (Esambo Kangashe 2017).

Drawing on recent literature, reports, and an analysis of socio-political and legal dynamics from 2018 to 2025, this chapter examines the discrepancy between constitutional guarantees and real-world practices. This gap highlights a deeper structural issue in the country's governance—a marked absence of political will to uphold democratic principles and protect fundamental freedoms. This period (2018-2025) is essential politically as it symbolises the aftermath of a

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[2] For the purposes of the following analysis, the human rights treaties ratified by the Democratic Republic of the Congo (DRC) include, at the African level, instruments such as the African Charter on Human and Peoples' Rights, its Protocol on the Rights of Women, and the African Charter on the Rights and Welfare of the Child (among others), and, at the United Nations level, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

peaceful transfer of presidential power the country has witnessed since its independence. The coming into power of President Tshisekedi was followed by a string of promises to improve the country's human rights situation and introduce several legal, institutional, judicial and other types of reforms to see to it that constitutional and treaty-law human rights standards are respected (La Libre Afrique 2019). In his investiture speech, Tshisekedi declared that his administration would guarantee "every citizen respect for the exercise of their fundamental rights' and put an end to all forms of discrimination, promising that his government would give priority to an effective and determined fight against corruption, [...] impunity, bad governance and tribalism"(Ibid.).

Despite recent progress in legislative and normative standards, the country still faces significant human rights challenges. These challenges are diverse and emanate from different sources but are reflected in the difficult implementation of fundamental human rights. State actors have imposed systemic restrictions on civic engagement, political opposition, and freedom of expression in their efforts to consolidate power and suppress dissent. Since 2020, successive governments have enacted and enforced repressive measures that curtail the ability of citizens, journalists, human rights defenders, and political opponents to freely participate in public affairs. These restrictions manifest through legislative, judicial, and executive actions that systematically limit fundamental freedoms, often under the pretext of maintaining public order or national security. In addition, new threats to the enjoyment of rights in the digital age have prompted a normative response from the State, which has adopted a series of laws regulating the digital domain. In practice, such measures undermine the very principles that define a democratic state, fostering an environment in which political contestation is criminalised, civic activism is met with persecution, and independent media faces censorship and intimidation. Therefore, the interplay of restrictive legislation, judicial manipulation, and executive repression creates a hostile environment for democracy to thrive.

2. Repressive legislations

The primary tools used to restrict democratic space in the DRC is legislation that enables excessive state surveillance, criminalises dissent, and imposes undue restrictions on freedom of expression and association. Similarly, legal provisions that penalise the activities of human rights defenders create an environment of fear and self-censorship, discouraging activists from exposing state abuses by exerting their right to freedom of association, expression, and peaceful assembly forms the backbone of democratic governance (Lever 2015, 163). These rights enable civic participation, government accountability, and open discourse (Vollenhoven 2015) as enshrined in the Constitution of the DRC the International Covenant on Civil and Political Rights, and the African

Charter on Human and Peoples' Rights. However, despite recent normative advances such as, the 2020 Law No. 20/017 on telecommunications and information and communication technologies (hereafter : New Technology Act), the 2023 Ordinance-Law No. 23/010 on the Digital Code (hereafter : Digital Code), and the 2023 Law no. 23/027 relating to the protection and responsibility of the human rights defender in the DRC (hereafter : The HRD Act), the civic space continues to shrink. The entrenchment of surveillance mechanisms and bureaucratic constraints on civil society actors illustrates an erosion of democratic space, undermining constitutional and international guarantees.

Article 31 of the 2006 DRC Constitution recognises the right to privacy, protecting all forms of communication from arbitrary interference. However, this constitutional safeguard is weakened by statutory provisions that grant extensive communication surveillance powers to state authorities (Makunya and Sindani 2025). Communications surveillance, defined by the UN Special Rapporteur on freedom of expression as "the monitoring, interception, collection, storage, and retention of information communicated via networks", [3] is a double-edged sword in a democratic regime. While it can serve public interest goals such as national security and pandemic response such as COVID-19 cases (Lim 2020, 540), it also presents significant risks of political manipulation and suppression of dissent (Makunya and Sindani 2025). The articles 126 to 130 of the New Technology Act and the articles 320 to 324 of the Digital Code for instance, provide prosecutors with unchecked powers to investigate citizens' communications. International human rights best practices and standards like those embodied in the African Commission's revised declaration of principles on freedom of expression and access to information in Africa (hereafter: Revised Principles), require all surveillance of communication to be authorised by an independent and impartial judicial authority (Revised Principles, Principle 41(3)(a)); yet the new laws let prosecutors conduct it without a court order, sidelining the judiciary and weakening its role as a guardian of human rights (DRC Constitution, article 150). Indeed, although prosecutors no longer form part of the judiciary following the 2011 amendment of the 2006 DRC Constitution, the independence they enjoy is merely relative when compared with that accorded to judges (Wetsh'Okonda 2017).

Furthermore, Article 13(6) of New Technology Act empowers the Regulatory Authority for Postal Services, Telecommunications, and Information and Communication Technologies as the regulator for personal data protection. However, this Authority operates under the Ministry of

[3] United Nations Human Rights Council (2013). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, (17 April 2013), UN Doc A/HRC/23/40.

Telecommunications (New Technology Act, Article 12). Similarly, Article 323 of the 2023 Digital Code empowers the National Cybersecurity Agency to authorise electronic communication interception, yet Article 275 places it under the direct authority of the President of the Republic. These structural and functional dependencies undermine their neutrality, facilitating political control over digital communications. However, international human rights standards stipulate that the public regulatory authority that exercises powers in the areas of broadcast, telecommunications or internet infrastructure shall be independent and adequately protected against interference of a political, commercial or other nature (Revised Declaration, Principle 17(1)). The procedure for appointing the members of such an authority shall likewise be independent, open and sufficiently safeguarded against undue influence (Revised Declaration, Principle 17(1)). It must also be noted that the Decree-Law No. 003-2003 on the creation and organisation of the National Intelligence Agency authorises state surveillance of any persons or groups suspected of carrying out an activity that could undermine state security, while Decree-Law 1- 61 of 25 February 1961 on State security measures allows the Minister of the Interior to place persons who undermine state security under surveillance by a simple written decision. The broad justification of "state security" is reportedly abused as a means of stifling political opponents (Maheshe and Mushagalusa 2021, 20) In addition, Ministerial Order No. CAB/MIN/PT&NTIC/AKIM/KL/Kbs/002 of 10 June 2020 has authorised the establishment of a Central Electric Identity Register, as well as allowing the government to monitor mobile telephone subscribers. Through this registry, the government has access to information about millions of mobile phones that can facilitate State surveillance (Maheshe and Mushagalusa 2021, 20)

Thus, by permitting communication surveillance without ensuring that judicial oversight is conducted before surveillance or by not clarifying the legal regime applicable to post-surveillance, the New Technology Act and the Digital Act give a *carte blanche* to whoever wields political and judicial powers to infringe on the rights of those who mobilise. The provision gives much discretion to the prosecutor by using vague and ambiguous language. Considering the recklessness of Congolese prosecutors and their acquaintance with executive officials from whose authority they depend (Adjolohoun and Fombad 2016) these provisions may be used to undermine the right to privacy primarily because no court order is required. Conferring on the prosecutor unchecked powers to survey citizen's communications, not only disempowered the judges to play their role as guarantor of human rights, but also the prosecutor has the discretion to determine how they proceed with communication surveillance and the duration of such a process. It is suggested that the institutionalisation of court orders on communication surveillance would foster a culture of justification and accountability (Makunya and Sindani

2025). The other problem is the absence of notification of the decision authorising communication surveillance to the person being controlled or, if this notification would defeat the purpose of the interception of communications, to be notified after surveillance has ended. In a democratic setting, notification, whether pre or post-surveillance, would serve the purpose of allowing the individual to approach judges against communication surveillance when founded on grounds that are not legal and eventually seek remedy (Makunya and Sindani 2025).

The absence of robust checks and balances could open the door to mass surveillance and intrusive monitoring of personal communication that disproportionately affects activists, journalists, and opposition figures. Reports indicate heightened intimidation and arbitrary detention of activists criticising state policies online.[4] Telecommunications companies have also been pressured to intercept communications and disclose customer data without judicial authorisation. The National Intelligence Agency engages in targeted phone tapping, utilising International Mobile Equipment Identity (IMEI) tracking, unauthorised server interception, and micro-transmitters to spy on dissenting voices (Paradigm Initiative 2023; US Department of State 2019; CIPESA 2020). They have also reported that the government monitored private online communications without appropriate legal authority (US Department of State 2019). Congolese authorities have in the past requested telecommunications companies to intercept communications or disclose customer data (CIPESA 2019). Sometimes, the political authorities do not need to go through one of the official requests for personal political interests (CIPESA 2019, 12). A transparency report released by Orange, one of the leading telecom companies in the country, has revealed evidence of mass surveillance by the Congolese government, with the assistance of telecom service providers and ISPs (Rudi International and Access Now 2022). Some suspect that the government uses mass surveillance tools such as RANDOM, which records telecommunications traffic, and SWITCH, which monitors social media (Ibid.). The National Intelligence Agency has been criticised by several independent reports for engaging in the practice of digital "spying" on opponents and activists of citizen movements (Kapinga 2021; Maheshe and Mushagalusa 2021).

Principle 41(2) of the Revised Declaration enjoins states to conduct targeted communications surveillance if authorised by law, which in turn must be consistent with international human rights law and standards and based on specific and reasonable suspicion that a serious crime has been or is being committed or for any other legitimate purpose. In addition, states shall ensure that any law authorising targeted surveillance of communications provides adequate safeguards

[4] United Nations Human Rights Council (2024). Working Group on the Universal Periodic Review Forty-seventh session Geneva, 4-15 November 2024 Summary of stakeholders' submissions on the Democratic Republic of the Congo, Report of the Office of the United Nations High Commissioner for Human Rights, at. para 25.

for the right to privacy, including prior authorisation by an independent and impartial judicial authority; due process guarantees; specific limitations on the duration, manner, location, and scope of the surveillance; notification of the decision authorising the surveillance within a reasonable period following the conclusion of the surveillance; proactive transparency on the nature and extent of its use; and effective monitoring and regular evaluation by an independent oversight mechanism (Revised Declaration, Principle 41(3)). Similarly, the International Principles on the Application of Human Rights to communications surveillance, communications surveillance law must meet, *inter alia*, the principle of adequacy, which requires that any communications surveillance authorised by law must be appropriate to achieve the specific legitimate purpose identified (Necessary and Proportionate 2014).

Another significant restriction on democratic space in the DRC comes from legislative constraints on civil society organisations (CSOs) and human rights defenders (HRDs). The HRD Act, despite its promising title, has paradoxically institutionalised state control over civic activism. The law mandates that CSOs and HRDs register with the National Human Rights Commission (HRD Act, Article 7), failure of which exposes them to legal prosecution (HRD Act, Article 27). Historically, CSOs have operated under the Folio 92 certification, a provisional status that allowed them to function while awaiting full legal recognition. However, in June 2024, the Minister of Justice revoked this certification, effectively suspending operations of numerous organisations. This measure contradicts international human rights standards such as the African Commission's Guidelines on Freedom of Association and Assembly in Africa, which mandates that state-imposed registration requirements should not be used to unduly restrict civic engagement and require that the registration shall be governed by a notification rather than an authorisation regime.[5] Moreover, CSOs and HRDs face bureaucratic hurdles in obtaining legal personality, with prolonged delays and arbitrary denials. The requirement to submit sensitive operational details further raises concerns about government surveillance and targeted repression, especially for sexual minorities rights organisations (MOPREDS and others 2017). Indeed, article 7 of the law governing non-profit associations and public interest institutions provides that the articles of association of a non-profit association may not contain any provision contrary to law, morality or public order. Furthermore, article 653 of the Congolese Family Code prohibits the adoption of a child by, among others, homosexuals and transsexuals. Article 20 of Law no. 09/001 of 10 January 2009 on child protection also prohibits the adoption of a child by a homosexual couple, in the same way as paedophiles and people suffering from mental disorders. On the basis of the

[5] African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa (2017), 11.

interpretation and application of these legal provisions, the objectives pursued in the context of defending and promoting the rights of LGBTI people are considered by the public authorities to be illegal (Si Jeunesse Savait and Sexual Rights Initiative 2019). Therefore, the registration process for organisations pursuing such objectives was burdensome and very slow (US Department of State 2022, 23).

3. Judicial manipulation

Alongside repressive laws, the subversion of the judiciary has significantly restricted the democratic space in the DRC. Rather than serving as an impartial guardian of justice, courts are exploited to silence dissent and marginalise human rights defenders. Although judicial independence is essential for upholding democratic norms and safeguarding fundamental rights,[6] executive overreach has transformed these institutions into tools of political repression that target opposition, human rights advocates, and journalists—thereby fostering impunity and stifling democratic debate (Human Rights Watch 2023; FIACAT 2024). The systematic misuse of judicial mechanisms to suppress dissent raises fundamental questions about the judiciary's constitutional role as the guardian of fundamental rights and freedoms (Nzongo Ekombo 2022).

The judiciary's inability or unwillingness to challenge legislative and executive overreach has led to a significant erosion of public trust in judicial institutions.[7] Trials against political activists and human rights defenders frequently result in indefinite detention without a final judicial determination, suggesting that the primary goal is to intimidate rather than to uphold justice (FIACAT 2024). There judiciary in the DRC has become a key instrument in the perpetuation of impunity and the suppression of democratic debate (OSISA 2012). Through politically motivated prosecutions, the criminalisation of civil society actors, and the harassment of journalists, judicial institutions have largely failed to fulfil their constitutional mandate to protect fundamental rights (DRC Constitution, Article 150). Instead, they have facilitated a climate of fear that discourages political opposition and civic engagement. Between 2023 and 2024, political opponents were arrested by the Congolese intelligence services and prosecuted for inciting civil disobedience and spreading false rumours (Jeune Afrique 2025).

In July 2020, Nobel Peace Prize laureate Denis Mukwege received death threats after calling for accountability and justice for human rights violations in the DRC (FIDH 2020). Similarly, Dismas

[6] Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985).

[7] According to RCN Justice & Democracy study on Socio-Anthropological Study on Corrupt Practices in the Justice Sector in the Democratic Republic of the Congo at page 11, "a large majority of citizens (74%) perceive most judges and magistrates as corrupt,"

Kitenge, head of the Lotus Group, was threatened after engaging with the Minister of Human Rights regarding impunity for a high-ranking military officer (Amnesty International 2021, 389). Furthermore, opposition leaders face systematic repression through judicial means. Prominent figures such as Moïse Katumbi, Martin Fayulu, and Matata Ponyo have been barred from political participation, prevented from traveling, and faced judicial harassment (Amnesty International 2024, 404). In 2021, Jacky Ndala, the national youth coordinator of the opposition party *Ensemble pour la République*, was arbitrarily arrested and summarily tried (Human Rights Watch 2025). In July 2023, opposition Member of Parliament and former minister Chérubin Okende was found dead under suspicious circumstances after being last seen at the Constitutional Court (Amnesty International 2024, 403). Despite these clear threats to civil society actors, the judiciary has largely failed to investigate and hold perpetrators accountable, reinforcing a climate of fear and impunity.

Similarly, although journalism is fundamental to democratic governance (OSISA 2012; Mushizi 2021), journalists in the DRC frequently endure systematic persecution—often through judicial harassment. Since 2019, media professionals have been subjected to threats, intimidation, arbitrary arrests, and prosecution under dubious legal pretexts. Authorities frequently accuse journalists of "disrupting public order" or violating "professional ethics" to justify their repression (FIDH 2024). In 2021 alone, at least 11 journalists were arbitrarily arrested, sometimes violently, while covering events of public interest (Amnesty International 2021). In September 2023, journalist Stanis Bujakera was arrested and charged with "forgery", "spreading rumors", and "disseminating false information" in connection with an article implicating military intelligence in the murder of Chérubin Okende (Human Rights Watch 2025) His subsequent six-month prison sentence exemplifies how the judiciary is weaponised against the press, thereby stifling public debate and investigative journalism. Furthermore, the prolonged "state of siege" in North Kivu and Ituri, initially declared to address security concerns, has enabled the military authorities to bypass judicial oversight and suppress dissent. [8] Under this legal framework, public gatherings and demonstrations critical of the government have been systematically banned (Amnesty International 2023, 398). Those who question the effectiveness of the state of siege or investigate military governance are targeted, including ordinary citizens, human rights activists, journalists and members of provincial assemblies (Amnesty International 2022, 14-22).

Although the prosecution of individuals who allegedly violate the criminal law irrespective of their status or profession is not an affront to individual rights *per se*, the way the trial and legal

[8] United Nations Human Rights Council (2024), note 3, at. para 25.

proceedings surrounding the case are conducted generally suggests judicial institutions are being captured by those who wield executive power to undermine the ability of human rights defenders and opposition leaders to operate. Trials against some political activists often end up with the release of the 'prisoner' or the 'detainee' without a final determination thereby leading many to question the seriousness within which such trials were initiated. Furthermore, public officials, including the President, must accept a greater level of scrutiny than private citizens, or democratic debate will be strangled.[9] Following this logic, international human rights standards suggest that press offences, defamation, libel, sedition, insult, and publication of false news should be removed from the criminal sphere altogether because they constitute a violation of the right to freedom of expression. (Revised Declaration, Principle 22). Since custodial penalties are inherently disproportionate and chill investigative journalism, only civil damages—tempered by defences of truth, fair comment and public interest—meet the tests of necessity and proportionality. The Democratic Republic of the Congo should therefore excise criminal-defamation and insult provisions from its laws and rely exclusively on narrowly tailored civil liability to protect reputation while safeguarding vigorous public discourse.

4. Executive Overreach

Beyond legal and judicial constraints, the executive branch plays a central role in shrinking the democratic space through the suppression of public manifestations, restrictions on freedom of association, and the violent repression of peaceful protests. This repression arises from a confusion fostered—both by the authorities and by certain earlier enactments—between the constitutional regime of mere prior notification (DRC Constitution, Article 26) and the erstwhile authorisation regime inherited from Decree-Law No. 196/1999, thereby creating a normative vacuum that the police and administrative authorities exploit to suppress peaceful assemblies. Relying improperly on the alleged "lack of authorisation" has granted the executive authorities unchecked discretionary power to suppress dissent: they ban or disperse marches that have nonetheless been duly notified, and then justify mass arrests, excessive use of force and, in the gravest cases, killings (OSISA 2012).

The persistent erosion of democratic space in the DRC, driven by restrictive government policies and the absence of a human rights culture within the executive branch, poses a fundamental threat to governance and stability. However, in contexts where governments employ restrictive policies to stifle dissent and limit civic engagement, democracy becomes fragile, and the rule of law is

[9] *Media Rights Agenda and Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998), para 74-75.

undermined (Croush and Naidu 2024). Since 2019, the DRC has witnessed an alarming increase in state-imposed restrictions on public demonstrations. Authorities have frequently banned peaceful protests under various pretexts, including national security and public health concerns (Amnesty International 2019, 49). For instance, in January 2019, internet access was blocked nationwide for 20 days to prevent the dissemination of unofficial election results, a move widely condemned as a direct attack on freedom of expression (Amnesty International 2019). Similarly, throughout the COVID-19 pandemic, the prohibition of large public gatherings was selectively enforced, disproportionately targeting opposition parties and civil society organisations (Amnesty International 2021, 387). Large public gatherings have been banned as part of the fight against the COVID-19 pandemic, and the security forces have used excessive force to disperse peaceful demonstrations (Amnesty International 2019, 49).

Recent two of the gravest flare-ups of anti-MONUSCO unrest in eastern DRC occurred between July 2022 and August 2023. The first erupted in July 2022, when protesters in Goma, Butembo, Beni and Uvira denounced the UN mission's prolonged presence and its perceived failure to shield civilians; Congolese security forces responded with clearly disproportionate force. At least 36 people (29 demonstrators and passers-by and seven UN staff members) were killed, according to the government. (Amnesty International 2023, 398). The second erupted on 30 August 2023, in Goma, the army attacked followers of the political-religious group *Foi Naturelle Judaïque Messianique vers les Nations* (Human Rights Watch 2023). The attacks were carried out in the run-up to the group's planned demonstration against the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo, mandated to maintain peace in the country. At least 56 people were killed and 85 injured, according to the authorities. [10]

The pervasive culture of repression in the DRC can be attributed to the structural deficiency of human rights education within public institutions. Scholars argue for the importance of human rights education as a mechanism to prevent or mitigate conflict and for peacebuilding in post-conflict contexts (Wahl 2016). In the context of DRC, the security sector, in particular, lacks adequate training on human rights standards, leading to widespread abuses. Police and military forces operate under directives that prioritise regime security over constitutional rights, resulting in a governance model that privileges coercion over democratic engagement. Comparative studies highlight the transformative potential of integrating human rights education into public administration.

[10] United Nations Human Rights Council (2024), note 3, at.3

5. Conclusion

The systematic restriction of democratic space in the DRC not a mere byproduct of governance challenges but rather a deliberate strategy rooted in repressive legislation, judicial manipulation, and executive overreach. Although the Constitution and international treaties guarantee fundamental rights, entrenched impunity and a lack of political will have rendered these guarantees largely ineffective. Reversing these democratic backsliding calls for an immediate and multifaceted reform agenda that includes repealing repressive laws, restoring judicial independence, and enforcing genuine institutional checks on executive power.

A crucial component of these reforms should be the reinvigoration of constitutional oversight. The Constitutional Court could play a transformative role by engaging in an a priori constitutional review to preemptively overturn laws that restrict civic space before they come into force and facilitating an a posteriori review—through the procedure of the exception of unconstitutionality—thereby empowering citizens and human rights defenders to challenge and reverse inoperative laws once enacted. Equally important is revitalising the mandate of the National Human Rights Commission. Strengthening this Commission would enable it to function as a vigilant watchdog over human rights violations, extending its monitoring beyond the current focus areas to include: the numerous arbitrary detentions of human rights and democracy activists by police and intelligence services, as well as the regular occurrences of killings, massacres, and other severe human rights abuses.

Together, these institutional reforms would create the necessary checks and balances to counteract state repression, restore public confidence in democratic governance, and set the foundation for genuine political pluralism. Without such comprehensive measures, the DRC risks further entrenchment of authoritarian practices, imperilling not only its democratic aspirations but also the stability and well-being of its citizens.

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Eritrea's Democratic Deficit: A State in Perpetual Transition

Fenot Mekonen Hailu

1. Introduction

Eritrea, a small country in the Horn of Africa, has been governed by President Isaias Afwerki under a non-democratic system of governance since gained independence from Ethiopia in 1993 (Freedom in the world 2025). Despite the potential for democratic governance following the country's liberation from Ethiopia, Eritrea has struggled with political pluralism, the lack of an independent judiciary, and severe restrictions on freedom of expression (State 2022). The People's Front for Democracy and Justice (PFDJ), led by President Afwerki, is the only legally allowed political party, and the country has not held national elections since its independence. This continued political monopoly has hindered democratic transition and consolidation, leaving the country in a state of perpetual authoritarianism (Freedom in the world 2025). In 1991, the Eritrean people gained independence after a prolonged and transformative liberation struggle and began the challenging process of rebuilding their society, which had been devastated by war (Eritrea: Special report on 12 years of independence 2003). The initial post-independence period was marked by the implementation of progressive reforms, including initiatives to promote gender equality (Plaut 2014). However, the renewed conflict with Ethiopia in 1998 and prolonged hostilities reversed early progress and entrenched authoritarian rule. Continued militarisation and repression of civil freedoms have stalled democratic development, making popular democracy a distant goal (Plaut 2014).

Arbitrary arrests, forced and indefinite national service, and tight control over the media are widespread in Eritrea. Since the government shuttered all independent media outlets in 2001, there has been no space for free press or open dissent (Eritrea: Repression past and present 2019). This is further compounded by the absence of rule of law, lack of accountability, and minimal public involvement in governance, fostering a climate where civil and political rights are consistently undermined (Eritrea: Repression past and present 2019). Citizens are deprived of core freedoms such as expression, assembly, and access to an impartial judicial system. Political opposition and public demonstrations are heavily restricted, with the legal framework operating under strict state control, leaving little space for genuine political pluralism. (Eritrea: Repression past and present 2019).

This chapter aims to critically examine the state of democracy in Eritrea by assessing key elements of democratic governance, including electoral systems and processes, political pluralism and public participation in decision-making, freedom of expression and access to information, the rule of law and accountability, and judicial independence. It considers how Eritrea's centralised and tightly controlled system of governance has significantly hindered democratic progress. The chapter explores how the absence of credible electoral mechanisms, the lack of peaceful transitions of power, and the suppression of public participation have collectively undermined efforts at democratisation. By analysing Eritrea's prolonged state of military rule and the dominant role of the People's Front for Democracy and Justice (PFDJ), this chapter will conclude with an evaluation of the prospects for political reform and the potential for Eritrea to move towards a more inclusive and democratic society.

2. Electoral systems and processes in Eritrea

The electoral system is a cornerstone of democratic governance, crucial in shaping political representation and influencing policymaking (How the electoral system shapes our democracy today 2025). It outlines how electors are selected, how votes are counted, and ultimately how leaders are chosen be it through popular vote, state legislatures, or electoral colleges. This structure fundamentally shapes modern democratic processes (How the electoral system shapes our democracy today 2025). Eritrea, however, has not undergone a democratic transition or consolidation**.** Since officially gained independence from Ethiopia in 1993 through a popular referendum, Eritrea has been governed by a transitional administration established to lead the new state (State 2022). However, the transitional government did not pave the way for a democratic system. An unelected Transitional National Assembly appointed Isaias Afwerki as President, with the understanding that national elections would follow under a new constitution (FREEDOM IN THE WORLD 2021). Since then, he has remained in power without ever securing a mandate from the electorate (FREEDOM IN THE WORLD 2021).

In 1997, Eritrea ratified a constitution that envisioned the creation of a 150-seat National Assembly responsible for electing the president by majority vote. It also called for the establishment of an electoral commission, with its chairperson appointed by the president and confirmed by the National Assembly (The Constitution of Eritrea 1997). However, the constitution has never been implemented, the electoral commission was never formed, and electoral laws remain incomplete (FREEDOM IN THE WORLD 2021).

Although national elections were scheduled twice, they were cancelled without explanation. The transitional assembly last met in 2002, and national elections have never taken place. Meanwhile,

periodic local and regional elections are conducted for positions such as administrators, managing directors, and village coordinators (Eritrea Country Report 2024). These elections are held by secret ballot, and all citizens aged 18 and above can vote. However, they are tightly managed by the ruling People's Front for Democracy and Justice (PFDJ), offering no genuine political alternatives to voters (Eritrea Country Report 2024). In 2003, the government officially declared that, 'In accordance with the prevailing wish of the people, it is not the time to establish political parties, further postponing political pluralism and reinforcing its grip on power (State 2022).

3. Political pluralism and public participation in decision-making processes

Political pluralism and public participation are key pillars of democracy. Pluralism allows multiple political parties and viewpoints to coexist, preventing the dominance of a single ideology (Klein, Kiranda 2011). Public participation ensures that citizens are actively involved in decision-making, promoting government accountability and inclusivity (Klein, Kiranda 2011). In Eritrea, however, both political pluralism and public participation are severely restricted. The country operates under a one-party system dominated by the People's Front for Democracy and Justice (PFDJ), which monopolizes political power (FREEDOM IN THE WORLD : Eritrea 2024).

The formation of other political parties is strictly prohibited, leaving no space for political competition or opposition (FREEDOM IN THE WORLD : Eritrea 2024). Although membership in the PFDJ is not legally mandatory, authorities often pressure certain groups particularly government employees and national service graduates to join the party and pay associated fees (Country Reports on Human Rights Practices: Eritrea 2023). Citizens are frequently compelled to attend political indoctrination meetings as part of their mandatory militia participation, regardless of their party membership. Failure to attend these sessions may result in the denial of essential benefits such as ration coupons (Country Reports on Human Rights Practices: Eritrea 2023). Similar pressure is applied to the Eritrean diaspora through embassy meetings, with non-attendance potentially resulting in denial of consular services. Opposition groups are banned domestically and operate in exile, though many lost supports in Ethiopia after the 2018 Eritrea-Ethiopia rapprochement (FREEDOM IN THE WORLD : Eritrea 2024). Since independence, President Isaias Afwerki and the PFDJ have ruled without multiparty elections, maintaining tight control through military dominance and indefinite national service (FREEDOM IN THE WORLD : Eritrea 2024). Though women and ethnic groups are nominally included, they cannot organize independently or advocate freely within the political system (FREEDOM IN THE WORLD : Eritrea 2024).

Political decision-makers in Eritrea are neither democratically elected nor limited by constitutional checks (Eritrea Country Report 2024). More than three decades after independence, the country still lacks an implemented constitution. (Eritrea Country Report 2024). Democratic mechanisms, including veto powers or public participation in policymaking, are entirely absent (Eritrea Country Report 2024). Instead, the policymaking process is centralised and opaque, dominated by the executive branch and high-ranking military officials who continue to wield significant influence (Eritrea Country Report 2024).

Besides the separation of powers in Eritrea is effectively absent, with the executive dominating the legislative and judicial branches. The judiciary lacks independence and reinforces executive control (Eritrea Country Report 2024). Eritrea has not seen a democratic transition, and political pluralism is tightly restricted. With no clear succession plan, the transfer of power remains uncertain, and prospects for democratic reform are minimal (Eritrea Country Report 2024).

4. Freedom of expression and access to information

The right to freedom of expression and access to information is vital in its own right and serves as a cornerstone of any functioning democracy. With the rapid advancement of information and communication technologies, people across the globe now have greater ability to seek, share, and access information (Article 19, Eritrea: A Nation Silenced 2013). Today, more than ever, this right plays a critical role in upholding and advancing all civil, political, social, and economic rights within society (Article 19, Eritrea: A Nation Silenced 2013). Eritrea is obligated under international law to respect, protect, and fulfill the right to freedom of expression and access to information. These obligations stem not only from general principles of human rights law but also from specific commitments the country has undertaken at both the international and regional levels.

5. International and regional human rights commitments

Eritrea, as a member of the United Nations, is expected to uphold the principles of the Universal Declaration of Human Rights (UDHR), including Article 19, which states: ‘Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (Universal Declaration of Human Rights, article 19 1948). Although the UDHR is not a binding treaty, Article 19 is widely regarded as part of customary international law and has carried significant legal weight since its adoption in 1948 (Article 19, Eritrea: A Nation Silenced 2013). Eritrea has also acceded to the International Covenant on Civil and Political

Rights (ICCPR) on 22 January 2002 and is therefore legally bound to uphold the right to freedom of expression, as articulated in Article 19 of the ICCPR (International Covenant on Civil and Political Rights (ICCPR) 22 January 2002). This provision guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers either orally, in writing, in print, in the form of art, or through any other media of their choice (Article 19 of ICCPR n.d.). At the regional level, Eritrea acceded the African Charter on Human and Peoples' Rights (African Charter) on 14 January 1999 (Eritrea acceded the African Charter on Human and Peoples' Rights 14 January 1999.). Article 9 of the Charter affirms that every individual shall have the right to receive information and to express and disseminate their opinions within the law (Article 9 , African Charter on Human and Peoples' Rights n.d.). To further interpret these rights, the African Commission on Human and Peoples' Rights adopted the Declaration of Principles on Freedom of Expression in Africa in 2002 (Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019). Article 1 of this Declaration affirms that freedom of expression and access to information including the right to seek, receive, and impart information and ideas orally, in writing, in print, in the form of art, or through any form of communication across frontiers is a fundamental and inalienable human right and an indispensable component of democracy (Declaration of Principle, article 1 n.d.). It also provides that everyone shall have an equal opportunity to exercise the right to freedom of expression and access to information without discrimination (Declaration of principle, article 2 n.d.). Domestically, Article 19 of Eritrea's 1997 Constitution though not fully implemented in practice explicitly guarantees the right to freedom of expression and access to information (The Constitution of Eritrea 1997). It provides that every person shall have the freedom of speech and expression, including freedom of the press and other media (The Constitution of Eritrea, article 2 n.d.). It also affirms that every citizen shall have the right of access to information (Constitution of Eritrea, article 3 n.d.).

However, the reality on the ground is in stark contrast to these commitments. Freedoms of expression and private discussion are severely restricted in Eritrea largely due to fear of government surveillance and the risk of arrest or arbitrary detention for voicing dissent (FREEDOM IN THE WORLD 2024). The government has historically used the conflict with Ethiopia as justification for these broad restrictions (Eritrea: Repression Without Borders-Threats to Human Rights Defenders Abroad 2019).

Independent media has been completely shut down since 2001, and the private press remains banned (Eritrea: Repression Without Borders-Threats to Human Rights Defenders Abroad 2019).

That year, the Eritrean government closed all privately owned newspapers, including Meqaleh, Setit, Zemen, Wintana, Admas, Keste Debena, and Mana (Attacks on the Press in - Eritrea 2001). Coverage for Eritreans now primarily comes from external sources, including the British Broadcasting Corporation (BBC), the Paris-based Radio Erena, and the satellite station Asena TV (FREEDOM IN THE WORLD 2024). Within the country the state media is tightly controlled by the Ministry of Information and focuses almost exclusively on reporting government achievements and development projects (Eritrea Country Report 2024). Journalists imprisoned in 2001 remain in detention, and according to Reporters Without Borders (RSF), Eritrea ranked 179 out of 180 countries in the 2022 World Press Freedom Index (RSF's World Press Freedom Index : a new era of polarisation 2022). As of late 2023, the Committee to Protect Journalists (CPJ) reported that 16 journalists remain imprisoned, none of whom have ever been formally charged (In record year, China, Israel, and Myanmar are world's leading jailers of journalists January 16, 2025).

The government also curtails digital freedoms by frequently blocking access to social media platforms and shutting down internet cafés (FREEDOM IN THE WORLD 2024). It has deliberately restricted and disrupted internet access, with reports indicating that some online communications, including emails, are monitored without appropriate legal authorisation (Country Reports on Human Rights Practices: Eritrea 2023). Government informants are known to frequent internet cafés, contributing to a climate of fear. Many citizens reportedly fear arrest if caught accessing opposition websites, although such sites are generally still available (Country Reports on Human Rights Practices: Eritrea 2023). While members of the Eritrean diaspora have comparatively more freedom to express dissent online, they too remain subject to surveillance, harassment, and intimidation by Eritrean authorities operating abroad (FREEDOM IN THE WORLD 2024).

Furthermore, freedom of expression is not only suppressed in public and digital spaces, but also in private life. Conversations in bars, cafés, religious events, and other social settings are monitored by a pervasive network of informants embedded in both government and military structures (Eritrea Country Report 2024). These agents also actively search for individuals evading military service, contributing to a climate of fear and self-censorship across the country (Eritrea Country Report 2024).

6. Rule of law and accountability

The rule of law is a cornerstone of democracy, requiring that all, including the government, are subject to the law and that political power is exercised within legal limits (Gardner 2021). In

Eritrea, the rule of law is virtually non-existent due to the absence of an implemented constitution. The government is entirely controlled by President Isaias Afwerki, who exercises unchecked authority over the legislative, executive, and judicial branches (Linzer 2018). The separation of powers is not observed either in law or practice, as the president rules by decree, and no functioning parliament exists (Commission of Inquiry on Human Rights in Eritrea 2016).Cabinet ministers are hand-picked by the president and hold little real power, with most having remained in office for years without challenging his authority (Eritrea Country Report 2024).

Judicial independence is vital to democracy and the rule of law, as it ensures that courts operate impartially, uphold constitutional principles, and act as a check on the abuse of power (Honnurali 2012). In a democratic society, an independent judiciary protects individual rights, enforces accountability, and upholds fair legal procedures (Honnurali 2012). In Eritrea, the judiciary lacks independence and is heavily influenced by the executive. The Supreme Court has been inactive since 2002, and the formal court system is weak and poorly structured. In many cases, military officers assume judicial functions over conscripts, further eroding the distinction between civil and military governance (Eritrea Country Report 2024). The erosion of legal institutions is compounded by the closure of Asmara University's law faculty in 2006, which led to the departure of many trained legal professionals from the country (Eritrea Country Report 2024). The justice system is marred by arbitrary detention and torture. Security forces regularly arrest individuals without due process, detaining them for months or even years without formal charges or access to a court (Harter 2025). Detainees often endure inhumane treatment, and torture is widespread, especially in military detention centers and prisons (Harter 2025). As a result, Eritrea's justice system is plagued by arbitrary detention, prolonged imprisonment without trial, and widespread use of torture particularly in military detention centers (Human Rights Council Hears that the Human Rights Situation in Eritrea Remains Dire and Shows No Sign of Improvement, and that the Situation of Human Rights in Afghanistan Continues to Deteriorate 2023). In such an environment, the absence of an independent judiciary prevents Eritrea from upholding democratic principles, protecting human rights, or ensuring rule of law (TIWARI 2024).

Corruption is rampant, especially within the civil administration and military. High-ranking military officials have been repeatedly implicated in illegal activities such as smuggling and human trafficking between Eritrea and Sudan (Eritrea Country Profile 2023). These officials operate with impunity, benefiting from the lack of enforcement mechanisms and judicial oversight (Eritrea Country Profile 2023). The situation has worsened with Eritrea's involvement in the Tigray conflict, where Eritrean military forces have committed grave human rights violations, including widespread looting and attacks on civilians. Looted goods are reportedly

resold in Eritrean markets, further enriching army officials (Ethiopia: Eritrean Forces Massacre Tigray Civilians 2021).

Furthermore, Eritrea's national service program functions as a system of forced labour. Citizens are conscripted into indefinite service, often under harsh and exploitative conditions. Party-affiliated companies, such as Segen Construction rely heavily on this labour to advance government and military interests (Reisen 2020). This conscription policy has been condemned as a form of modern-day slavery (Reisen 2020). Attempts to avoid conscription are met with severe punishments, including the confiscation of family homes and the harassment of relatives of those in hiding (Reisen 2020). In general, the rule of law in Eritrea remains deeply undermined by the concentration of power in the hands of the president and military elites, the absence of constitutional governance, the collapse of judicial independence, and widespread corruption. Civil liberties are routinely violated, and the continued use of forced labour, arbitrary detention, and impunity for rights abuses illustrates the systematic erosion of legal and institutional accountability in the country.

7. Conclusion

Eritrea's post-independence trajectory has been characterised by a highly centralised and tightly controlled system of governance. Although the country gained independence through a popular referendum and initially promised democratic transformation, these aspirations have not been realised in practice. Power remains firmly concentrated in the hands of President Isaias Afwerki and the People's Front for Democracy and Justice (PFDJ), with no legal opposition or pluralistic political space permitted.

Key institutions essential for democratic governance such as an independent judiciary, a functioning legislature, and a free press main either weak or entirely absent. National elections have never been held, and the 1997 Constitution, which outlines basic rights and democratic principles, has not been implemented. Civil liberties such as freedom of expression, association, and assembly are severely restricted, and reports of arbitrary detention, enforced disappearances, and torture continue to surface.

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Beyond Conflict: The National Dialogue as a Path to Democratic Renewal in Ethiopia

Eden Getnet

1. Introduction

Democracy is both an idea and a political system that functions as an analytical tool, a normative ideal, and a governance principle. (Stanford Encyclopedia of Philosophy 2006) However, democracy is not static; it evolves in response to societal changes, historical contexts, and political challenges (Jiacheng 2022, 111-139). Ethiopia, a country with a complex and contested democratic trajectory, illustrates the fluidity of democracy (Mattes , Teka 2016, 6). Since the fall of the Derg regime in 1991, Ethiopia has oscillated between democratic aspirations and authoritarian tendencies. The federal system introduced by the Ethiopian People's Revolutionary Democratic Front (EPRDF) was initially seen as a step toward self-governance and inclusivity. However it ultimately deepened ethnic divisions and fueled cycles of conflict (Fessha 2016).

The transition following the rise of Prime Minister Abiy Ahmed in 2018 initially sparked hope for democratic reform (Gonzalez 2022). However, Ethiopia has since been engulfed in conflicts that have raised questions about the country's commitment to democracy. Widespread human rights violations, conflicts, restrictions on press freedom, electoral disputes, and weakened rule of law suggest that Ethiopia's democracy is not only fragile but perhaps failing (Martorelli 2021). Against this backdrop, Ethiopia is currently undergoing a national dialogue process, which is intended to address political instability and create a path toward lasting peace and democratic renewal.

This chapter critically examines the status of Ethiopia's democracy the challenges it faces and how Ethiopia's national dialogue can serve as a mechanism for democratic consolidation. It delves into the specific obstacles undermining the effectiveness of the national dialogue. Furthermore, it offers recommendations for transforming the national dialogue into a tool to build a more inclusive and sustainable democracy. Ultimately, this chapter argues that while Ethiopia's democratic failures stem from a deeply rooted historical ethnic tension and grievance, a well-executed national dialogue could offer a crucial step toward genuine democratic transformation.

2. Understanding democracy and its values

Democracy, at its essence, is a form of governance where authority resides with the people (Inter parliamentary union 1998, 2). Over time, various democratic models have emerged across the

globe, shaped by the unique cultural, social, and political contexts of each society (Tilly 2007, 1-205). While every democracy functions under its own set of laws and structures, they all uphold core values and fundamental democratic principles, discussed below (Hadenius 1992, 36-61). Furthermore, democracies establish institutions dedicated to preserving essential freedoms and guaranteeing that governments remain attentive to the needs and rights of their people. Although democracy has a common understanding of the elements that define the concept and examples illustrating its meaning in practice, it remains fundamentally contested regarding its precise definition and appropriate implementation (Konrad Adenauer Stifunge 2011, 2).

The fundamental characteristics that unify democratic societies include popular sovereignty, where power rests with the people and governments operate with their consent through regular, free, and fair elections (Day 2022). The rule of law ensures that all individuals, including leaders, are subject to the law, which must be applied equally and fairly. A separation of powers between the executive, legislative, and judicial branches helps prevent the abuse of power and promotes checks and balances (World justice project 2023). Democracy also requires the protection of fundamental human rights (Office of the high Commissioner Human Right resolution 2002/46). Political pluralism and active citizen participation are essential, allowing diverse political parties and voices to influence governance (Escobar 2017, 416-438). Transparency and accountability in government operations, alongside an independent judiciary, uphold justice and public trust. Furthermore, democratic systems emphasize equality and non-discrimination (Johnston 1-31), ensuring that all individuals are treated fairly regardless of their identity, and embrace majority rule while safeguarding the rights of minorities.

3. Ethiopia's Democratic Journey: Navigating Challenges and Confronting Contradictions

Since 1991 Ethiopia, officially known as the Federal Democratic Republic of Ethiopia, envisions itself as a democratic state through its constitution, which guarantees different democratic principles (FDRE constitution Proclamation No. 1/1995). However, the practical application of these principles has been hindered by historical authoritarianism, ethnic tensions, one party dominance and political instability (Ibrahim 2018, 18-39). Prime Minister Abiy Ahmed's rise to power in 2018 brought initial optimism with reforms such as the release of political prisoners and journalists, peace agreement made with Eritrea and the return of various opposition leaders to Ethiopia. Despite these changes, Ethiopia's democratic progress has faced significant setbacks (Yetena 2022). These challenges are most evident in the government's inability to uphold essential

democratic standards (Global state of Democracy Initiative 2023: Ethiopia). Respecting and protecting human rights is a cornerstone of democratic governance (UN Human rights office of the high commissioner 2002). A democracy cannot thrive in the absence of fundamental rights such as freedom of expression, the right to life, liberty, security, non-discrimination, and access to justice. These rights empower citizens to participate freely in political processes, demand accountability, and ensure that power is exercised within legal and moral bounds. In Ethiopia, however, democracy is steadily eroding due to the government's failure to uphold these basic human rights, particularly in the context of conflicts (Yusuf 2022, 27). The war in the Tigray region and continued violence in Amhara and Oromia have been marked by widespread violations, including extrajudicial killings, sexual violence, mass displacement, arbitrary detention, and restrictions on humanitarian access (US Department of states 2023 country reports). These abuses highlight a breakdown of the rule of law and a disregard for international human rights standards.

Moreover, ethnic-based violence across various regions has intensified Ethiopia's political and social instability (Mulualem 2025). Clashes rooted in ethnic divisions have not only claimed thousands of lives but also deepened mistrust among communities, thereby weakening national cohesion and undermining prospects for peace and democratic reform (Freedom House Ethiopia: freedom in the world 2024 country report). In this context, the government's inability or unwillingness to protect its citizens' rights reveals a democratic system in crisis, where power is increasingly enforced through repression rather than representation.

Freedom of the press is an essential instrument for upholding democratic principles (United Nation 2023). A free and independent press acts as a watchdog over government conduct, exposing abuses of power and amplifying diverse voices, which are all critical components of a functioning democracy. In the case of Ethiopia, press freedom has experienced a notable decline in the past years, marked by increased instances of arrests and arbitrary detention of journalists (ALJAZEERA 2022). Furthermore, the legal framework governing the media has become increasingly restrictive, undermining the independence of journalism and the rights of mass media. A key concern is the proposed amendment to Proclamation No. 1238/2021, which would place the Ethiopian Media Authority under the direct control of the Prime Minister's Office (African press agency 2024). This change removes vital checks and balances, such as parliamentary oversight and transparency in board appointments, while granting the Authority broad powers over licensing and disciplinary actions. Such reforms risk politicising media regulation and undermining democratic accountability.

Freedom of civic space ensures democratic governance and the rule of law by enabling citizens and civil society to freely express, organize, and hold authorities accountable. It fosters participation, transparency, and the protection of fundamental rights. However, in Ethiopia, this space has been increasingly restricted (The Observatory for the Protection of Human Rights Defenders 2024). The Authority for Civil Society Organisations (ASCO) has suspended (Amnesty international 2024) and shut down several CSOs, a move that has not only limited public participation but also fostered a climate of fear, exclusion, and stigmatisation among civil society actors (International federation for human rights 2024). These actions suggest a democratic backslide in Ethiopia, where critical voices are being silenced instead of being protected and encouraged.

Regarding free and fair elections, Ethiopia's most recent national election, held in 2021 following political reforms under Prime Minister Abiy Ahmed, reflected progress through electoral law reforms and increased participation of opposition parties. However, it lacked broad-based legitimacy due to issues such as registration irregularities, closure of opposition party offices by security forces, lengthy and partisan electoral dispute resolution process, harassment, imprisonment, killings of members, the boycott by key opposition groups and war (Abay 2021). The government was also criticised for restricting the activities of several opposition parties, thereby undermining political pluralism (Yimenu 2024, 22-44). Ethiopia's democratic trajectory continues to face serious challenges, particularly in relation to the rule of law, the effective functioning of government institutions, and respect for due process (Freedom house freedom in the world 2023, making 50 years in the struggle for democracy). The states of emergencies, imposed in response to conflicts in various regions, have often been accompanied by restrictions on fundamental freedoms and rights (UN Human rights office of the high the commissioner 2024). These conflicts have not only destabilised the affected areas but have also exacerbated ethnic divisions across the country (Siyum 2021). As a result, ethnic identity has increasingly become a basis for discrimination in critical areas such as neighborhood integration, property ownership, and employment opportunities even in regions not directly impacted by conflict (UN Human rights office of the high the commissioner 2021).

This deepening ethnic fragmentation poses a significant threat to the foundations of Ethiopian democracy (Zena 2025). It undermines national unity, weakens public institutions, and hinders inclusive governance. Therefore, addressing Ethiopia's democratic deficits requires more than legal and institutional reforms; it necessitates a comprehensive and inclusive national dialogue. Such a process must create a safe and genuine space for all ethnic groups to articulate their

grievances, aspirations, and visions for the future. Only through open and honest dialogue can Ethiopia begin to heal its divisions, build mutual trust among its diverse communities, and lay the groundwork for a functioning, equitable, and sustainable democratic system.

4. National Dialogue as a Democratic Tool

A peaceful society fosters growth and development in multiple ways. However, across the globe, violent conflicts continue to disrupt communities, leading to widespread destruction of lives and property (Governance and social development resource Centre 2009). The positive aspect is that there are established mechanisms to address conflicts within a country, one of which is national dialogue. These dialogues serve as domestically led political processes designed to offer an inclusive and participatory platform for formal negotiations (Incisive peace 2017). Their primary purpose is to resolve political crises and facilitate political transitions. National dialogues are often mandated to undertake political reforms, draft or amend constitutions, and promote peace building efforts (Papagianni 2006). They are typically convened to tackle critical national issues, particularly deep-rooted conflicts that have been brought to the surface by political unrest or armed conflict (IDEA Handbook series 1998).

National dialogue serves as a vital democratic tool, particularly in societies experiencing deep divisions and political instability (ACCORD 2024). It provides an inclusive and structured platform where diverse actors can engage in open and honest discussions about the country's most pressing challenges. Unlike conventional democratic mechanisms that often fail to address root causes of conflict, national dialogue allows for the articulation of long-standing grievances related to ethnic tensions, historical injustices, power-sharing, and identity (Fontana, Yakinthou & Siewert 2020, 1-23). This process fosters inclusive participation, promotes consensus-building, and helps rebuild trust in public institutions that may have been weakened by conflict (Inclusive peace and transition initiative 2017, 2). In doing so, national dialogue prevents further democratic backsliding by offering peaceful alternatives to violence and repression, and by laying the groundwork for transformative institutional and constitutional reforms.

5. The Process of Ethiopia's National Dialogue

Ethiopia is a country of remarkable diversity, inhabited by more than 80 ethnic groups with distinct languages, cultures, and histories. However, in recent decades, this diversity has also given rise to deep political divisions and violent ethnic tensions (Yimenuh 2023). Repeated outbreaks of conflict across various regions have resulted in significant loss of life, widespread

displacement, and the erosion of trust among communities (Human rights watch world report 2024). In an effort to recognize and accommodate this diversity, Ethiopia adopted ethnic federalism as its system of governance. While the intention behind this approach was to ensure representation and autonomy for all ethnic groups, it has, unfortunately, deepened ethnic divisions. Many communities feel that the current system does not adequately represent their interests, leading to heightened tensions, grievances and growing resentment and distrust among groups (Bayu 2022), with some ethnic groups like the Amhara and Tigray alleging that they are victims of a systematic ethnic cleansing (Addis 2025). As a result, Ethiopia has witnessed a troubling erosion of a shared national identity, replaced by a surge in ethno nationalism and deepening polarisation (Desta 2021). The heightened emphasis on ethnic affiliations over collective nationhood continues to challenge the country's unity, stability, and prospects for democratic development.

Furthermore, Ethiopia's history plays a crucial role in shaping present-day ethnic conflicts (Kleppe 2022). Historically, some ethnic groups have felt marginalised, believing that political and economic power has been concentrated in the hands of a few dominant ethnic groups (Freeman 2003). This longstanding perception of exclusion in terms of political participation, economic prospect and cultural acknowledgement has fueled resentment and division, with some groups feeling that they were not actively involved in shaping the country's trajectory (Zelek 2018, 1961-1974). Consequently, the current ethnic conflicts are not merely a result of recent political decisions but are deeply rooted in historical experiences of inequality, exclusion, and competition for power. In response to these deep-rooted historical grievances and the urgent need to address the growing ethnic tensions, the Ethiopian government established the Ethiopian National Dialogue Commission (ENDC) (proclamation number 1265/2021& Demeke 2024) with the objective of fostering state and government legitimacy, resolving conflicts, enhancing democratic governance, and promoting social cohesion (The Reporter 2024). Despite the importance of Ethiopia's national dialogue initiative, it faces serious challenges that undermine its legitimacy and credibility (Center for advancement of rights and democracy 2024). These issues become clear when measured against the core principles of effective national dialogues, which require careful planning and execution across three key phases: pre-dialogue, during the dialogue, and post-dialogue. The first two phases must ensure inclusivity, transparency, public participation, a neutral convener, a clear and relevant agenda, defined mandates, suitable structures and procedures, a mechanism for implementation, and a balance between external support and national ownership (United States Institute of Peace 2015). The post-dialogue phase is equally vital, as it focuses on implementing the agreed outcomes.

The Ethiopian National Dialogue has faced widespread criticism for its lack of inclusivity, particularly for excluding key stakeholders such as religious institutions, civil society organisations, and various opposition political parties (Plaute 2024 & Stiftung 2024). Concerns have also been raised about the transparency and fairness of the commissioner nomination process, which lacked broad representation and impartiality (Kurtz 2024). Although one of the Commission's stated objectives is to resolve conflict and promote peace, it has largely sidelined the main actors involved in the conflicts (Etiel 2024). The dialogue process has also been criticised for not being participatory. Many concerned citizens youth, adults, elders, women, men, girls, and boys as well as different stakeholders, have felt excluded and inadequately consulted (Center advancement of rights and democracy 2024). Furthermore, the neutrality of the process has been called into question, as it appears to be indirectly steered by the ruling party (Habte 2025). This has resulted in a lack of trust from key opposition parties and armed groups, who view the leadership of the dialogue as biased.

Critics have also pointed out issues with the agenda-setting process (Yared 2024). Although the root causes of the country's conflicts are central to the dialogue's purpose, these have not been clearly identified. From the outset, the government has been accused of avoiding the inclusion of contentious issues widely considered to be at the heart of Ethiopia's political tensions. Additionally, the mandate and independence of the Commission have been challenged (Anduwalem 2022, 71-78). Given that the selection and nomination process was reportedly influenced by the ruling party, there are serious doubts about whether the Commission can truly operate free from political interference. This raises questions about its ability to carry out its work in a neutral, credible, and effective manner.

6. Way Forward

Despite persistent challenges, Ethiopia cannot afford to squander yet another critical opportunity for genuine democratic transformation. To ensure that the national dialogue becomes a credible pathway to democratic governance and lasting peace, the process should begin with a temporary pause to allow for introspection, wide public engagement, and meaningful dialogue with armed groups. This period should also be used to secure a comprehensive ceasefire and facilitate elite negotiations on unresolved political issues. A successful dialogue requires revisiting the root causes of the country's political crisis, including the contested historical narratives and competing national visions that continue to shape political grievances. Moreover, the National Dialogue Commission must demonstrate its neutrality and institutional independence, and actively ensure

the meaningful inclusion of all relevant stakeholders especially marginalised and historically excluded communities.

Public trust and a sense of ownership must be fostered by ensuring transparency throughout the process, including regular public updates, clear timelines, and accessible platforms for participation and feedback. The dialogue should not be seen as a one-time event but as part of a broader strategic framework aimed at navigating complex political dynamics and addressing systemic inequalities. With deliberate planning, inclusive structures, and sustained political will, the national dialogue can offer Ethiopia a real chance to rebuild trust, strengthen national unity, and lay the foundation for a democratic and peaceful future.

Concurrently, it is imperative to reinforce the independence and institutional capacity of the judiciary and electoral bodies, ensure accountability for human rights violations through the transitional justice process already underway, and undertake comprehensive reforms to depoliticize security institutions in order to rebuild public confidence in state structures. Furthermore, the government must reconsider and halt any efforts to revise media legislation in ways that would impose greater restrictions and stop undermining the progress achieved in expanding the civic space. Ultimately, the revitalisation of Ethiopia's democratic trajectory hinges on a firm commitment to inclusive governance, the protection of human rights, and the consistent application of the rule of law.

7. Conclusion

Ethiopia's democratic promise is faltering under the weight of deep ethnic divisions, recurring conflicts, and persistent human rights violations. While initial reforms sparked hope, increasing polarisation and weakened institutions have undermined trust and democratic progress. Civil liberties especially the rights to life, expression, and equality continue to be eroded, pushing the country further from its democratic ideals. Amid this crisis, the national dialogue offers a critical opportunity to redefine Ethiopia's future. If inclusive, transparent, and rooted in international best practices, it can heal divisions, confront historical grievances, and forge a shared democratic vision. To succeed, the process must ensure broad participation, amplify marginalised voices, guarantee transparency, and commit to implementing outcomes.

However, the path is fraught with challenges. Political complexities, vested interests, and elite manipulation threaten to derail the process. Without robust safeguards, oversight, and accountability, the dialogue risks becoming another failed initiative. Managing spoilers and

preventing elite capture are essential to preserving its legitimacy and credibility. Ultimately, Ethiopia's renewal depends on collective will facing hard truths, listening across divides, and committing to justice, equity, and reconciliation. A well-executed national dialogue, if genuine and inclusive, holds the greatest promise for restoring peace, unity, and democratic transformation in Ethiopia.

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State of Democracy in Gabon

Lassané Ouedraogo and Dorcas Basimanynane

Commentators paint an almost depressing picture of the state of global democracy (Knuer 2021, 1443). The terms "democratic recession," "democratic decay," "deconsolidation," "autocratisation", and “de-democratisation”, meaning democratic recession or regression, are employed to characterise the depressed state of global democracy (Fombad 2021, 1-2). Recent events in the Francophone Africa region substantiate this depressing assessment. These developments have plunged the zone back into the dark days before the post-Cold War optimism of the 1990s (Nur 2015, 51). In fact, within 5 years, the region experienced several coups d’État, with two in Mali and two in Burkina Faso (Haidara 2023). Similar events occurred in Guinea, Niger, Chad, and Gabon (Kamga 2025). Unfortunately, this indicates a regression of democratic development, akin to conditions three decades ago, contrasting sharply with the progress made in the post-1990s era. The rise in military rule is mainly due to public dissatisfaction with political systems and poor socio-economic conditions. Disillusionment with democracy in Africa has risen due to politicians' failure to uphold democratic values and deliver good governance (Haidara 2023). The growing approval of military rule in several African countries, as seen in surveys from Gabon and Niger, reflects this disillusionment (Afrobarometer 2024, 6). The erosion of trust in purportedly democratic political elites further exacerbates this trend, as evidenced by the findings of the Democracy Index 2023 (Democratic 2023, 7).

On one hand, Gabon is a wealthy, equatorial country in Central Africa with approximately 2.5 million inhabitants. Gabon’s economic trajectory reflected a complex interplay of resource dependency, governance reforms, and regional and global shocks. The Gabonese economy is characterised by a high degree of dependence on the exportation of primary commodities, notably crude oil, manganese, and timber. In 2022, the national economy demonstrated a measurable recovery, with projected growth reaching approximately 3%, a notable increase from the 1.5% recorded in 2021 (AFDB 2024, 76). While the 2023 military coup disrupted governance and investor confidence, projections for 2025 suggest a potential rebound, with estimated economic growth of approximately 3% if Gabon managed to diversify its economy and improve its precarious fiscal system (Bello-Schunemann and Ciliers 2025, 14).

On the other hand, the political landscape of Gabon was dominated by the Bongo clan from 1963 to 2023, coinciding with the coup d'état that overthrew Ali Bongo. President Ali Bongo came to power in a contentious 2009 election following his father's death, Omar Bongo, who ruled the

country for 42 years. The *Parti Democratique Gabonais* was the dominant political force until the August 2023 coup. Indeed, it is alleged that the Bongo family's misappropriation of oil revenues led Gabon to prolonged underdevelopment, which was a motivating factor in the 2023 coup (Reddy 2023). This chapter aims to assess the state of democracy in Gabon. The study then proceeds to analyse seven key elements to ascertain the state of democracy in Gabon. These elements encompass a brief history of Gabon's legal commitment to democracy through the constitutional order in Gabon and Gabon's subscription to international human rights instruments that have a rule of law or democratic requirements. Thereafter, the study will assess how these democratic commitments have been implemented through the management of elections, the prevailing political culture, and access to justice, freedom of expression, internet access, corruption, security, and inclusivity.

1. Gabon's commitment to democracy

Gabon showcases its commitment to democracy through its adherence to international agreements and its constitutional framework that supports democratic values.

Gabon is not only a party to the Universal Declaration of Human Rights, but also a signatory to the Covenant on Political and Civil Rights and the Covenant on Economic, Social and Cultural Rights. These instruments are known for their implicit requirements regarding democracy. Furthermore, Gabon is also party to the African Charter on Human and Peoples' Rights, adopted in 1981. Most importantly, regarding democracy, Gabon has signed the African Charter on democracy and Good Governance of 2007. Although it has yet to ratify, this does not undermine its moral commitment to this charter.

Historically, Gabon's first constitution was adopted on February 21, 1961, following the country's independence from France on August 17, 1960. It laid the foundational legal framework for the newly sovereign state. As an important feature, it encompasses the influence of the French constitutional model. The 1961 Constitution officially established a democratic republic. Substantively, it provides for a strong presidential system. It also provided for a National Assembly, whose members must be elected by universal suffrage, signifying a formal embrace of representative democracy. However, the constitution did not initially guarantee multi-party competition substantively. Although political parties were not formally prohibited, the political landscape was dominated by the *Parti Democratic Gabonais*. This resulted in stifling opposition and limiting meaningful electoral competition from the end of the 1960s to the end of the 1980s (Zhuang 2025, 5). The first constitution was eventually replaced in 1991, following the end of the Cold War and the call of la Baul.

Gabon's second constitution, promulgated in 1991, marked a turning point in the country's constitutional, political, and democratic history. It was adopted after the National Conference in 1990, like other francophone African States (Robinson 1994, 575). Symbolising a shift from single-party rule toward a formal embrace of liberal democracy, multi-party pluralism, and expanded human rights protections.

The 1991 Constitution re-established and entrenched the foundations of representative democracy. This encompassed the reintroduction of multiparty politics, hence, legally allowing opposition parties to organise and contest elections. It also reaffirmed the separation of powers between the executive, legislative, and judicial branches (Constitution, 1991). However, it maintains a presidential system, wherein the President is directly elected by the people. A distinguishing feature of the second constitution is the establishment of a bicameral parliament, comprising the National Assembly and the Senate. Elections were to be conducted through universal suffrage, and term limits were introduced for the presidency (though these have been subject to several revisions). One of the most important innovations of the 1991 Constitution is its robust emphasis on fundamental rights and liberties. As such, its preamble heavily refers to international human rights instruments such as the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. Notably, the 1991 Constitution guarantees freedom of expression, assembly, association, religion, and the press. Furthermore, it affirms equality before the law, without distinction based on race, gender, religion, or political opinion. However, the 1991 Constitution was modified many times, especially to extend or remove term limits (Fombad 2014, 423). Consequently, these changes allowed the Bongo family to consolidate its dynastic ruling.

A new constitution was promulgated in December 2024, following the 2023 coup d'état (RFI 2024). It reflects an effort to rectify the political and institutional legacies of the Bongo dynasty. Although the text largely preserves the same guarantees of fundamental rights as its predecessor, it introduces notable structural reforms. In particular, it establishes a Constitutional Court vested with the authority to exercise judicial oversight and constitutional review. Significantly, the 2024 Constitution reinstates presidential term limits, which had been previously abolished under the Bongo regime (Zhuang 2025, 5). Most importantly, Article 169 of the 2024 Constitution explicitly prohibits any constitutional amendment that seeks to extend the presidential term limit. The phrasing of this provision constitutes a safeguard against executive overreach. While this study aims to assess the state of democracy in Gabon, its focus will be on the previous constitutions and laws supplementing them.

2. Elections and prevailing political culture

Before the 2025 presidential elections, Gabon was classified as a consolidated electoral authoritarian regime. This classification followed the country's failed democratic transition in the 1990s (Battera 2023, 138). It also reflected the entrenchment of elected incumbents who dismantled constitutional term limits. Notably, President Omar Bongo eliminated term limits and remained in power for decades. Upon his death, his son, Ali Bongo, succeeded him, further consolidating the dynastic ruling (Yates 2019, 504).

Before the 2023 coup d'état in Gabon, the political landscape was dominated by the Bongo family dynastic party (the *Parti Gabonnais pour la Democratie*, which ruled in Gabon from 1968 to 2023 (Ovono and Ondo 2023). Indeed, despite its democratic aspirations, the 1991 Constitution has undergone several amendments, notably in 2003 and 2011, which have weakened some democratic safeguards (Oyono and Ondo 2023). Indeed, a democratic and rule of law state must have sound separation of powers amongst the executive, the legislative and the judiciary. Notably, the removal of presidential term limits in 2003 allowed President Omar Bongo and, subsequently, his son, Ali Bongo Ondimba, to extend their tenure in office. Consequently, these constitutional changes to extend the term limits have weakened the independence of Gabon's judiciary, parliamentary, and electoral oversight bodies.

In the words of Bazmi and Qureshi, "the beauty of democracy lies in the rule of separation of powers and the principle of checks and balances" (Bazmi and Qureshi 2021, 876). The theory of separation of powers, as developed by Montesquieu, warned that if the legislative and executive are detained in one institution, the liberties of the people will be jeopardised (Montesquieu 2002). Further, if the judicial power is granted to the same institution which has the power to govern and legislate, the laws become pointless.

However, the context of Gabon, the executive influence over the Constitutional Court, responsible for validating election results and resolving constitutional disputes, undermined the checks and balances prerogative it is meant to uphold (ISS 2018). These changes raise concerns about executive overreach and the erosion of the rule of law (Oyono and Ondo 2023). As an illustration, amongst others, the 1996 parliamentary elections were marred by serious irregularities. Following the opposition's electoral success, the government subsequently transferred key electoral functions from the Electoral Commission to the Ministry of the Interior (Tordoff and Young 1999, 270). Similarly, President Omar Bongo's re-election in 1998 was marked by a campaign that made extensive use of state resources, while major opposition parties boycotted the process (Tordoff and Young 1999, 271). Furthermore, the 2005 presidential election was held over two dates: on

25 November for security personnel and on 27 November for civilians. This election, too, was undermined by significant irregularities, particularly concerning voter registration and the misuse of public resources (Freedom House 2005). It was tarnished by irregularities, including incomplete and inaccurate electoral lists, abuse of government resources by the ruling party, and unequal access to the media. (Freedom House 2005). Opposition parties also accused the ruling party of buying votes and ballot stuffing (Freedom House 2005). According to the Freedom House, the election occurred without competition and experienced military, and the incumbent president's interference over the electoral process (Freedom House 2005).

Once more, the 2009 presidential election that took place following the death of President Omar Bongo was heavily contested for irregularities. In fact, after Omar Bongo passed away, according to the constitutional provision, the President of the Senate at that time, Mrs. Rose Francine Rogombé, was the legitimate interim successor (AU and ECCAS, 2016). Nevertheless, the transition to elections occurred under contested circumstances. While the official results declared Ali Bongo the winner with 41.79% of the vote. However, the opposition strongly disputed the outcome, alleging widespread electoral irregularities (AU and ECCAS, 2016).

Furthermore, the 2016 presidential election in Gabon was marked by significant controversy. Following the contested 2009 elections, opposition leaders questioned the nationality of Ali Bongo with scepticism regarding his lineage. Initially, President Ali Bongo's eligibility was challenged based on his citizenship. The opposition leaders went further and contested his birth certificate before the Constitutional Court (AU and ECCAS). However, the Constitutional Court dismissed the challenge as inadmissible due to insufficient evidence (AU and ECCAS, 2016). In addition, the absence of a constitutional limitation on presidential terms further fuelled political tension. Although the African Union and other international observers reported that the electoral process was generally calm, serious concerns persisted over the final results (AU and ECCAS, 2016). As a result, the official results were widely rejected by the opposition and segments of the population (EU, 2016). Violent demonstration occurred, which lead, to reported casualties ranging from five to one hundred (EU, 2016). Public media facilities were attacked, and the Bongo Administration imposed internet and social media shutdowns (EU, 2016).

Finally, on a recent note, the 2023 presidential election was also heavily contested (France 24, 2025). Indeed, the 2023 general election occurred after constitutional revision, which occurred in April 2023. The revision was on the electoral process and the presidential term. The presidential term was reduced from 7 years to 5 years. However, the presidential term limit was removed (Perspective Monde 2023). Additionally, the election occurred in an opacity context. The internet

was shut down, international electoral observers were excluded from monitoring the election, and various mainstream media were suspended (Le Monde 2023). Further, the incumbent government decided to impose a curfew (Bob Barry 2023). These measures from the incumbent regime raise suspicion of electoral fraud, which led to a post-electoral crisis (Bob Barry 2023).

The post-electoral crisis culminated in a coup d'état in August 2023. Scholarly literature classifies such interventions as 'protective coups,' typically justified as efforts to safeguard the state from governance failures (Thomson, 2000). In short, the 2023 general elections were marked by widespread irregularities. Finally, the military junta organised new presidential elections on 12 April 2025. The transitional leader, Brice Oligui Nguema, was elected by a large margin (France 24, 2025).

3. Access to justice

Beyond the above prevailing political culture, the implementation of access to justice in Gabon faces persistent challenges. Indeed, like the 1991 Constitution, the 2024 Constitution does not explicitly enshrine the right to access to justice. However, its preamble affirms adherence to international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights (ACHPR). According to Article 10 of the UHDR, everyone has the right to a fair and public hearing by an independent and impartial tribunal. Additionally, a combined reading of Articles 7 and 26 of the ACHPR obliges states to ensure the right of every individual to have their cause heard by an independent adjudicatory body. This includes guarantees such as the right to appeal, the presumption of innocence, the right to legal defence, and the right to be tried within a reasonable time by an impartial court.

However, despite these normative guarantees, the practical enjoyment of access to justice in Gabon remains limited. The judiciary is frequently criticised for its lack of independence and limited accessibility. In this regard, according to the World Justice Project, Gabon ranks 122nd out of 142 countries in terms of access to justice and the rule of law (World Justice Project, 2024). A recent diagnosis by judicial actors reveals severe dysfunctions within Gabon's justice system (RFI 2024). The primary concern is the persistent failure to uphold ethical and deontological standards. In addition, insufficient allocation of resources to the judiciary significantly hampers its functioning and reduces public access to justice. Moreover, political interference remains pervasive. According to the same document, this undermines both judicial independence and public confidence in legal institutions (RFI 2024). The perception of bias further weakens the legitimacy of judicial decisions. Furthermore, the penitentiary system is in critical condition.

Prisons are overcrowded, and detainees are held in conditions that fall short of international human rights standards. These systemic deficiencies illustrate a broader crisis affecting the administration of justice in Gabon (RFI 2024). These institutional weaknesses are particularly evident in the adjudication of electoral disputes. The Constitutional Court, responsible for such matters, is widely perceived as lacking impartiality and closely aligned with the executive (Ntwali 2019, 340). It has repeatedly ruled in favour of incumbent authorities, thereby undermining the credibility of electoral outcomes (Ntwali 2019, 340).

Consequently, this erosion of judicial independence has fostered widespread mistrust in democratic institutions. A notable outcome of this longstanding disillusionment was the public support for the 2023 coup d'état. In 2025, the population further endorsed this shift by overwhelmingly electing the military leader to the presidency.

4. Freedom of expression and access to the internet

Freedom of expression constitutes a foundational human right (Article 19 UDHR). It guarantees the liberty to express opinions, ideas, and beliefs without undue interference (Article 19 UDHR). In the digital era, this right is increasingly contingent upon access to the internet, which now functions as a central platform for communication, information dissemination, and public discourse (Momen 2020, 277). At the international level, the United Nations recognises freedom of expression as essential to fostering inclusive, participatory, and peaceful democratic societies (HRC, 2020). Regionally, Article 9 of the ACHPR (ACHPR, 1981) explicitly protects the right to receive and disseminate information and ideas. At the domestic level, Article 1 of Gabon's 1991 Constitution enshrines this right, which is reaffirmed in Article 14 of the 2024 Constitution. These constitutional provisions underscore the pivotal role of freedom of expression in upholding democratic governance and the rule of law. Moreover, given technological developments, the African Commission on Human and Peoples' Rights has affirmed that states have positive obligation to promote and safeguard freedom of expression and access to information in digital spaces (ACHPR, 2019). This duty extends to ensuring that individuals have access to reliable, affordable, and secure internet services, enabling the meaningful exercise of these rights.

Nevertheless, in Gabon, freedom of expression and internet access remain precarious, particularly during periods of political contestation (IDEA 2024). According to Afrobarometer, fewer Gabonese perceive their media as free (Afrobarometer, 2025). Further, 54% of Gabonese are with the opinion that there news media are not free of censorship (Afrobarometer 2025). The state has repeatedly resorted to internet shutdowns and blockages in such contexts (Obangome 2023). However, Gabon has recently demonstrated progress. According to Reporters Without Borders,

the country improved its global ranking on freedom of expression, moving from 94th out of 180 countries in 2023 to 56th in 2024 (RSF 2025). Following the coup, the transitional leadership expressed a willingness to uphold freedom of expression.

Gabon reportedly hosts more than 60 broadcasting outlets (RSF 2025). However, the media landscape remains dominated by state-owned platforms (RSF 2025). The institutional framework regulating media was heavily influenced by the Bongo political dynasty. For instance, in 2023, prior to the general elections, legislation adopted by the National Assembly and Senate granted the incumbent regime exclusive authority to appoint all nine members of the High Authority for Communication (RSF 2025). This measure significantly undermined the independence of the media. In addition, the government under President Ali Bongo refused to accredit foreign journalists for coverage of the general elections held on 26 August 2023 (Nzuey 2023). Numerous African and international media representatives were denied access, and some journalists were expelled from the country. Despite a relatively high internet penetration rate, estimated at 73.7% (RSF 2025), internet access in Gabon is frequently disrupted. These shutdowns are systematic during electoral periods before the general election of 2025. Notably, during the 2023 general elections, the Bongo administration ordered a complete internet blackout (Obangome 2023).

5. Corruption

Corruption constitutes a significant barrier to socio-economic development (Kubbe and Engelbert 2018, 175). It negatively impacts fiscal performance, economic growth, social equity, and the general well-being of citizens. Moreover, it erodes political trust and undermines the legitimacy of state institutions (Kubbe and Engelbert 2018, 175).

In Gabon, corruption is formally prohibited under multiple legislative instruments. Notably, Law No. 041/2020 of 22 March 2021 amends and expands Law No. 002/2003 of 17 May 2003, initially focused on illicit enrichment. The amended law introduces broader mechanisms for the prevention and repression of corruption.

Despite this legal framework, corruption remains deeply entrenched. According to Afrobarometer, 82% of Gabonese perceive corruption levels to be high (Keulder 2021). Additionally, Transparency International's Index on corruption indicates that Gabon scored 27 out of 100 in 2024, and ranks 135 out of 180 States, being its lowest score since 2014 (Transparency International, 2025). Bribery is reportedly widespread, particularly as a means to access public services. The same source indicates that perceived corruption is prevalent at all levels of public authority: 63% at the presidency, 45% among civil servants, 69% in the police, and

58% within the judiciary (Keulder 2021). Additionally, fear of retaliation is widespread. Afrobarometer reports that 91% of citizens fear consequences for reporting corruption (Keulder 2021). This climate of fear further restricts access to essential public services and deters civic engagement.

Corruption has also been instrumentalised for political purposes. Anti-corruption initiatives such as “Operation Mamba” and “Operation Scorpion” have been used selectively to remove political rivals (Stifung 2021). These campaigns often targeted individuals holding significant power, subsequently replaced by close affiliates of the Bongo family, particularly Ali Bongo’s eldest son, Noureddin Bongo. For example, in February 2020, the public prosecutor dismissed corruption allegations brought by four civil society organisations against Noureddin Bongo. Ironically, Noureddin played a leading role in these anti-corruption operations. As a result, several high-profile figures were prosecuted, including Patrichi Christian Tanasa, former head of Gabon Oil Company, and Ike Ngouoni, the former presidential spokesman, who was sentenced to eight years in prison for embezzlement and money laundering in 2022 (Stifung 2021).

Conversely, allegations implicating members of the Bongo family in grand corruption and money laundering have not led to prosecution (Reddy 2023). The 2021 Pandora Papers, released by the International Consortium of Investigative Journalists, revealed that tens of millions of euros in public funds were laundered through BNP Paribas by the Bongo family. The same investigation showed that these resources were used to sustain patronage networks and finance vote-buying during elections (Reddy 2023).

6. Security and inclusivity

A stable democratic state requires professional and republican security forces (Huntington 1981). The armed forces play a critical role in preserving constitutional order and public security. However, in Gabon, the political system has been weakened by persistent military interference in civilian governance (Murden 2025). Security forces in Gabon have historically operated with de facto impunity. Alleged security threats have often been invoked to restrict civic space and suppress fundamental rights. Under previous Bongo administrations, opposition leaders and journalists were subjected to systematic surveillance and intimidation (CPJ 2012). Justifications based on national security were routinely used to curtail civil liberties and political participation. These same pretexts served to repress dissent and silence critical voices. Although the leaders of the 2023 coup pledged to uphold justice and combat impunity, the centralisation of power among the military elite raises serious concerns (Hetinnon 2024). Promises of "zero tolerance" for misconduct by security personnel remain largely untested and rhetorical.

Moreover, inclusivity remains a persistent challenge to democratic consolidation in Gabon (Human Rights Council 2017). Despite the country's ratification of key international and regional instruments protecting minority rights, including those of indigenous peoples, implementation has been limited (Human Rights Council 2017). Gabon is home to an important community of indigenous inhabitants, including the Baka and Babongo people (A Goussoutou 2024, 21). These indigenous people have been continuously facing the violation of their basic rights (Human Rights Council 2017). Indeed, these communities' cultural customs and means of subsistence are closely linked to particular regions, especially rainforest areas (Human Rights Council 2017). These include areas that are heavily used economically or in terms of resources, as well as areas that are legally protected. These areas frequently correspond to the areas that these communities have historically occupied or used (Human Rights Council 2017). This overlap results in a complicated legal and practical relationship between community rights, development activities, and conservation efforts. In general, development projects are implemented in these zones without the prior and informed consent of these indigenous people, resulting in systematic violations of the rights of these communities (Human Rights Council, 2017). In sum, these elements limit a sound participation of the indigenous people to the democratic process in Gabon.

Aside from the participation of Indigenous people, the participation of women and youths in the political contestations limits the vitality of the Gabon democratic system (Gabon Review 2023). Despite important steps towards women's inclusivity adopted in 2018 through constitutional revision, sound women's participation has yet to be achieved (Gabon Review 2023). Indeed, Article 1, paragraph 24 and Article 6 of the Gabon Constitution, as modified in 2018, call upon the equal political and administrative participation of women, youths, and persons with disabilities. Still, the apparent under-representation of women in leadership positions continues to be a cause for concern, even with these encouraging developments. While some areas, such as the constitutional reform highlighted previously, have seen progress, it is far from sufficient. Women make up just 19% of the National Assembly (Gabon review 2023). This number shows a notable gender disparity in political representation. This lack underlines the ongoing obstacles women encounter in their quest for positions of power. It also brings up significant issues regarding equality, inclusion, and access to leadership. Women still need to be much more present and equal in decision-making areas.

Additionally, Articles 6 and 15 of the 2024 Constitution provide for equal political involvement for all people, regardless of gender. Overall, these clauses seek to guarantee that women have the same chances as men to engage in political activity and to foster inclusiveness. But, in reality, this goal stays mostly unfulfilled. Only one female candidate was authorised to run for the presidential

election in 2025 (RFI, 2025). This small representation calls into question the efficacy of constitutional promises. It also shows continuing structural and social obstacles preventing women from fully participating in the political process.

The absence of a checks and balances system when it comes to inclusivity limits the rights of indigenous persons. Marginalised components of the society in Gabon, such as women and indigenous communities, continue to face systemic exclusion from political, social, and economic processes. In sum, unchecked military influence, limited civic space, and the marginalisation of minority groups undermine Gabon's prospects for a truly democratic and inclusive state.

7. The way forward

Restoring democracy in Africa, especially in Gabon, requires strong institutions, inclusive governance, media freedom. Gabon must prioritise these areas to protect and advance democratic values. Collective action is essential.

Aligned with SDG 2030 and Africa 2063, the Gabonese leaders must ensure access to justice, peace, and effective institutions at all levels. The rule of law, equity, and accountability are key to good governance. This includes fair elections, inclusive constitutions, and strong civil society. Media and judiciary must hold power to account. Lastly, leaders must create secure environments where democracy and good governance can thrive.

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Democratic Transition and Consolidation in The Gambia

Awa Gai & Satang Nabaneh

1. Introduction

The Gambia's political history is marked by a complex interplay of authoritarian rule and the struggle for democratic governance. Following years of autocratic leadership, the country embarked on a significant democratic transition after the 2016 presidential elections, which not only reshaped its political landscape but also ignited hopes for a more inclusive and representative government.[1] Before outlining the roadmap of the chapter, two definitional issues need to be addressed. 'Democratic transition' is used broadly to refer to the process of democratisation where a state undergoes regime change away from a particular type of authoritarianism to a more liberal and/or democratic one (Arugay 2021, 276). 'Democratic consolidation' on the other hand is the process by which a new democracy matures, becoming stable and enduring, involving the deepening of democratic institutions and practices, including the establishment of a strong civil society, independent judiciary, and a culture of political participation and competition (Makgale 2024, 188-200). This sets the stage for understanding the intricate journey The Gambia has undertaken, from repression to potential renewal.

The rest of this chapter is divided into four sections. In exploring the historical context, section 2 analyses the previous regime and key events leading up to the 2016 elections, emphasising how decades of authoritarianism have indelibly impacted the nation's political culture and society. Section 3 also highlights the key players in the transition, examining the roles of political parties, civil society organisations (CSOs), and international actors, as well as influential figures who have been pivotal in steering the country toward democracy. However, the path to democratic consolidation is fraught with challenges. Section 4 addresses ongoing issues, including resistance from entrenched interests and the lingering legacy of past authoritarian practices. Despite these hurdles, significant progress has been made in governance reforms and civil rights, which this chapter discusses. This section also considers opportunities amidst the challenges on the future prospects for democracy in The Gambia, identifying potential pathways for consolidation and the role of youth and emerging leaders in shaping the nation's political landscape. This aims to

[1] On how semi-authoritarian regimes in Africa manage leadership transitions, see generally, Nabaneh, Satang. 2024. "From Contemporary (Semi-Competitive) Authoritarian Regimes to Constitutional Democracies in Africa: Lessons from The Gambia, Uganda and Zimbabwe." PhD dissertation, University of Washington.

provide a nuanced understanding of The Gambia's ongoing journey toward democracy and the complexities that lie ahead. Section 5 offers concluding remarks.

2. Historical Context: From Independence to Democratic Transition

The Gambia gained independence on 18 February 1965 as a constitutional monarchy within the Commonwealth. Following decades of colonial rule, it transitioned to a republic on 24 April 1970 after a referendum that received majority approval. Until a military coup on 22 July 1994, The Gambia was governed by President Dawda Kairaba Jawara of the People's Progressive Party, which had been the dominant political force since the country's independence. Jawara was instrumental in the creation of the African Charter on Human and Peoples' Rights (African Charter),[2] commonly referred to as the Banjul Charter. The African Charter was named after The Gambia's capital, where it was formally adopted in 1981. Despite its small size relative to its larger neighbouring countries, The Gambia was chosen to be the host of the secretariat for the African Commission on Human and Peoples' Rights (ACHPR), which is a quasi-judicial body tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent as well as interpreting the Charter (Article 45, African Charter).

A military coup orchestrated by Yahya A.J.J. Jammeh toppled the Jawara government and suspended the 1970 Constitution, signaling the end of the first republic. This led to a military junta called the Armed Forces Provisional Ruling Council (AFPRC), replacing Jawara's elected government, with Jammeh serving as its leader. The AFPRC appointed and oversaw the Constitutional Review Commission (CRC) tasked with creating the new Constitution.[3] This process culminated in a constitutional referendum held on 8 August 1996, which resulted in the adoption of the 1997 Constitution, a document that remains in effect to this day. Additionally, a '22 July Movement', established in 1995 to commemorate the 1994 coup, evolved into an official political party known as the Alliance for Patriotic Reorientation and Construction (APRC) to back Jammeh's presidential campaign. Jammeh won the September 1996 presidential election, leading to the restoration of civilian rule and making him The Gambia's second elected President in 31 years of independence (Nabaneh 2007, 5-6).

On 1 December 2016, The Gambia held a presidential election in which Jammeh, who had been in power for 22 years, was defeated by opposition coalition candidate Adama Barrow. Initially,

[2] The African Charter was signed and ratified by The Gambia in 1983.

[3] For a comprehensive overview of the work of the CRC, see *in* Perfect, David. 2022 "Making constitutions in The Gambia" In *The Gambia in Transition: Towards a New Constitutional Order,* edited by Satang Nabaneh, Adem Abebe and Gaye Sowe. Pretoria University Law Press.

Jammeh accepted the election results on 2 December, but a week later, on 9 December, he changed his mind and refused to relinquish power, leading the country into an unprecedented political deadlock (Searcey and Barry 2016). This reversal drew significant local and international criticism and prompted a series of diplomatic efforts by the Economic Community of West African States (ECOWAS). The ECOWAS planned to intervene and forcibly oust him if diplomatic negotiations proved unsuccessful. As a result, Barrow officially took the oath of office as president on 19 January 2017 at the Gambian Embassy in Dakar, Senegal. Shortly thereafter, a coalition of military forces from five ECOWAS member states entered The Gambia, halting their advance near the capital to complete their diplomatic mission aimed at securing Jammeh's departure. Just two days later, under mounting diplomatic pressure, Jammeh agreed to leave and flew to Equatorial Guinea. Barrow made his return to The Gambia on 26 January 2017, where he was met with jubilant celebrations from the public (Al Jazeera 2017). Since then, he has been in power and has already served two terms, with plans to seek a third term in the upcoming 2026 presidential elections (QTV Gambia 2025).

3. Intersection of key players in the transition

Despite the significant challenges posed by an unequal political landscape, the opposition's failure to establish and maintain a strong and cohesive coalition allowed Jammeh to secure victory in four consecutive presidential elections in 1996, 2001, 2006, and 2011 (Nabaneh 2024, 214). However, the collaborative dynamics between political parties, CSOs and international actors, coupled with the impactful contributions of influential individuals, have been instrumental in steering The Gambia's transition to democracy. These diverse forces, each playing a critical role, have collectively forged a path toward a more inclusive and representative political landscape. A significant factor in the outcome of the 2016 elections was the unprecedented unity among opposition parties, which came together to form a coalition after 15 years of fragmentation and discord (Jaw 2017, 61). Independent politicians and seven of the eight opposition parties, including the United Democratic Party, National Reconciliation Party, Gambia Moral Congress, People's Progressive Party, People's Democratic Organisation for Independence and Socialism, Gambia Party for Democracy and Progress, and National Convention Party, united in forming the coalition (Election Guide 2016). Arguably, this historic alliance not only galvanised support but also united various factions of the Gambian populace in a common cause against the long-standing regime of Jammeh. The undemocratic practices under Jammeh's regime included widespread human rights violations, particularly suppression of the political opposition through intimidation and violence, restricted media freedom, and controlled the narrative by censoring

dissenting voices (TRRC Report 2021). Thus, the decision to put aside long-standing differences and collaborate toward a singular goal marked a pivotal shift in the country's political climate.

In response to this call for unity, a diverse array of individuals and CSOs rallied together, contributing their resources, expertise and passion to support the coalition (Janneh 2019). Gambians living home and abroad actively engaged in influencing the political landscape of the country, advocating for a return to democratic governance. The influence of youth and women in shaping democracy in The Gambia also became strikingly evident during the 2016 Presidential elections (Nabaneh 2018). Even today, the country boasts a diverse array of CSOs that play a critical role in mediating public affairs. Notably, professional bodies, like the Gambia Bar Association and the Gambia Press Union, wield considerable influence in representing and mobilising interests (Gambia Country Report, 2024). The involvement and activism of key players, particularly women and youth, were critical. Their participation was not only unprecedented but also essential in mobilising support against the autocratic rule of Jammeh. A remarkable woman figure is Aja Fatoumatta Jallow-Tambajang, who served as the chairperson of the coalition and was instrumental in forming an unprecedented alliance that united opposition political parties and independent candidates.

One of the most notable movements to emerge during this time was 'Gambia Has Decided,'[4] which arose in direct response to Jammeh's attempts to undermine the legitimacy of the electoral results following the December 2016 elections. This movement played a crucial role in raising awareness and maintaining pressure for change, with its bold campaign slogan, 'Gambia Has Decided', prominently displayed on billboards and T-shirts (Nabaneh 2018). Despite challenges, the movement remained steadfast in its call for adherence to constitutional norms and the rule of law following Barrow's electoral victory. As of March 2020, over half of the Gambian population is reported to be actively participating in at least one community-based group or civil society organisation (Jaw and Isbell 2020, 2). While the current climate suggests positive developments in civic engagement and empowerment, true political maturity will depend on the establishment of strong institutions, continuous public participation, and a commitment to democratic values over time.

Another significant development in this context was the coalition agreement established prior to the 2016 elections, which stipulated that the winning candidate would serve only three years in power, without running for re-election. However, President Barrow's subsequent decision to

[4] A hashtag that inspired hope for democracy, rule of law, unity, and justice. It aimed to amplify the voices of Gambians, advocating for the 2016 election results to be respected and upheld.

extend his term, citing constitutional requirements for a five-year presidency, sparked public discontent and led to the formation of the 'Three Years Jotna' movement.[5] The movement was labelled by Barrow's government as "subversive," reminiscent of tactics used during the Jammeh era (Harris and Jaw 2024). The dynamics surrounding the coalition agreement and the formation of the 'Three Years Jotna' illustrate the fragility of the country's democratic transition.

The events of 2016, although viewed as part of a broader pattern observed across various African countries (Bakare 2023),[6] The Gambia stands out in a notable way: it is a small nation. With a population that recently surpassed 2 million—having only reached 1 million in the 1990s—The Gambia ranks among the six smallest countries in mainland Africa by population and is the smallest by land area (Population Trends, UNFPA). Thus, the year 2016 highlighted a turning point for the country, revealing how shared aspirations and solidarity among various stakeholders of a small nation yet compelling force could cultivate a future for democracy.

4. Democratic Consolidation: Challenges and Opportunities

The journey toward democratic consolidation in The Gambia has not been without its difficulties. As the nation moves forward from a history of authoritarian rule, it faces several ongoing challenges that threaten to undermine progress since the 2016 elections. When President Barrow assumed office in 2017, it sparked a wave of optimism for improved governance in The Gambia. While the new administration has made a promising start, it has yet to fully realise many of its commitments to good governance. Among the positive developments are strides toward judicial independence and the creation of transitional justice mechanisms, such as the Truth, Reconciliation, and Reparations Commission, alongside the Janneh Commission, which investigated the financial abuses perpetrated by former President Jammeh and his acolytes. Rebuilding a human rights culture has also been prioritised with the creation of the National Human Rights Commission (NHRC) (Nabaneh 2022, 295-318).

Moreover, the National Assembly has made progress with the emergence of relevant legislation, such as the Access to Information Act (2021) and the Anti-Corruption Act (2023), although a major setback remains the rejection of the draft Constitution in 2020 (Nabaneh 2020). When the draft Constitution was presented to the National Assembly, it successfully passed the first reading

[5] 'Three Years Jotna' translates to 'Three Years is Up.' This movement mobilised citizens to demand adherence to the original agreement, highlighting the ongoing struggle for democratic transition and consolidation.

[6] Issues stemming from semi-authoritarian governance and its associated challenges have emerged in neighbouring countries such as Guinea, Mali, Mauritania, and Burkina Faso.

in the legislative process. However, it did not progress beyond the second reading (Touray 2020). This setback is attributed to several contentious issues, including the proposed term limits for the presidency, the retroactive nature of certain provisions, regulations concerning citizenship and the procedures for impeaching an incumbent president. For example, the retroactive nature of the transitional clause regarding presidential term limits has been contentious, particularly for supporters of the Barrow Government. They argue that since he assumed office under a constitutional framework that did not impose such limits, applying these restrictions retroactively is legally problematic. Ultimately, the rejection of the draft underscored significant political rifts, revealing a stark divide particularly between supporters of the incumbent and those of the majority opposition.

Since 2017, there has been an expansion of civic space, which has enabled greater participation from citizens. Notwithstanding, concerns about democratic backsliding have emerged. In certain instances, activists have encountered disproportionately harsh responses, raising alarms about the current state of civil liberties and the protection of free expression (Amnesty International 2024 and 2021). The years of repression under the Jammeh regime not only created a climate of skepticism towards political leaders and institutions but also a need for the Barrow government to rebuild trust by demonstrating a genuine commitment to human rights, freedom of expression, and the strengthening of democratic institutions. The remnants of a culture of fear and repression still affect public discourse, and has consequently presented a substantial barrier in the efforts to consolidate democracy.

Despite the challenges, The Gambia's journey toward democratic consolidation presents a plethora of opportunities that, if capitalised upon, could significantly enhance the democratic framework within the country. One of the most promising pathways lies in the establishment and strengthening of institutions such as the judiciary, to promote accountability, transparency, and good governance. A key element in this opportunity is the ongoing transitional justice process, which has already laid out a comprehensive roadmap known as the 'Implementation Plan' aimed at addressing past injustices and ensuring accountability for human rights violations. The implementation of this roadmap, in conjunction with existing relevant legislation highlighted in this section, is critical solidifying the foundations of democracy in The Gambia. As Eken (Amnesty International 2021) rightly posits:

> The establishment of the Truth, Reconciliation and Reparations Commission was a crucial first step towards fighting impunity. But it cannot be judged a success if the government fails to effectively implement its recommendations.

Furthermore, leveraging the media landscape and protecting press freedom are crucial components of any democracy. An independent press can serve as a watchdog, capable of holding the government accountable and preventing potential abuses of authority (ACHPR Joint Declaration on Media Freedom and Democracy 2023). In an increasingly fractured political landscape, the media can help bridge divides by facilitating discussions that include various stakeholders, including civil society, activists, and citizens through investigative journalism and in-depth reporting. The media is crucial in raising awareness about pressing issues, such as the ongoing restrictions on freedom of expression and peaceful assembly (Amnesty International, 2021). This will enhance transparency by providing access to information that the public needs to make informed decisions. For example, the enactment of the Access to Information legislation is a positive step that echoes greater transparency and trust in public institutions. Although its potential to contribute to the country's democratic consolidation through the promotion of transparency, enhancement of civic engagement, strengthening of institutions, and support for media freedom largely depends on effective implementation.

Notably, the inclusion of diverse and underrepresented voices in the political sphere, particularly those of women and emerging youth leaders, can significantly shape the trajectory of The Gambia's democracy. The majority of Africa's political leaders are men, and in the majority of countries including The Gambia, the political arena remains primarily dominated by men (Nabaneh 2022, 125). Women have historically faced barriers to political participation (Gai 2023, 47) at the levels of the presidency, National Assembly, as well as broader engagement in national decision-making processes, yet their involvement is crucial for ensuring that the perspectives and needs of over half the population are represented in the country's democratic transition and consolidation. Similarly, with a substantial portion of the population being the youth, their active engagement in politics offers fresh perspectives on addressing contemporary issues and aspirations that resonate with the younger demographic.

5. Conclusion

While the transition to multiparty democracy in The Gambia was met with considerable optimism after years of authoritarian rule, the nation's democratic foundation remains fragile (Nabaneh 2024, 226). Ongoing government efforts to address past abuses and rebuild democratic institutions are crucial. However, persistent concerns regarding repressive laws such as the Public Order Act, curtail fundamental human rights and the need to realise the constitutional replacement project underscore the need for vigilance. As Nabaneh argues in "Prospects for Democratic Consolidation in The Gambia: A Cup Half Full, Half Empty, or More?," to facilitate

democratic gains and the attainment of the vision of 'New Gambia,' it is imperative that the Gambian government

> manifest its acceptance and commitment to democracy and constitutionalism both in theory and everyday practice, including a relinquishing of any attempts that give any semblance to actions undertaken by the previous dictatorship.

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Democracy under pressure in Ghana: Reflections on resilience amidst institutional weaknesses, corruption, and political violence

Michael Addaney

1. Introduction

Ghana's path since the return to democratic rule in 1992 has frequently been cited as an African success story, especially in West Africa, where political instability has been more common (Abdulai and Crawford 2010, 26). This view was supported by the peaceful and successful results of the elections between 1992 and 2024 elections which represented the handover of power between political parties (Addadzi-Koom and others 2022; Addaney and Nyarko 2017; Abdulai and Crawford 2010, 26). Elections have mostly maintained the pattern of peaceful power transfers (Mohammed 2023 347; Abdulai and Sackeyfio 2022, 25). According to Osei (Osei 2013), Ghana has passed Huntington's 'two turnover test' for democratic consolidation. The 1992 Constitution's formal guarantees of political and civil liberties, along with generally free and fair elections have helped make Ghana a symbol of democracy in Africa (Darmoe and others 2024). However, significant obstacles still exist in spite of this widely celebrated advancement in formal democratic processes (Abdulai and Crawford 2010; Mohammed 2023). Although there has been progress, scholars have pointed out that certain aspects of consolidation are still lacking. Therefore, it is too soon to say that Ghana has fully achieved democratic consolidation (Darmoe and others 2024; Abdulai and Sackeyfio 2022). A latent threat of political violence has been brought to light during the run-up to the 2016, 2020 and 2024 elections, even though they were generally successful (Addadzi-Koom and others 2022). Therefore, the quality and substantive delivery of democracy are impacted by a variety of limitations and difficulties in various areas of democratic consolidation. This chapter examines the main threats to Ghana's democracy, such as institutional flaws, corruption, and difficulties with resource governance[1], and it considers how resilient the democratic system and its participants have proven to be.

2. Pressures on Ghana's democracy

[1] Resource governance is fundamentally defined as a system through which decisions regarding the exploitation of a country's oil and gas resources are made and put into action (Kumah-Abiwu 2017, 7). This system typically involves the engagement of both governmental and non-governmental actors within the nation's oil sector. Key characteristics and principles associated with good resource governance include, clarity of goals and the ability to execute those goals, accountability and transparency, responsibility and the accuracy of information, sustainable strategies designed to benefit future generations, and involvement of key stakeholders.

Despite being stable during election cycles, Ghana's democracy is hampered by a number of internal and external forces such as institutional weaknesses and governance deficits, corruption, resource governance challenges, socio-economic inequality and development deficits and political violence and vigilantism that have an impact on citizens' daily lives and prevent deeper consolidation.

2.1. Institutional weaknesses and governance deficits

State institutions in Ghana continue to have serious flaws that compromise democratic governance's efficacy and accountability (Abdulai and Crawford 2010). The major challenge is executive dominance. According to Bewel and others (2022), one of the main limitations is the president's and the executive branch's excessive power. The legislature and the executive in Ghana are merging due to the executive's extensive appointment powers, which puts the latter at risk of being co-opted by the former (Mohammed 2023). Similarly, Rick Stapenhurst and Riccardo Pelizzo (2012, 335) argue that the Ghanaian parliament's oversight authority is frequently constrained by a lack of autonomy and independence. There is also a challenge of weak state bureaucracy. Abdulai and Crawford (2010) observe that the public sector and civil service are marked by widespread corruption and incapacity. Separate actions are necessary to address issues of inefficiency and corruption. Corruption problems are made worse by the state bureaucracy's capacity shortages. This is further compounded by judicial inconsistency. Although the judiciary has occasionally appeared to be influenced by attempts of the executive to control the Supreme Court by packing it with judges who share their views, it has also demonstrated instances of asserting independence and ruling against the government (Mohammed 2023; Frimpong and Agyeman-Budu, 2018). This discrepancy affects citizens' rights and permits corruption to grow.

Furthermore, the decentralisation system in Ghana is faced with multiple challenges (Ohene-Manu 2022). For instance, decentralisation reforms have had little effect on strengthening local democracy, even though the constitution emphasises their importance in 'making democracy a reality' (Crawford 2009). There are key difficulties such as legal, political, administrative, and financial restrictions, the central government's unwillingness to cede authority, and the appointed status of metropolitan, municipal and district chief executives (DCEs), which raise concerns about downward accountability (Nyendu 2012, 221). Although these are essential to the multi-party system (Darmoe and others 2024), Ghana's political parties have flaws such as a lack of consistency in following democratic procedures for choosing candidates (Osei 2013), a propensity for clientelism (Gyampo and others 2017, 112), and a tendency to encourage political vigilantism. According to Osei (2013), their programmatic appeals may not be much more than populism.

2.2. Corruption

Corruption is widespread, endemic, and a destructive force to democratic processes (Amponsah-Mensah 2022). This difficulty is reflected in Ghana's continuously low score on Transparency International's corruption perception index (see generally, Transparency International 2024). There are numerous reports of high levels of bureaucratic corruption (Afrobarometer 2022). Ghanaians' level of trust in public institutions is strongly influenced by their perception of corruption (Mohammed 2023). Persistent problems include claims of corruption in state institutions and procurement fraud (Ruddy 2021). Political leadership is necessary for top-down measures to combat corruption, but there are still issues with guaranteeing accountability and transparency.

2.3. Resource governance challenges

Natural resources such as gold, cocoa, and more recently, oil, are vital to Ghana's economy (Kumah-Abiwu 2017, 21). The paradox of abundant natural resources coexisting with underdevelopment and slow economic growth, known as the 'resource curse' has gained new attention since the discovery of oil. According to Kumah-Abiwu (2017, 21), a greater focus on oil sector governance is necessary, according to some, while others argue that Ghana's democratic institutions may help it break free from the curse. The incapacity of succeeding administrations to pursue development plans independent of the priorities of donors (Abdulai and Crawford 2010), externally driven policies, and dubious agreements pertaining to infrastructure and resource extraction that are occasionally quickly approved or violate procurement laws are among the problems (Mohammed 2023). These problems are associated with elite capture and corruption. Making sure that resource wealth results in reduced inequality and shared economic benefits rather than escalating political unrest is the difficult part. This complicated governance issue also includes environmental risks, such as mining that destroys forests.

2.4. Socio-economic inequality and development deficits

Ghana continues to experience socioeconomic disparities in spite of economic expansion (Abdulai and Crawford 2010). Millions of people still live in poverty as a result of democratic governments' failure to provide meaningful, developmental progress in Ghana and thus, support for democracy coexists with high levels of economic discontent. For instance, the poverty rate in Ghana is projected to be 23.31% in 2025, and thus 23.31% of the population are expected to live on less than $2.15 per day (Ghana Statistical Service, 2020). Additionally, the number of people living in extreme poverty is projected to be 6,777,000, representing an extreme poverty rate of 8% (Ghana Statistical Service, 2020). The World Bank (2024) projected poverty to rise, reaching 51.2%

(LMIC poverty line) by 2027 with extreme poverty reaching 26.9% by 2027. According to Mohammed (2023) there is a disconnect between the general public's desires for material well-being and sufficient fulfilment. Unemployment is still a persistent issue while democratic sustainability is severely impacted by this disregard for glaring socioeconomic disparities (Abdulai and Crawford 2010). The high degree of public support for democracy may be predicated on unmet expectations of socioeconomic gains and decreased inequality.

2.5. Political violence and vigilantism

Despite Ghana's generally acclaimed improvements in democratic governance, political violence and vigilantism pose serious threats to the country's democratic stability and consolidation (Abdulai and Crawford 2010). Ghana is frequently referred to as a 'Golden Child' of West Africa due to its numerous power transfers and peaceful, free, and fair elections (Armah-Attoh and Robertson 2014, 1). However, some academics contend that it would be premature to declare that democratic consolidation has been fully accomplished because certain elements such as the latent threat of political violence still exist (Abdulai and Crawford 2010; Gyampo and others 2017; Addadzi-Koom and Agyei 2025). Vigilante groups such as the 'Mobisquad' and 'Committees for the Defense of the Revolution' (CDR) were armed and trained to defend the revolution in the years preceding the Fourth Republic in 1992 during the Provisional National Defence Council (PNDC) era (Paalo 2017; Gyampo and others 2017). Both the New Patriotic Party (NPP) and the National Democratic Congress (NDC) are currently linked to a number of youth organisations, sometimes going by different names depending on the area. Examples of these include the 'Invincible Forces' (NPP) and the 'Azorka Boys' (NDC). These groups are primarily made up of non-elite people who are working on a 'political becoming' project in an effort to become more well-known and improve their political standing in the political sphere (Kyei and Berckmoes 2021; Kwarkye 2018; Nyabor 2017). They have entrusted leadership roles and a variety of institutionalised organisational structures.

Clientelistic politics in which reciprocity is expected and individualised goods are provided is a major factor driving the activities of political vigilante groups (Daddieh and Bob-Milliar 2012; Bob-Milliar 2014; Kusche 2014). According to Gyampo and others (2017), members believe that public office holders, or patrons, control vast resources and are expected to share these resources, including jobs and favours, with the groups that helped them gain power. This feeling of entitlement can result in violent behaviour, particularly when these expectations are not met, which in turn prompts vigilante groups to carry out a variety of actions before, during, and after elections. Vigilante groups, for example, are important conduits for the dissemination of party

manifestos and ideologies, particularly in isolated rural areas. They also function as party security apparatus (Kyei and Berckmoes 2021), keeping an eye on polling stations to prevent impersonation and guarding party leadership and ballot boxes (Bob-Milliar 2014). These vigilante groups regularly use violence in their operations, endangering the stability of democracy in Ghana despite its democratic advancements. Ballot box snatching and theft frequently taint elections (Alidu 2014). Politically motivated violence also occurred during the 2020 general elections, resulting in at least two civilian deaths, two security force murders, and multiple injuries (Mohammed, 2023). Additionally, opposition protesters protesting election results were subjected to rubber bullets, water cannons, and tear gas by the police (Mohammed 2023).

Following elections, vigilante groups occasionally vandalise public and state property (Seidu 2017; Ansah 2017; CODEO 2013). NDC-affiliated groups, for instance, attacked the Tamale mayor's office and set fire to party offices, while NPP foot soldiers damaged party property (Gyampo and others 2017, 112). Parts of the Fountain at the Kwame Nkrumah interchange were among the government properties demolished by NPP vigilante groups following the 2016 elections (Gyampo and others 2017). Vigilante groups have also been known to physically attack and violate the human rights of officials from opposing parties (Ansah 2017; Seidu 2017). For example, the NPP's 'Delta Force' stormed the Ashanti Regional Coordinating Council, hurt the Regional Security Coordinator, and then expelled their members who were standing trial from the court (Nyabor 2017). Legislative violence has progressively escalated from the unchecked violence caused by vigilante groups. Members of Parliament (MPs) engaged in physical violence and confrontations during the 8th parliament (2021) for the first time in Ghana's parliamentary history (Addadzi-Koom and Agyei 2025, 43). These acts of violence can harm Ghana's democratic reputation and legitimacy and are a reflection of a history of political intolerance. The widespread nature of political violence and vigilantism directly jeopardises Ghana's democratic gains, even though this may represent a developing parliament reaffirming its independence from the executive. Although there has been progress, the latent threat of political violence, especially from the manipulation of electoral processes along ethno-regional lines (such as in the Ashanti and Volta regions), indicates that the consolidation of democracy in Ghana is still vulnerable to undermining (Abdulai and Crawford 2010).

3. Resilience of Ghana's democracy and interplay between pressures and resilience

Ghana's democratic system has proven remarkably resilient in the face of these enormous pressures. One of the primary indicators of resilience is electoral regularity and power transfers.

Since 1992, multi-party elections have been held consistently, resulting in numerous peaceful power transfers (Abdulai and Crawford 2010). Mohammed (2023) argues that this distinguishes Ghana from many other nations in the region that have experienced reversals. Citizen commitment to democracy comes in second. Despite economic discontent, the vast majority of Ghanaians support democracy as their preferred system of government (Armah-Attoh and Robertson 2014). This shows how deeply ingrained a democratic political culture has become. The democratic system is highly valued by the populace. A vibrant civil society is the third. According to Botchway (2018), the democratic political culture is enhanced by a thriving civil society. CSOs in Ghana function within a constitutional framework that guarantees freedom of association. They play roles in election monitoring, policy change advocacy, civic engagement, and capacity building, and they are increasingly involving the government in policy-making processes. CSOs are regarded as 'free schools for democracy' (Botchway 2018).

The fourth is pluralism in the media. According to Darkwa and others (2017), the 1992 Constitution guarantees the media's independence and freedom while requiring it to maintain government accountability. As a result, the media has become more assertive, which has fuelled a critical political public (Ebelei 2011, 15). Fifth, an official institutional framework exists. The 1992 Constitution offers a framework that includes a bill of rights, separation of powers, an independent judiciary (on paper), and independent agencies such as the Commission on Human Rights and Administrative Justice (CHRAJ) and the Electoral Commission. Although these institutions frequently face difficulties in their day-to-day operations, their very existence serves as a foundation for democratic governance and accountability (Stapenhurst and Pelizzo 2012). Finally, there are respectable and operational traditional authorities (Odotei and Awedoba 2006). Although their official role in decentralised governance is up for debate and requires clarification, chiefs continue to play a significant role and are occasionally involved in conflict resolution (Honyenuga and Wutoh 2019, 2). Chiefs are still powerful traditional leaders (Kendie and Guri, 2007, 332).

Ghana's experience demonstrates a complex interplay between ingrained pressures and formal democratic procedures' resilience. Despite pressures, the system is kept from collapsing by the dedication to elections and peaceful power transfers (Addadzi-Kumson and others 2022). Support from the public serves as a buffer, showing that people prefer the democratic system even when they are unhappy with its results. As watchdogs on the government and political parties, civil society and the media use the democratic space granted by the constitution to demand accountability and reform (Botchway 2018). Nevertheless, this resilience is weakened by the ongoing pressures. The effectiveness of the checks and balances that the formal framework

intended can be limited by institutional flaws, especially the executive branch's dominance and oversight and judicial shortcomings (Mohammed 2023).

Public trust is undermined and democratic processes are distorted by corruption, which also diverts resources and prioritizes elite interests over the general welfare (Crawford 2005). The inability to convert economic expansion and resource wealth into equitable development exacerbates public unhappiness and jeopardises the legitimacy of the democratic system, which could result in political unrest and instability. Ghana's resilience narrative is based on peaceful electoral processes, which can be disrupted by political violence and vigilantism, which are frequently linked to party rivalry and clientelist networks (Gyampo and others 2017). A limited view of democracy that focuses on limiting state power rather than expanding popular control, self-interest (Crawford 2005), and the predominance of external priorities in policy determination can sometimes limit the influence of external actors, even though they have supported governance reforms (Williams 2010, 403).

4. Conclusion

Ghana's experience since 1992 paints a complex picture of the evolution of democracy. With frequent, competitive elections and peaceful handovers of power, the country has unquestionably established a strong electoral democracy and gained recognition as an African democratic leader. Democracy continues to enjoy strong public support, which is a vital component of its resilience. Significant pressures, however, continuously put this resilience to the test. The substantive quality of governance and the provision of public goods are undermined by widespread corruption, deeply ingrained institutional weaknesses, especially in the judiciary, bureaucracy, and executive-legislative relations, as well as by ongoing socioeconomic disparities. Corruption and difficulties in managing the natural resource sector are linked, and they both widen the divide between economic development and shared prosperity. The system is further strained by the pervasiveness of vigilantism associated with party rivalry and the dormant threat of political violence. Ghana's democratic gains could be a ‘hollow triumph’ if the government ignores these basic governance and developmental issues, even though formal democratic institutions and citizen commitment offer resilience. The continuation of successful electoral procedures is necessary to maintain Ghana's democracy, but so are important reforms that will fortify institutions, effectively fight corruption, guarantee the fair distribution of resource wealth, and increase democratic accountability and participation outside of the voting booth.

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Navigating the turbulent democratisation process in Guinea Bissau: A struggle for stability amid military and political clashes

Philippe Plagbe

1. Introduction

Guinea Bissau's post-independence history presents an account full of protracted, recurrent and vicious political crises (Ikokou 2024). At several stages of its history, the country has been plunged in an institutional and political deadlock which have severely hampered any prospect of stability. In 51 years of independence, the country holds the peculiar record of a dozen coup d'état, four of them successful, as well as a civil war and multiple political assassinations (Stears 2024; Global Initiative 2021) As a matter of fact, if the current head of state, Embalo Umaro Sissoko (hereafter Sissoko) completes his term in office, he will only be the second elected president in the entirety of the country's history to reach such a milestone, others having been prevented to do likewise mostly due to coup d'état. The succession of socio-political crises has seriously affected the economic development of the country which ranks among the poorest of the world (World Bank 2025). Paradoxically, and in a manner most regrettable, the smallest state of West Africa has been regarded as the greatest African Narco-state serving as an entry point for narcotics from Latin America to West Africa and Europe (UNODC 2008).

However, in the 1990s similarly to several countries in Africa, the country adopted democracy as a form of government. While external factors explain the political liberalisation of the country (Jaló 2023, 3-5), it is accurate to state that the advent of democratisation process came as an opportunity for the people of Guinea Bissau to consent to and consummate a divorce with a history or a past marked by authoritarian and military rule. Perhaps, it may be useful to confirm this perspective to present the post-independence history of the country in three stages (Lobban and others 2025). The first part ranges from the independence in 1974 to 1980 during which the country was ruled by the African Party for the Independence of Guinea and Cape Verde (PAIGC) whose military wing, the Revolutionary Armed Forces of the People (FARP), snatched the independence of the country from the Portuguese colonial forces. In 1980, the year during which the second stage of the history began, a coup d'état ended the first regime of governance and brought to the supreme magistracy Joao Bernardo 'Nino' Vieira (hereafter Viera). His rule which lasted until 1999 was characterised as authoritarian. In the 1990s, Guinea Bissau entered the third phase of its history and embraced democracy. It revised the 1984 constitution five times over the following years to progressively incorporate into the fundamental law, the cardinal principles of

the separation of powers, human rights, the rule of law, multi-party system and constitutionalism (Bastos 2013). Despite that, the legislative and institutional guarantees taken by the country to achieve democracy, it has verified the following assertion: 'the assumption that the constitutional entrenchment of fundamental rights…would provide a solid foundation on which constitutional democracy…as well as political stability, and would discourage dictatorship and military adventurism has not turned out to be true.' (Fombad 2011, 15). As a matter of fact, Guinea Bissau, alike several countries in Africa, stalls at the level of a formal democracy whose main features consist in political processes and tokenistic reforms which do not reach deeply into the root causes of political instability and crisis as well do not result in any institutional and substantial democratic transformations (Fombad 2014, 36).

In the face of the complexity and elongation of the socio-political upheavals, the United Nations (UN) (UN Security Council 2020) and the Economic Community of West African States (ECOWAS) (ACCORD 2019) have multiplied interventions in the country which have ranged from diplomatic engagements with relevant actors to the deployment of armed forces. These interventions have not only contributed to provide relative stability but also to conceive solutions to the issues peculiar to Guinea Bissau. On 14 October 2016, ECOWAS succeeded at negotiating the Conakry agreement between political parties(Ibid.) acclaimed by these actors and international organisations (UNIOGBIS 2016) as a good roadmap to advance political stability in the country. As of May 2025, this agreement is yet to be implemented due to dissonances between political actors.

Additionally, the country is on the brink of facing another crisis as tensions are increasing on the organisation of elections. Indeed, socio-political actors disagree on the end of the term of Sissoko and, by extension, on the date of new presidential and legislative elections (MSKT 2025). The current head of State took office on 27 February 2020 just after the National Electoral Commission (NEC) proclaimed the election results. The swearing-in took place before the Supreme Court could review an appeal introduced by his opponent and confirm the election results, which it did only on 04 September 2020. The opposition argued that considering the date he took office, the president's term should have concluded on 27 February 2025 while the Supreme Court upheld the position of the ruling party and set it for 07 September 2025 (Tendeng 2025). A mission of the ECOWAS sent to the country to consult the political actors, appease the tensions and support the organisation of democratic elections left prematurely the country after it said it received threats from the current head of State. A few days later, the head of State announced that presidential and legislative elections will be held on 30 November 2025 (Africanews 2025).

As the previous developments demonstrated and will be further substantiated in this chapter, the democratisation process has been undermined by military rule and intervention in political processes. However, in addition to the military, political actors have also contributed to perpetuate the vicious cycle of crisis and challenges Guinea Bissau has been facing since engaging in a democratisation process. In 2014, while the military agreed not to intervene in the political affairs of the country and that Guinea Bissau could return to the polls to reinstall constitutional government and institutions, this didn't stop at least for long or durably the political unrest and institutional impasses. This is mostly due to stark disagreement and power struggles between political actors, mostly the executive and legislative powers.

In regard to the above, it appears safe to advance that timely, fair and free elections are fundamental to the country's democracy (UN 2025; ISS Africa 2023). However, political stability is unlikely to settle with votes alone and without consensual as well as inclusive, substantial and major reforms (ISS Africa 2019; Thompson and others 2025). This would ensure that military and political efforts do not hijack further the promises of democracy in Guinea Bissau. Espousing this view, this chapter will first demonstrate that democracy in Guinea Bissau stagnates at a purely formal stage. Second, it will attempt to untangle the deep rooted issues which have prevented democracy from delivering its dividends in the country. This chapter will conclude by sketching measures and actions to be taken to build in Guinea an institutional approach to democracy or a substantive democracy.

2. Formality without substance: a democratisation process stagnating at semantic reforms and political processes

Several indicators demonstrate that Guinea Bissau is stalling at the stage of a formal democracy (Kaldor 2014; Chabal 1998) mainly founded on political processes and formal procedures. This part will offer an overview of the democratic legal framework and show how solely limited on formal democracy it was ineffective to address political instability.

2.1. A purely formal democracy, the main features

The 1990s democratisation process in Guinea Bissau has birthed promising formal procedures as well as legal and institutional frameworks. The main features are as follows.

First, Guinea Bissau has a constitution which entrenches the fundamental principles of democracy, separation of powers, human rights, constitutionalism and the rule of law. The constitution of 1984 amended five times, entrenches the democratic legality and the supremacy

of the constitutional law (Const., art. 8(1)). It also establishes a multiparty system (Ibid, art. 4). The constitution also recognises and protects fundamental rights including civil and political rights as socioeconomic rights (Ibid., Title II). It also entrenches that constitutional rights, principles and guarantees are directly applicable to public and private entities (Ibid). Besides that, it proclaims that the courts are 'independent and subject to the law' (Ibid, art. 120(4)) and that 'appointment, dismissal, placement, promotion and transfer of judges of the courts of law and the exercise of disciplinary actions are matters for the Supreme Judicial Council' (Ibid, art. 123(4)).

Second, a semi-presidential regime has been established to limit the power of the president of the Republic. The constitutional revision of 1993 established a semi-presidential regime in order to restrict the exorbitant powers held by Vieira when he ascended to power in 1980. With this constitutional revision, the organs of the State are the president of the Republic, the government headed by a prime minister, a National People Assembly (NPA) and the courts. More precisely:

- The president of the Republic is 'elected by the free, universal, equal, direct, and periodic suffrage of citizens who are registered voters' for a five years' term and no more than two consecutive terms. The president can dissolve the NPA after consultation with the prime minister and the parties represented in the NPA (Const. art., 69(1)(a) and 94).
- The government is the second head of the executive branch and headed by a prime minister (Ibid., art. 97(2)). The latter is appointed by the President of the Republic 'in view of the election results and consultation with political parties represented in the National Popular Assembly'.
- The NPA which represents the legislative branches (Ibid., art. 77) is formed of deputies elected by 'by universal, free, equal, direct, secret and periodical suffrage' for a four years' tenure.
- The courts which embody the judicial branch are constitutionally structured as follows: (i) the Supreme Court, as the 'supreme judicial instance of the Republic'; (ii) courts with general jurisdiction; (iii) the military courts and the administrative, fiscal, and audit courts, as courts with specific jurisdiction; and (iv) the 'people's courts' designed to hear 'social disputes, whether civil or criminal' (Lobban and al 2025).

Finally, the organisation of regular elections is usually considered as relatively free and fair. From 2014, Guinea Bissau has experienced relatively democratic, fair and free elections. This is due to the 2013's electoral reforms which has depoliticised the NEC (ISS Africa 2023). Since these

reforms, members of the commission are magistrates appointed by the NPA following the nomination of the Supreme Judicial Council.

2.2. The ineffectiveness of political processes to advance political stability: a giant reduced to its shadow

Despite the constitutional revisions of the 1990s which introduced the country to the era of democracy, governments were mostly unable to depart from autocratic tendencies. Almost, none of the heads of state from the beginning of the political liberalisation of the country till date could establish or sustain a democratic culture. Power struggles, clashes with factions of the army, poor governance, inability to respond to the needs of the citizens and interference in the mandate of the legislative and judiciary powers have prevented Guinea Bissau to experience the reality of democracy as entrenched in the revised constitution (Jalo 2023; BTI 2024).

From 1994 until the civil war in 1998 and from his re-election in 2005 to his assassination in 2008, President Viera took advantage of political and military alliances, narco-trafficking, political assassinations to support autocratic policies and abuse of powers (Yabi 2010, 14-18; Ferreira 2004, 46-48; VOA 2009).

The rule of Kumba Yala, who succeeded Viera after the civil war before being deposed by a coup in 2004, was characterised by the subversion of the judiciary, the legislature and the media. His term was also marked by the politicisation of the ethnic and religious groups in the country (Ferreira 2004, 48-49; Nyokabi 2017).

From 2009 to 2012, the rule of Malam Sanhai elected as head of state with Prime Minister Aristide Gomes brought some short political stability as they both come from the same political party. However, his death from natural causes marked the resurgence of the political turmoil and the interruption of political processes by the military (Seabra 2012).

The government of President Mario Vaz, elected president in 2014, experienced intense political tensions due to disagreement between him and with the Prime Minister Pereira both trying to control the PAIGC and the government, whereas they were coming from the same political party (Accord 2019). President Vaz finished his term with 7 prime ministers due to his refusal to appoint a prime minister consensually with the PAIGC, which held a parliamentary majority for several years, despite decisions of the Supreme Court (Ibid.).

So far, the rule of President Sissoko fails to mark a rift with these tendencies (Proenca 2025; Wahila and Hany 2025). While he committed to undertake the constitutional reforms required by the 2016 Conakry agreement, he set up a committee to work on a constitutional revision project

instead of initiating discussions within the parliament as the constitution of Guinea Bissau requires it (Niang 2020; Const. Art. 127). The parliament rejected this constitutional revision project (Ibid.). Later, in an alleged coup d'état, the president dissolved the parliament twice (Wahila and Hany 2025). The second dissolution occurred less than six months after legislative elections and therefore contravened constitutional provisions (Const. Art. 94(1)).

3. Unravelling the foundations: exploring the underlying factors of political instability

Political instability finds its roots in several factors which are deeply embedded in the country's socio-political history. The second part untangles several of the major ones.

3.1. A culture of intervention of the military in politics

In Guinea Bissau, the military have influenced and continue to shape the political history of the country. This intervention of the military which could be qualified as 'omni-president' has been multiform even going beyond coup d'état and political assassinations. In Guinea Bissau, the military interventions espoused the following patterns. They have been constituted among others of an absolute control of state power through historical legitimacy during the first governments and regular interruptions of democratic processes through coup d'état.

To begin with, the military exercised an absolute control of state power through historical legitimacy in the first post-independence governments. Guinea Bissau achieved emancipation following a fierce war between the military wing of the PAIGC and the Portuguese colonial forces. In 1980, Viera who was considered as a war hero who acceded to power through a coup d'état. He established an authoritarian regime, concentrating the essence of political powers into the ambit of the competences of the president of the Republic. Even after the constitutional revisions which entrench democratic principles, due to his reputation of war hero and military alliances, he could maintain an autocratic rule, leading the country with the support of the army (Yabi 2010, 14-18).

Furthermore, the military have regularly interrupted the democratic processes through coup d'état and political assassinations (Jalo 2023, 5-8). Shortly after the constitutional revisions which pushed Guinea Bissau into the democratic era, a civil war broke out in 1998 following disagreements between the president Viera and another high ranking official of the army Asumane Mane (CNN 1998). The two very popular military clashed and plunged a whole country into a civil war due to suspicions of Viera on the involvement of Mane in 'proven arms trafficking

network under the guard of the FARP to the independence movement of Casamance, a Senegalese region in the northern vicinity of Guinea-Bissau'. The one-year civil war led to the resignation of Viera and the organisation of general elections which in January 2000 brought to power Kumba Yala as president, and for the first time, an opposition party the Social Renewal Party (PRS) (Ferreira 2004, 48-50). President Yala faced tensions with the military including Mane which kept on increasing. On the background of these tensions, a record of poor governance, autocratic policies and the continual postponement of legislative elections resulted in Yala being ousted by a coup d'état (Ibid.). In 2005, presidential elections witnessed the coming back to power of Viera despite its previous contentions with some factions of the military. From November 2008, attempts of political assassinations were carried out and finally resulted in the killing of Viera in March 2009 (VOA 2009). Following presidential elections in 2008 and 2009, the PAIGC took back control of the power with Prime Minister Carlos Gomez Junior and President Malam Bancai Saha. In April 2010, Antonio Indjai arrested the prime minister and Zamora Induta, the then military chief of staff (BBC 2010). After releasing both of them a bit later, he dismissed Zamora Induta from his position and took his place. In 2012, the president Saha died for medical reasons. Prime Minister Carlos Gomes Júnior suspended his functions as prime minister and decided to run for presidential elections (Ibid.). After the first round of the elections, the five defeated candidates argued that there was electoral fraud. On 12 April 2012, Antono Indjai took the power, claiming that Carlos Gomes Junior had reached an agreement with Angolan military forces to attack the armed forces of Guinea-Bissau (US Department of State 2012). From 2014 to 2020, the country experienced relatively democratic elections despite political tensions between the president Mario Vaz and members of his own party which held the majority at the parliament (Accord 2019). In 2020, Umbalo Sissoko acceded to power after presidential elections. During his presidency, two alleged coup d'état have been recorded.

In summary, a careful observer may safely say that politicisation of the military in Guinea Bissau destabilised the democratisation process in Guinea and led to much of the political instability in the country.

3.2. Lack of accountability, rule of law and independence to the judiciary

The independence of the judiciary is guaranteed by constitutional and statutory provisions in Guinea Bissau (Pinto 2016). However, the independence of the judiciary and the rule of law have been challenged several times.

Several examples at different stages of the history of the country have shown that the judiciary is submitted to political pressure and interference. For instance, in 2001, President Kumba Yala dismissed and replaced three judges of the Supreme Court, contrary to the provisions of the constitution (BBC 2001). This happened after the court declared unconstitutional its decision to expel from the country a religious Muslim group (Ibid.). In 2014, President Vaz and Prime minister both appointed attorney generals to increase their influence on the judiciary (BTI 2024, 11). In 2020, following the proclamation of the election results by the NEC and without waiting for the confirmation of the results by the Supreme Court, Embalo Umaro Sissoko was sworn in as a president. When six judges of the Supreme Court decided to review the request of the opposition party leader regarding the regularity of the elections, they were called 'corrupt' and 'bandits' by President Sissoko (Ibid., 12). In 2022, the president of the Supreme Judicial Council called the Minister of Interior to deploy security forces to implement his decision of suspension of members of the Supreme Court (UN 2023). This took place after the Supreme Court judges gathered to discuss and take sanctions against the president of the Supreme Judicial Council for interference in the work of the judiciary and obstruction to justice. Later, the president of the Supreme Court resigned, citing security and psychological reasons.

In Guinea Bissau, access to courts is a challenge as they are nearly absent in rural areas where people alternatively resort to traditional means of dispute settlements (ISS 2018, 2). Despite a civil war, several coup d'état and political assassinations, no justice process has ever been set up to hold accountable potential perpetrators of these actions usually protected by amnesty laws (Pinto 2016, 13-14).

3.3. Drug trafficking as a factor in political destabilisation

Drug traffic developed and turned into a whole economy during the rule of Nino Viera, who facilitated the country's positioning as a corridor for drugs from Latin America to West Africa and Europe (Shaw 2015). This is illustrated by the seizure of large quantities of narcotics in Guinea Bissau or in neighbouring countries, which have been identified as coming from Guinea Bissau (Global Initiative 2022).

In Guinea Bissau, drug trafficking is one of the factors destabilising the democratisation process, as it is used by political and military players to prop up the country's economy. At various stages of the country's history, high-ranking military officers and political figures have been arrested and indicted for their involvement in drug trafficking (Insight Crime 2013; ISS Africa 2013). Another example is that, in 2012, following the death of President Malam Bancai Saha, Antono Indjai

successfully staged what is called the 'cocaine coup' to protect the drug trafficking network and maximise its profits (The Guardian 2012). While from 2014 to 2017 there was a relative decrease in trafficking, under the presidency of Sissoko, drug trafficking was reported to be on rise, and there is a certain impunity for drug trafficking offenses. Under his presidency, major drug seizures have resumed (BBC 2020).

Drug trafficking at various stages of the history of Guinea Bissau seems to have been supported and sponsored by military and political elites of the country and occasioned political disputes which have further fuelled political instability in the country.

It is readily apparent that unless these root causes of political instability are tackled, the democratisation process, independently of any political process, is bound to fail to deliver on its promises of stability, peace and stability.

4. Conclusion

Guinea Bissau is embroiled in a political crisis and institutional deadlock since it took the democratic turn in the 1990s. The instability that the country is currently experiencing is characterised by political and military rivalries, the latter having prioritised their personal interests and will to control governmental powers instead of advancing democracy and political instability.

The solution to the political instability are widely recognised to be in the ECOWAS 2016 Conakry agreement and the implementation of reforms in an inclusive and consensual context as recommended also by some analysis (ACSS 2013; ISS Africa 2018). They are essential as they will serve to address the deep-rooted issues at the basis of the unrest the country is experiencing.

As political actors have demonstrated their unwillingness to support the democratisation process, the intervention of international partners as ECOWAS and the UN should continue to put pressure on these actors to discontinue fuelling the political instability of the country.

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The democratic process in Guinea or the perpetual restart

Foromo Frederic Loua

1. Background

Guinea, like many other African countries, began its democratic process in the 1990s after the 1984 death of its first president, Ahmed Sékou Touré, who ruled the country with an iron fist, using authoritarian and repressive governance strongly influenced by the communist ideology. He ruined the economy with ideas imported from the Eastern bloc and ferociously suppressed any dissenting voice and thousands of other Guineans were thrown into an African gulag (Pham 2015).

Drawing lessons from this painful past, and thanks to the wind of democracy that blew across the continent in the 1990s, the overwhelming majority of Guineans adhered to the formal principles of democracy, and consequently wanted to organise their society in the form of a state governed by the rule of law (Diallo 2024).

However, a democratic regime, beyond the organisation of elections, is also based, in its modern acceptation, on an anthropology and an ethic that conceives of citizens as free and equal before the law.

In view of the political and social chaos in which Guinea has been immersed for decades, we are entitled to ask ourselves whether Guinea had this essential prerequisite for any effort at democratic construction.

Indeed, political power has always been founded by the army and not by the sovereignty of the people, while public authorities have always flouted the law, the law having yielded under the weight of the arbitrariness of those in power. Finally, there is a lack of a sense of the common good and a level of arbitrariness that characterises both individual and collective behaviour.

Furthermore, it is important in the context of the forthcoming debates to highlight the fact that certain moral and religious authorities, as well as social and political actors, have contributed through their relationship with power to accentuating this triple crisis by endorsing a culture of domination. This largely explains the failure of the various political transitions (1984 - 1993, 2008 - 2010) that Guinea has experienced (Barry 2021) .

Thus, there is undoubtedly a social reality and a political history that must be understood and addressed if we are to ensure the success of the current political transition, which has already taken worrying turns.

In order to provide some answers to the difficulties that are hampering all attempts to turn Guinea into a democracy, we feel it would be wise to structure our chapter as follows: Guinea from the adoption of the 1990 constitution to the death of President Lansana Conté in 2008; the parenthesis of the CNDD's political transition between 2008 and 2010; civilian rule between 2010 and 2021; the new political transition following the coup d'état of 2021; and the failure of various attempts at democratisation in the light of Guinea's social realities and political history

2. Guinea from the adoption of the 1990 Constitution to the death of President Lansana Conté in 2008

Learning from its political past characterised by a bloody dictatorship and taking advantage of the winds of democracy that swept across Africa in the 1990s, Guinea resolutely embarked on a process of democratisation after its first military transition following the death of its first President, Ahmed Sékou Touré, in 1984 (Deme 2016).

With this now-declared commitment, the country adopted a new constitution in December 1990 and established all the republican institutions, essential pillars of a functioning democratic state. These democratisation efforts led, in 1993, to the holding of Guinea's first free and multiparty presidential elections, marking a turning point in this democratisation process.

These elections were won by the then president, General Lansana Conté, who had ruled the country with an iron fist since his coup d'état on 3 April 1984. He thus held power for two successive terms, from 1993 to 2003. At the end of his second and final term, rather than organising a peaceful transition of power, he, against all expectations, organised a referendum in 2001 to amend the Constitution in order to remain in power for life. The constitutional revision he sought and imposed, lifted the restrictions on presidential terms and the age limit (Champin 2001).

After the adoption of this new constitution, he naturally organised and won the 2003 presidential elections. It was then that his health began to deteriorate seriously, and he was no longer able to effectively manage state power. This was when the descent into hell began, paving the way for a period of crisis at the highest levels of government, followed by a continuous and brutal deterioration of the country's political, social, and economic situation (Hofnung 2003).

This destitution, compounded by corruption and the abdication of government power, led to a general uprising of the Guinean population across the country in 2007. This popular uprising subsequently resulted in the destruction of symbols of the state. Courthouses, police stations, and other public buildings were not spared from the popular anger (RFI 2007).

The defense and security forces, called in to help, violently suppressed this popular uprising, resulting in serious human rights violations. Hundreds of people were injured and killed, for whom justice has never been served (LDH 2014) .

It was in this macabre chaos and wasteland that President Lansana Conté died in December 2008, leaving the country without viable political institutions and plunged into dire economic and social chaos.

A group of young military officers quickly seized power just hours after the announcement of General Lansana's death. They immediately announced the suspension of all institutions of the Republic and the beginning of a new political transition led by the National Council for Democracy and Development (CNDD) (Oxford Analytica 2008) .

3. The parenthesis of the CNDD's political transition between 2008 and 2010

The death of Lansana Conté under the circumstances described above once again paved the way for the second military transition following the coup d'état perpetrated by the National Council for Democracy and Development (CNDD) led by Captain Moussa Dadis Camara on 23 December 2008.

However, this new military transition unfortunately took place with many difficulties and was marked by the tragic event of 28 September 2009[1], and the attempted assassination of Captain Moussa Dadis Camara in December 2009 (Human Rights Watch 2009).

The seriously injured captain was evacuated to Morocco for medical treatment and subsequently prevented from returning to his country (BBC News 2015). The political transition continued, reaching its decisive phase with the signing of the Ouagadougou Agreement on 15 January 2010.

These accords established the roadmap for the political transition with the formation of a national unity government led by General Sékouba Konaté, the first vice-president of the junta (Le Monde 2010).

This unity government was primarily responsible for organising elections within six months and establishing a National Transitional Council (CNT) to serve as a provisional parliament responsible for revising the Constitution and the Electoral Code.[2] The other republican institutions provided for in the constitution were to be established by the elected president.

Thus, learning from its history marked by serious human rights violations due, among others, to the failure to respect democratic principles, particularly that of political alternation, the National Transitional Council (CNT), when drafting the Constitution of 7 May 2010, in addition to guaranteeing respect for all rights inherent to the protection of human rights and the consolidation of the rule of law, set the presidential term at five years, renewable only once, while specifying that under no circumstances may anyone serve more than two presidential terms, whether consecutive or not. The constitution also enshrined the separation of powers and the strengthening of the judiciary. Finally, the legislator has made these innovations a political and moral legitimacy in order to guarantee political stability in Guinea (2010 Constitution, art 27).

In short, this constitution, by laying the foundations for a new Guinea, also enabled the organisation of the first democratic elections in Guinea, following which Alpha Condé was elected President of the Republic of Guinea in December 2010 (Niang 2019).

4. Civilian rule between 2010 and 2021

The Ouagadougou agreements redefined the bases of the political transition in Guinea. As part of the electoral process, these agreements provided for the revision of the electoral roll and the organisation of presidential elections within six months. The agreements also provided for the organisation of legislative elections by the President of the Republic within six months of taking office, and the gradual establishment of other republican institutions.

As a result, Alpha Condé was elected President following an electoral process marred by violence and manifest fraud, but recognised by the international community as Guinea's first truly democratic and multi-party elections (The Carter Center 2010).

[1] The massacres of September 28, 2009 followed a demonstration by supporters of the Guinean opposition organised on September 28, 2009, at the stadium of the same name in Conakry, against the plans of the head of the military junta, Moussa Dadis Camara, to run in the presidential election.

[2] The National Transitional Council (CNT) was the body that served as the parliament during the military transition between 2008 and 2010.

These elections raised hopes among Guineans that military transitions were a thing of the past and that the work of building democracy would be continued and completed by the newly elected civilian president.

Unfortunately, upon taking power, Alpha Condé immediately set about demolishing the democratic process for which Guinea had made considerable sacrifices. In particular, he called into question the electoral process and delayed the establishment of other republican institutions, as provided for in the Ouagadougou Agreement (FIDH 2020) .

This methodically planned process of dismantling and unraveling the achievements of the political transition continued and culminated in the referendum of 22 March 2020, to amend the May 2010 constitution. From a strictly legal perspective, the legal basis of the state was weakened, leaving Guinea without a constitution.

This constitutional change took place in a context of systematic repression of all dissenting or discordant voices. Freedom of expression, opinion, and demonstration were seriously undermined. Violence against peaceful protests has resulted in serious human rights violations, including the killing of demonstrators, often at close range, the arrests and detention of political opponents opposed to the tampering with the constitution. This violence became widespread in the capital, Conakry, and several major cities across the country, following months of demonstrations and protests organised by the National Front for the Defense of the Constitution (FNDC).[3]

This opposition to illegality has also led to major inter-ethnic conflicts. The proposed constitutional revision has undermined social cohesion, weakened and subordinated the institutions of the Republic, and challenged the Guinean democratic ideal. The new constitution has shifted the balance of power in favor of the President of the Republic, whose powers have been considerably increased. For instance, it gave the executive branch of government extensive power with the right to appoint to all civil and military functions. The president appoints and dismisses the Prime Minister who no longer chairs the council of ministers. One of the major innovations in the new constitution was the possibility given to the President of the Republic to dissolve the National Assembly at any time in case of disagreement on fundamental issues between him and the Assembly (2010 Constitution, art 102).

In the 2010 Constitution, the dissolution of the National Assembly by the President of the Republic was only possible after the third year of the legislature and once in a presidential term. Also, the president is no longer obliged to resign if early elections held after the dissolution of the National Assembly return a majority of deputies who support the position that led to the dissolution.

It was under this illegitimate and illegal constitution that the presidential elections of October 2018 were held, which saw the unsurprising re-election of Alpha Condé for his third term, an election that was the pretext for the coup d'état of 5 September 2021 (FIDH 2020).

5. The new military transition following the coup d'état of 2021

[3] The FNDC Movement (National Front for the Defense of the Constitution) is a civic grouping that has initiated a series of demonstrations since October 14, 2019 in Guinea to protest against the amendment or adoption of a new constitution that could lead President Alpha Condé to a third presidential term

The coup d'état took place on 5 September 2021, when an elite unit of the Guinean army, the Special Forces Group (GFS), seized the presidential palace and captured President Alpha Condé after drowning the presidential guard in blood.

In the aftermath, the coup plotters, led by Colonel Mamadi Doumbouya, a former French army legionnaire, announced the suspension of the Constitution, the dissolution of the government and political institutions, and the closure of the borders. A military junta seized power under the name of the National Rally for Development Committee (CNRD) (Guineematin 2022).

Although the coup d'état was initially widely applauded by Guinean political and social forces in general, these hopes were soon dashed, with the junta now accused of authoritarian excesses and serious human rights violations (HRW 2009).

In fact, the euphoria generated by Colonel Mamadi Doumbouya's seizure has faded. The junta and its civilian relays have departed from the traditional mission of a regime of exception. They are increasingly embracing a form of governance worthy of a totalitarian regime, rather than addressing the imperatives of restoring constitutional order within the allotted timeframe (Ledjely 2024).

The junta has also arrested civil society leaders, whose fate remains unknown today, forced the main political leaders into exile and closed down the main private media with a large audience. Dignitaries of the ousted regime of Alpha Condé have also borne the brunt of these arrests and detentions without any legal procedure. Senior army officers have been also arrested, some summarily executed and others disappeared.

The political transition, which was supposed to end with a return to constitutional order on 31 December 2024, according to the various commitments made to the international community, in particular the Economic Community of West African States (ECOWAS), is now without a clear agenda (Boucher 2024).

Instead, we are witnessing a propaganda campaign organised by the junta in support of its leader Doumbouya's candidacy in the forthcoming presidential elections, in violation of the transitional charter and his oath as an army officer to the international community and the people of Guinea (West Africa Corner 2025) .

The current sociopolitical situation is again, in every way, similar to that of past transitions. It will inevitably lead to a dilemma: either elections are organised and won by Mamadi Doumbouya, elections that will not be accepted or recognised by a significant segment of Guinean society, or during this troubled and lawless situation, we have another coup d'état that will plunge Guinea back into another military transition with uncertain outcomes.

In any case, the ideal of democratic construction will be seriously affected, with its attendant political and social instability against a backdrop of serious human rights violations.

6. The failure of various attempts at democratisation in the light of Guinea's social realities and political history

Since its independence in 1958, Guinea has had five constitutions: the 1958 constitution, the 1982 constitution, the 1991 constitution (revised in 2001), the 2010 constitution and finally the 2020 constitution, the last of which has been suspended by the current junta. All these successive

political regimes have claimed to be democratic, even though their practices have hardly conformed to democratic principles (Balde 2020) .

The country's efforts at democracy have always been undermined either by the revision of constitutions or by the suspension of constitutions through coups d'état, resulting in the breakdown of the alternation of power and human rights violations. Constitutions have always been a subject of political controversy rather than an instrument of state organisation and social stability.

Guinea has never had strong institutions capable of withstanding political, economic and social shocks. It is a country where one man decides everything, in other words, he monopolises the three powers of the state. There is no separation of powers between the executive, the judiciary and the legislature, despite the formal separation written on paper (Perspective Monde 2023).

After its independence in 1958, Guinea was built on the basis of total control of the social body, with the suspension of almost all freedoms (political freedom, freedom of the press and of expression, among tohers), a monopolisation of all powers and total control of institutions, the totalitarian regime reigned over the country for more than two decades.

This totalitarianism was controlled by a state party that was committed to silencing any dissenting voice and repressing any attempt to oppose the 'will of the people'. A people with a very relative definition and a very strict composition. In this conception, the people are only those who have agreed to side with the party in power. 'The people', said the supreme leader of the revolution, 'are the healthy part of the nation'. Any opposition to the 'will of the people', in other words to the vision of the ruling party, was considered a betrayal of the nation (Diallo & Diakite 2023).

Unfortunately, this is the conception of power that still prevails in Guinea, against a backdrop of personality worship. Anyone who comes to power immediately sees himself as invested with a divine mission, and drawing on this social heritage, will do anything to control the institutions of the republic in order to remain in power for life.

At the end of the day, Guinea claims to be a democratic regime. Its political history has been marked by upheavals and painful ordeals on the road to democracy and the rule of law. The country is making its fifth attempt since 1984 to adopt a genuine democratic system. However, there are real challenges to the success of this new transition, which has already taken a worrying turn, with all the signs of past transitions coming together.

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From Tweets to streets: The role of digital activism in promoting constitutionalism in Kenya

Tioko Emmanuel Ekiru

1. Introduction

The 21st century has had digital activism blowup over the years as a revolutionary force that has reshaped how societies confront power dynamics globally (Kavada 2010, 101). Digital activism has become the new battlefield for justice, resistance, and constitutional accountability worldwide due to the rapid rise of internet technology and widespread digital connectivity. In Kenya, digital activism has emerged as a powerful weapon for advancing constitutionalism, particularly through the mobilisations of youth and marginalised voices. The rise of social media platforms such as Facebook, Twitter (now X), TikTok, and WhatsApp has provided a space for youth and citizens to engage in political discourses aimed at holding the government and its officials accountable. For example, the recent Gen Z protests against the Finance Bill 2024 exemplified the vital role of digital activism in advancing constitutionalism by empowering citizens to exercise their constitutional rights effectively.

Digital activism in this period evolved from the online expression of dissent-tweets, posts, and viral hashtags to tangible street protests aimed at compelling the government to respect constitutional rights and freedoms such as freedom of expression, access to information, and the right to peaceful assembly. However, the rapid growth of digital activism has been met with significant barriers such as internet shutdowns, disinformation, and misinformation, censorship, and an unequal digital divide. Overcoming these challenges will ensure digital activism remains an effective tool for real-world political engagement and constitutional rights advocacy. This Chapter situates how digital activism advances constitutionalism in Kenya while highlighting the barriers facing digital activism in the context of the recent Gen Z protests in Kenya.

2. Exploring the intersection between digital activism, anarchy, and constitutionalism in the context of the Finance Bill, 2024

Digital activism is a new method of civil mobilisation using digital technology, such as signing online petitions and participating in online discourses (Abiero 2025). In addition, it is the expression of one's opinion using the available media platforms. As it is the expression of one's opinion, digital activism has the potential to amplify offline and online civic activism and political participation, with motivations determined by access to and use of digital spaces (Abiero 2025).

The advancement of the internet and digital platforms has brought about better and easier accessibility of these platforms (Abiero 2025). The internet is known as a no man's world meaning that no State can claim its ownership. Over the years it has been easier for most individuals to access the internet and a gadget that can access the internet which continues to be manufactured and developed in bulk.

In the Kenyan context, digital activism has increasingly evolved rapidly since the onset of the COVID-19 pandemic, growing from a supplementary form of civic engagement into a powerful force for shaping the country's constitutional advocacy efforts (Gonzalez-Paddila 2020). Post-pandemic period, digital activism in Kenya has moved away from the traditional ethnic mobilisation model towards issue-based activism, largely driven by the digitally savvy Generation. This cohort born from the late 1990s to the early 2000s has used platforms like TikTok, Twitter (X), WhatsApp, and Facebook to organise protests, to hold the government accountable.

For example, in June 2024, Kenya youth led an unprecedented wave of digital protests against the infamous Finance Bill 2024, which sought to implement a significant tax increase on essential goods and services such as bread, sanitary towels, and vegetable oil (Munabi 2024). Many Kenyans perceived these measures as an attempt by President Ruto's government to exacerbate the already high cost of living, leading to widespread discontent (Munabi 2024).

Given this, the youth, particularly Gen Z, harnessed social media platforms to organise and mobilise, transforming their online dissent into tangible action. This demographic, characterised by their digital fluency and frustration with traditional political structures, orchestrated decentralised rallies across the nation. Their innovative use of platforms like Facebook, TikTok, and Twitter (X handle) not only facilitated rapid mobilisation but also educated citizens on the bill's implications, fostering a unified front against the proposed legislation (The Guardian 2025).

The protests reached a pivotal point on 25 June 2024, when thousands of demonstrators flooded the streets of Nairobi and other urban cities and towns across the country (Wikiwand 2024). Part of the Kenyan Parliament Building in Nairobi was occupied temporarily as a direct response to the parliamentary approval of the Finance Bill. Protesters breached security barriers, vandalised property, and set parts of the Parliament building ablaze.

The ensuing clashes between demonstrators and law enforcement resulted in 19 fatalities in Nairobi alone, with over 160 individuals sustaining injuries. In addition to this, protesters similarly made their threat dubbed as 'occupy' Parliament real by successfully entering the Senate and sitting on the Senate chairs—including the Speaker's seat (Munabi 2024, 1). They even took

away the parliamentary mace, a ceremonial symbol of the state. Equally, they also served themselves food in the parliamentary cafeteria. Some protesters stormed the Supreme Court building, while others forcibly entered the Nairobi Governor's office, destroying the building (Munabi 2024, 1).

While generally, the months of June and July may have been the most dramatic in the Kenyan story, there were over 1,800 demonstrations or four demonstrations that were carried out every day over 2024 (ACLED 2024). Disappointingly, the state-militarised response to the youthful protesters was highly deadly. Several peaceful protesters were met with excessive and disproportionate lethal force despite being armed only with Kenyan flags, water bottles, and constitutions (Houghton 2024). Security forces repeatedly used water cannons, tear gas, rubber, and live ammunition against unarmed protesters, journalists, activists, advocates, human rights defenders, bystanders, and emergency health workers during the Finance Bill 2024 protests.

Non-uniformed police agents also stabbed some protesters (Amnesty Kenya 2024). The Kenya National Commission on Human Rights (KNCHR), civil society, and other human rights organisations verified at least 65 deaths and hundreds of injuries resulting from these violent crackdowns. These violent acts by the police and military personnel rapidly escalated tension in the country causing widespread causalities, forced abductions, disappearances, arbitrary arrests, extrajudicial executions, and threats of internet shutdowns. However, in the face of mounting pressure and civil unrest, President William Ruto vetoed the bill allowing its complete withdrawal, marking a significant victory for Gen Z protestors.

Besides this, the President effected other significant changes in the government, including the dismissal of almost his entire cabinet following the weeks of nationwide protests, sparing only the Deputy President and Prime Cabinet Secretary. In addition, the government took steps to dissolve certain cooperatives, while at the same time pledging to cut wasteful spending by reducing the number of government advisors.

In early 2025, President William Ruto signed a memorandum of understanding with opposition leader Raila Odinga and the Orange Democratic Movement (ODM) to form a broad-based government aimed at fostering accountable representation. The broad-based government has seen the inclusion of opposition key individuals in strategic cabinet positions, including finance and energy ministries, as part of efforts to reduce political tension following the 2024 Gen Z protests. According to Duncan Okubasu, these demonstrations seek to reaffirm the place of co-optation of opposition politicians which has been an enduring aspect of Kenya’s multi-partyism. In addition, Okubasu observed that these protests revealed the pervasive subservience of Kenya's

political institutions to informal, executive-centered politics, which has been a dominant feature in Kenya's constitutional architecture despite the 2010 Constitution encapsulating the doctrine of separation of powers and checks and balances (Munabi 2024).

This doctrine envisions a balanced governance structure where the executive, legislature, and judiciary act as independent checks on one another. Regrettably, Kenya's political history has been marked by an entrenched imperial presidency, a legacy of colonial governance that consolidates and concentrates power to the executive branch of government.

While the 2010 Constitution sought to decentralise executive authority, with key principles of constitutionalism such as the rule of law, separation of powers, democratic governance, protection of fundamental rights, limited government, and judicial review, the recent events that resurfaced during the 2024 Finance Bill protests, reveal persistent tendencies of an imperial presidency (Munabi 2024)

3. Normative foundation governing digital activism

Kenya's 2010 Constitution is widely considered to be one of the most progressive constitutions in the world (Kibet and Fombad 2017, 340–366). The Constitution provides a comprehensive legal basis for digital activism through its Bill of Rights in Chapter Four. It guarantees freedoms that are essential to digital activism which include (Article 33) which guarantees freedom of expression, freedom of the media in (Article 34), the right to privacy in (Article 31), the right to access information in (Article 35), and the right to protest, which is a key right in any functioning democratic society(Article 37). These rights are complemented by the principles and national values like the rule of law, human rights, democracy, transparency, and accountability provided in Article 10 of the Constitution, which support participatory governance and civic engagement online.

It is also important to underscore that Kenya has also developed specific laws including the Computer Misuse and Cybercrime Act (2018), the Data Protection Act (2019), and the Media Council Act (2013) that aim to address the digital environment content, pertaining protection of privacy, and responsible use of digital platforms (Build Up 2022). However, some provisions, particularly in the Computer Misuse and Cybercrimes Act have been criticised for potentially limiting freedom of expression and privacy, raising concerns about digital authoritarianism. For example, section 22(1) of the Computer Misuse and Cybercrimes Act says that a person who intentionally publishes false or misleading information, intending it to be considered authentic, commits an offence and can be fined up to five million shillings, imprisoned for up to two years,

or both. The wording of this provision is vague, particularly around what constitutes 'publications', which raises concerns about possible overreach and impact on freedom of expression that is protected under the Constitution. In addition, the provision remains controversial due to its broad scope which runs contrary to Article 24 of the Kenyan Constitution which deals with the limitation of rights and fundamental freedoms.

Article 24 specifically states that a right or fundamental freedom in the Bill of Rights can be limited only by law, and the limitation must be reasonable and justifiable in an open and democratic society. This means that any restriction on a right must be necessary, proportionate, and not disproportionately infringe upon the right itself.

Globally, digital activism is supported by several international human rights frameworks like the Universal Declaration of Human Rights (UDHR) and the International Convention on Civil and Political Rights (ICCPR) which guarantees the important aspects of the freedom of expression and the right to access information.

Article 19 of the UDHR states, 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers' (United Nations General Assembly 1948, art. 19). In addition, Article 20 of UDHR provides the right to peaceful assembly, while Article 19 of the ICCPR guarantees the right to freedom of expression, and Article 21 provides the right to peaceful assembly (United Nations General Assembly 1966).

Although these frameworks allow the limitation of rights, including providing restrictions under specific circumstances such as 'respect for the rights or reputations of other individuals', 'protection of national security', or 'public order', the overarching concern is that these normative foundations provide a fertile ground for human rights activists, civil societies and social movements to express dissent, mobilise change and even challenge authoritarian regimes like the way Arab Spring movement did.

4. The barriers for digital activism

While digital activism remains a powerful tool for political engagement, especially among the youth, it continues to face significant barriers that undermine its effectiveness. The key barriers facing digital activism today include internet shutdowns, disinformation, and misinformation, censorship, and a persistent culture of digital divide. This part discusses in detail the challenges of digital activism.

4.1. The internet shutdown

Internet shutdown is an intentional disruption of Internet-based communications, making them inaccessible or unavailable for a specific population, location, or type of access (Access Now 2025). It is often a state attempt to try to control the flow of information within a region by preventing people from accessing the global Internet.

The internet shutdown during Kenya's Gen Z-led #Reject Finance Bill 2024 protests in June 2024 marked a critical juncture in the struggle for digital rights and the democratic right to freedom of expression (The East African 2024). As Gen Z protesters mobilised online against controversial tax hikes, the government abruptly disrupted internet access nationwide, plunging millions into information blackout. Despite denying any intentional plan to disrupt the internet shutdown, particularly by the Communications Authority of Kenya (CA) through its director general, the move of internet shutdown was seen as a ploy by the government to suppress dissent and also its deliberate action to control the flow of information, including crippling digital infrastructure, leaving protesters unable to communicate (Kenyans.co.ke 2024). In addition, these actions were aimed at controlling protests and preventing the spread of information that could undermine government authority.

By restricting access to information, the shutdowns underscored the state's willingness to weaponise digital controls, risking alienating a tech-savvy generation that views online as essential for civic participation. Similarly, the shutdown limited access to crucial information (CIO Africa 2024). This is because, during the crisis, citizens were unable to access critical information, verify facts, and stay informed, which is contrary to the provisions of the Access to Information Act (Kenya 2016, Part II, s. 4). This limitation not only impeded the public's right to be informed but also contributed to a climate of uncertainty, disinformation, and misinformation.

It must be recalled that an internet shutdown starkly contradicts the core democratic values such as transparency, participation, and accountability that give citizens mandates to engage meaningfully in their civic life. When the state weaponises digital controls to limit online access, it undermines these principles by silencing voices, curtailing freedom of expression, and obstructing the public's ability to verify facts and stay well-informed (BAKE 2025). The European Digital Rights and Principles emphasise that digital technologies should protect people's rights, support democracy, and ensure the safe and inclusive participation of all individuals in their public or private affairs (European Commission 2025) (BAKE 2025).

The shutdown also crippled the economy, particularly for small businesses and entrepreneurs who depend on the internet for their livelihood. It was reported that, every hour of total internet shutdown, Kenya loses about Sh1.8 billion of its GDP, according to NetBlock's cost of internet shutdown calculator. This economic damage not only affected the country's financial stability but also had broader implications for businesses and individuals who rely on the internet for their livelihood.

It was noteworthy to observe that this action of internet shutdown had profound implications for the core of democratic and constitutional rights, particularly the right to freedom of expression in Article 33, the right to access information in Article 35, and the right to protest in Article 36, which the government deliberately violated (Kenya 2010, arts. 33, 35, 37). Organisations like ARTICLE 19 and the Net Rights Coalition emphasised that restriction and disruption of the internet eroded democratic principles and also normalised authoritarian tactics (Paradigm Initiative 2024). The restriction of the enjoyment of these rights created an environment where journalists and media organisations operated under fear of censorship.

The state in many instances has found the justification of internet shutdowns listing various grounds including national security which normally clashes with the need to protect the fundamental rights to freedom of expression, access to information and the right to protest (Al Khasawneh and others 2023). The Access to Information Act provides criteria in which access to information can be limited, while Article 24 of the Constitution outlines limitations on the right of access to information as guaranteed under Article 35 of the Constitution. Section 6 of the Access to Information Act, particularly sets out elaborately the criteria on which Information disclosure can be restricted, particularly if it poses a risk to national security, impedes legal processes, endangers safety, health, or life, invades individual privacy, prejudices commercial interests, harms the government's economic management, undermines decision-making processes, jeopardizes legal positions, or infringes on professional confidentiality (Kenya 2016, s. 6).

Under the Kenya Defence Forces Act (Cap.199), national security-related information includes details on military strategies, covert operations, intelligence methods, foreign relations, scientific or technological matters, vulnerabilities of critical systems, and classified information under the Act (Kenya 2016, s. 6). The Access to Information Act 2016 provides exemptions from these limitations when the information requested pertains to product or environmental testing results that reveal significant public safety or environmental risks (Kenya 2016, s. 6). Furthermore, public entities and private bodies may be required to disclose information if the public interest in disclosure outweighs the potential harm, as determined by a court (Kenya 2016, s. 6). When evaluating the public interest, considerations include promoting public accountability, ensuring

effective oversight of public funds, fostering informed public debate, keeping the public aware of health, safety, and environmental risks, and ensuring regulatory bodies are fulfilling their duties (Kenya 2016, s. 6).

To address the issue of the internet shutdown, the Kenyan government must prioritise respecting constitutional and human rights, particularly the rights to freedom of expression, access to information, and peaceful assembly as enshrined in the 2010 Constitution. These rights are fundamental and should not be compromised by internet shutdowns unless their limitation is justified as required by the Constitution in Article 24 on general limitation of rights. In addition, government regulators like the Communication Authority of Kenya (CA) should establish clear, transparent procedures and guidelines to manage internet access fairly and prevent arbitrary shutdowns. Equally, telecommunication companies should resist unwarranted government shutdown orders by protecting customer data and maintaining transparency in all circumstances. Furthermore, there is a need to forge international collaboration to create frameworks that uphold digital rights and discourage internet shutdowns (Lawyers Hub 2025) (Internet Society 2025).

4.2. Disinformation and misinformation

Disinformation and misinformation are two related but distinct concepts that have a significant impact on public discourse, especially during politically charged events such as protests. Misinformation refers to false or inaccurate information shared without intent to deceive, often spread unknowingly by individuals who believe it to be true. Disinformation, on the other hand, is deliberately false information created and disseminated to mislead or manipulate public opinion (Mutisya 2022). During the recent anti-finance Bill protests in Kenya, both misinformation and disinformation played critical roles in shaping public perception and driving tensions. The unrest, driven by Gen Z, were accompanied largely by the surge of false and fabricated content circulated both online and offline. This included fabricated news stories, manipulated images, and Al-generated deepfakes that distorted facts about the protests and government action in general (Kenyan Foreign Policy 2025).

For example, following Kenya's anti-tax protests, there were alarming claims about a massacre in Githurai, a Nairobi suburb, with reports alleging over 200 deaths (BBC News 2024).

Nonetheless, a BBC investigation found no evidence of mass killings as reported (BBC News 2024). Verified videos showed heavy gunfire and a strong police presence but no verifiable images of bodies. Misleading information spread on social media, including old footage from Ghana (BBC News 2024). The Kenya National Commission on Human Rights confirmed 23 protest-related deaths but no mass killings in Githurai.

Another form of misinformation involved the use of old or unrelated photos and videos falsely presented as current evidence of police brutality. The images, for example, purportedly showing excessive force applied by the police against protesters were later demystified as recycled from past events, complicating efforts by humanitarian organisations like the Kenya Red Cross to respond effectively to genuine emergencies issues (NCIC 2017) (Lee 2019). This incident underscores how fake news rapidly spreads thus misleading the public about real issues facing them.

Disinformation campaigns were also run against the government by certain social media influencers and groups. The government accused these individuals of orchestrating coordinated digital attacks aimed at undermining the government's standing on the global stage. The crux of these campaigns included mass email petitions targeting foreign governments to influence state visits and international perceptions of Kenya (Kenyan Foreign Policy 2025). This initiative highlights how disinformation can be weaponised in political conflicts to create fabricated, false, and misleading information. The Kenya experience in this saga reflects a broader trend in Africa where domestic political actors increasingly deploy disinformation to influence public opinion and political outcomes. To combat the spread of misleading information requires employment of the fact-checking approach and also adopting collaborative efforts, particularly from various actors ranging from the government, civil society, and digital platform players to ensure every piece of information always meets the tenets of accuracy.

4.3. Censorship

The Black's Law dictionary defines censorship as the restrictions placed on publication and the showcasing of content to the public (Black's Law Dictionary 2019). Censorship is also defined as an act of suppressing, modifying, or withholding information, ideas, or expressions from public access, often imposed by governments or other authorities to control what people can see, hear, or say (Fitz 1996).

Censorship aims to prevent certain values, maintain control, or prevent the spread of ideas that are considered offensive or aim to threaten those in power (Fitz 1996).

During the 2024 Finance Bill protests, Gen Z activists faced censorship. The state authorities responded to the protest by slowing down internet access and potential digital restrictions in an attempt to control dissent and limit the impact of the protest (Ochieng 2025). Additionally, the use of Al-generated political images by some protesters, which depicted controversial and provocative content about political leaders, raised ethical debates about freedom of expression

versus defamation, further complicating the censorship landscape in the country (Kimware 2025).

It should be recalled that despite President William Ruto's withdrawal of the contentious Finance Bill, the demonstrations persisted. Ostensibly, Kenya transformed into a 'horror state', particularly for many individuals attending the protests and those found online criticising the government. Further, even in the instances where the protesters were peaceful, the government heavy-handedly responded with violence by deploying police and other security agents to create a climate of fear, control the flow of information, and further stifle the coordination of protesters (Houghton n.d.). The reports of crackdown, forced disappearance, abductions, torture, intimidations, threats, and unlawful arrests of protesters highlighted the severe violation of human rights with the scheme of silencing the protesters (Chahali 2024). The situation underscores the urgent need for the Kenyan government to respect and protect the freedom of expression, access to information, and protests as critical pillars for sustaining democracy in Kenya.

4.4. Digital/internet divide

The digital divide highlighted inequalities in access to digital tools and information. For instance, while urban and connected youth could leverage social media to coordinate protests and pressure lawmakers to shelve the Finance Bill in its entirety, those without reliable internet access were marginalised from digital discourse and mobilisation efforts due to poor infrastructure, high costs, and limited digital literacy (Abiero 2024). This divide not only impacted protest dynamics but also the representation of diverse voices participating in the movement. In addition, the digital divide deepened social inequalities, as those without reliable internet access could neither participate in digital activism nor access vital information (Okello 2024). Furthermore, the digital divide during the anti-Finance Bill protests exposed the tension between state control and citizen digital rights in Kenya's political landscape.

To bridge Kenya's digital divide to protect citizens' right to freedom of expression, access to information, and protests as enshrined in the Constitution, requires adoption of strategic investments in infrastructure, affordable internet access, and digital literacy programs, particularly targeting rural and marginalised communities. Initiatives such as establishing secure public WiFi access points and incentivising community networks are critical to ensuring equitable digital inclusion in this era.

5. Conclusion

Digital activism has become a powerful catalyst for fostering constitutionalism in Kenya, as evidently noted during the 2024 anti-Finance Bill protests pioneered by Gen Z. Through social media platforms like Twitter (X handle), Instagram, Facebook, TikTok, and WhatsApp, citizens-particularly youth-have been able to exercise their constitutional rights to freedom of expression, access to information, and peaceful assembly by mobilising protests to hold the government accountable. The evolution of these digital tools in the modern era has expanded civic engagement beyond traditional known spaces.

In Kenya, like other parts of the world, digital activism has evolved from online expression of dissent-tweets, posts, and viral hashtags-to tangible street protests demanding government accountability, transparency, and respecting the constitutional rights of individuals as provided under Kenya's 2010 Constitution and other international human rights instruments. However, the growth of digital activism continues to face glaring significant barriers such as internet shutdowns, disinformation, and misinformation, censorship, and digital divide. Addressing these challenges will ensure inclusive, effective, and resilient digital civic engagement in Kenya's evolving political realm.

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Libya: The struggle of two governments trapped in a vicious cycle

Lina Eissa

The revolutions in the neighbouring countries, specifically in Egypt and Tunisia, the victory of the Libyan rebel forces against the long-term dictator, and the fact that Libyans did not fight against each other on an ethnic, religious, or tribal basis during the war; gave the Libyans a short-lived sense of optimism after Qaddafi's death in Sirte in October 2011. However, the impact of Qaddafi's 42 year- rule, which hollowed out political institutions and enforced political apathy nationwide (Chivvis and others 2013, 8), proved that these factors were not sufficient to make Libya go through a peaceful and a successful post-conflict transition by its own, especially that the North Atlantic Treaty Organization (NATO) mission in Libya was also closed in October 2011.

Back in February 2011 in Benghazi, a city located in the northeastern part of Libya, demonstrations erupted after the arrest of human rights lawyer Fethi Tarbel by government police, sparking widespread unrest in Tripoli and in other parts of the country against Muammar al-Qaddafi. Weeks after the uprising and with the government's excessive use of force and violence against civilians, 18 countries have participated in the NATO military intervention in Libya (Salyk-Virk 2020, 18). This intervention came in support of the UN Security Council Resolution 1973 in March 2011; with France, the United States and the United Kingdom taking over the command of this military operations against Qaddafi's government and affiliated military targets. In August 2011, rebel forces advanced into Tripoli, taking over some areas in the capital and by early September they had solidified their control of Tripoli (Encyclopedia Britannica). Later on, as rebel forces advanced toward Qaddafi's strongest strongholds—Sirte and Bani Walid—and with French and American coordination in a joint surveillance operation to locate him (Salyk-Virk 2020, 18), they were ultimately able to capture and kill Qaddafi. In this way, NATO showed its significant role in toppling the regime; only to leave Libya then immediately after the conflict to face its own fate with sovereignty, autonomy, and democratic transition. NATO closed its mission on 31 October 31 2011 (ibid).

1. A democratic transition or an illusion of one?

With the beginning of the protests in Benghazi, opposition forces created their own leadership under what is called the National Transitional Council (NTC) which was ultimately aiming to lead the country's transition to a democratic government. During the uprising, some countries worked to establish contact with the NTC and, in some cases, began to recognise it as Libya's legitimate government (Encyclopedia Britannica). Therefore, with the collapse of Qaddafi's regime, the NTC

became the acting government at the close of NATO intervention which was led by acting Prime Minister Mahmoud Jebril (Salyk-Virk 2020, 18). At that point, Libya had more advantages compared to other MENA transition states. This advantage came from the fact that Qaddafi's security state collapsed completely with him and Libya's state structures needed to be built from scratch (Randall 2015, 200). Libyans could have benefited from this advantage to build a more integrated Libya and move toward a secure, democratic government with a more stable internal state system. However, the NTC struggled to establish a functional government formed in eastern Libya and was unable to implement its 18-month transition plan (Encyclopedia Britannica). Rebel forces that had fought autonomously during the uprising in western Libya also refused to submit to an interim government formed in the east (ibid). Despite the beginning of rising tensions between local militias and various obstacles, the strong political will of Libyans at the time led to the historic July 2012 elections. These parliamentary elections that were held the first since 1969; enabled the handover of power from transitional authorities to the Libyan General National Congress (GNC) (Chivvis and others 2013, 8), a 200-seat assembly headed at that time by the de facto head of state, Mohamed al-Magarief. The 18-month transition plan was supposed to be overseen by the GNC. The resulting parliament was composed predominantly of the National Forces Alliance (NFA), led by Mahmoud Jebril, with strong representation from Islamists as well as independents (Salyk-Virk 2020, 19). Like the NTC, the GNC was unable to effectively govern Libya or ensure the stability of the country. Also, many of the 'independent' individual electees held affiliations with Islamist parties, which added layers of complexity to the political landscape and the Islamists prevented the NFA from forming the government (Sawani 2024, 3). Only a month after the elections, the 2012 Benghazi attack erupted, resulting in the death of U.S. Ambassador Christopher Stevens along with three other American officials. The rift was clear in the makeup of the GNC. Secular members and associated independents have frequently opposed Islamist members and associated independents (Randall 2015, 210). In addition, the 2013 Political Isolation Law, which was forcibly passed by the GNC, prevented large segments of the population across the country from holding government positions if they had ties to the previous regime (Salyk-Virk 2020, 19). At this level, and with the political vacuum after Qaddafi's regime, Libyan political forces were unable to entrust transitional institutions with the authority required to restore the country's political order. Instead, they moved separately with no clear directions and competed to take over the power without consideration for the country's development visions.

2. Post-elections division intensification

The historic first national elections of 2012 were expected to bring not only legitimacy to the Libyan government, but also to contribute to the consolidation of democracy, peace and stability.

However, elections in the Libyan case seemed to intensify the rift between the Libyan political forces and, instead, increased the risk of democratic backsliding. A policy paper by International IDEA Institute titled 'Timing and Sequencing of Transitional Elections' argues that elections during periods of democratic transition often exacerbate divisions and deepen conflict. It warns that hastily organised elections may become technically disorganised and destabilising, and it introduced two options regarding decisions on the timing and sequencing of transitional elections. One is that elections need to be held as soon as possible in order to make quick wins and the other is to wait until all preconditions for organising safe, technically sound and participatory processes are met and there is greater certainty that the elections will yield truly democratic results. Further, hastily organised elections with weak security sector agencies, weak legal systems and judiciary and immature civil society may fall short of delivering credible results and that it might not allow sufficient time for new political parties to organise, thereby favouring former armed groups (Alihodžić and others 2019, 7-9 13). Applying this argument to the Libyan case, it was evident that Libya was more in need for 'internally-driven national dialogues and reconciliation initiatives' before holding any elections which alone were insufficient for resolving the conflict or leading to a successful democratic transition (Sawani 2024, 1). In February 2014, the GNC's term came to an end. However, a decision was made to prolong it. As a result, tensions arose between competing factions; especially with Khalifa Haftar, a former general and the leader of the self-styled Libyan National Army (LNA) (Encyclopedia Britannica), who refused the GNC's term extension decision. Consequently, in May 2014, this triggered the latter to start the 'Operation Dignity' coup against the GNC for being dominated by Islamists, where he wanted to eradicate them. In June 2014, elections were held to ease tensions. A case study of post-conflict Libya, which tackled the issue of elections in divided and conflict-affected countries answers the question as follows (Sawani 2024, 3):

> *In conflict-affected regions, the risk of election-related violence is heightened due to identity-based issues aggravated by hasty elections. This happens when, for example, electoral maps are drawn such that select ethnic, tribal, or regional groups consider them prejudicial to their identity or group interest. Weak and polarized media worsen these challenges, turning poorly timed, designed, and managed elections into obstacles in the democratic transition.*

Elections then resulted in the creation of the House of Representatives (HoR) in eastern Libya, but the legitimacy of the elected parliament has been disputed (Randall 2015, 211), especially after it was declared by Libya's Supreme Court that the HoR is unconstitutional. On one side, this judicial decision underscores the impediments to establishing a post-conflict legal and constitutional order and (Sawani 2024, 4), on the other side, reflects how premature elections

held before resolving the major issues of contention questioned the credibility of the results (Sawani 2024, 3). Since then, power was split among Libya's competing factions, each with its own armed supporters who claimed the right to rule the country, resulting in two governments with two different models of power: the political Islamist rule in Tripoli by the GNC, supported by Libya Dawn armed groups against the militarist nationalist rule in Tobruk by the HoR. Talking about a unified Libyan government has become an idea that is far removed from Libya's political, social and cultural reality. The legacy of a personalistic nature rooted in exploiting and empowering tribal loyalties, which was instigated by the previous Qaddafi regime to further bolster political power, along with Libyans' lack of experience in democratic processes after four decades of authoritarian rule, are the result of poor capacity in both decision-making and institutional state-building. Libya's new transitional leadership did not step into strong state institutions in need of reform (ibid) and lacked a monopoly on the legitimate use of force which left the state in the hands of powerful militias, each holding autonomy over their own parcel of territory, rather than under a preserved Libyan sovereignty. Therefore, the two major national elections of 2012 and 2014, which were supposed to foster democratic governance in the country, instead led to a more fractured security environment and hindered any dialogue or reconciliation process—both of which are considered the cornerstones for resolving the Libyan case before taking further steps toward democratic consolidation. Elections even increased foreign intervention from Qatar, Turkey, Russia, UAE, and Egypt, further widening divisions from the civil war, and making a peace agreement even more difficult to achieve, ultimately resulting in a failure to find national solutions and prolonging state-building efforts (Sawani 2024, 5).

Although this book focuses on the state of democracy in Africa, the post-election divisions observed in Libya can serve as a lesson for the current Syrian case following the fall of the Al-Assad regime on 8 December 2024. In Syria, de facto leader Ahmad al-Sharaa declared himself president of the transitional phase, abolished the country's constitution, dissolved the parliament, and announced that it could take up to four years to hold elections. This step demonstrates that post–Assad Syria cannot support valid elections amid complete security, judicial, and political chaos. In situations where a regime is toppled through a protracted revolutionary struggle, elections cannot be considered the sole instrument of democracy. They must first be grounded in a context of reconciliation and dialogue and be supported by a range of democratic political parties and a democratic constitution.

The Libyan political scene in essence continues to be inside the same cycle for years and relations between the eastern and western regions experiencing periods of intense tension, including cross-accusations of betrayal of the Libyan national cause or submission to foreign interests regardless

of several initiatives (Gutiérrez de Terán Gómez-Benita 2024, 227), backed by the international community, which aimed at achieving sustainable national reconciliation between the conflicting factions and restoring the social and political Libyan fabric.

3. Constitution-making in post-2011 Libya

Different transitional actors and national bodies have taken part in the constitution-making process in Libya, and the will to adopt a constitution was clear since the beginning in the words of Mahmoud Jebril when he stated that 'the moment we draft a constitution, then there is a frame of reference' (Zanotta 2011, 27). However, since Qaddafi's fall, Libya has not yet adopted an official constitution. This reflects the multi-level obstacles of the Libyan democratic transitional process which resulted from the lack of a prior consensus based on dialogue and reconciliation.

With Jebril and the establishment of the NTC on 3 August 2011, the Interim constitutional declaration was issued to serve as a temporary exercise of power that governs and organises the transitional phase until the adoption of a permanent constitution by general popular referendum (Constitute 2011). The declaration provided a timetable for the formation of a new government and the constitution-making process (Zanotta 2011, 33). This constitutional declaration came to establish a democratic Libya based on a political multitude and a multi-party system. It affirmed that Islam is the religion of the state and that Shari'a is the source of legislation. It stated that Arabic is the official language of the country and guaranteed at the same time the rights of the non-Muslims and the other non-Arabic speakers by ensuring their freedom of practicing religious rights and respecting their personal status (ibid). The interim declaration defined the NTC as the authoritative body of the state for a 20-month transitional process, which would later result in the elections of a new parliament, new president and legislatures. As explained above, the NTC would dissolve and pass its authority to the GNC, which would then appoint the new interim government and the elections for the new parliament that were scheduled for 7 July 2012 (Johnson 2018, 306). In the study of Darin Johnson of the 'Conflict Constitution Making in Libya and Yemen', she emphasised the successful recipe for the constitution-making process in a transitioning state. Johnson highlighted that any constitution-making process in a transitioning state will require a participatory, inclusive, deliberative and transparent approach in the constitution drafting process which would aid in constitutional legitimacy and effectiveness. This, in turn, would ensure broad societal acceptance of the new regime. At the same time, Johnson stated that this goal might be difficult to pursue when the security environment of the transitioning state does not permit widespread public engagement, especially when the country is experiencing ongoing hostilities

and violent civil conflict. Indeed, this was the case in Libya when various groups began to oppose the NTC's plans for constitutional reform (Johnson 2018, 307).

Although the NTC mandated the GNC to select sixty members of the Constitution Drafting Assembly (CDA) to draft the new constitution (ibid), several amendments were issued due to pressures and the fear of being excluded or unfairly represented in the new constitution drafting process mostly by Tripolitania and Fezzan regions who threatened that they would boycott the elections of the GNC. The NTC was compelled to modify the Interim Constitutional Declaration, so that the CDA would have been directly elected by the population instead of being appointed by the GNC (Zanotta 2011, 35). In response, the NTC changed the rules and gave equal seats (20 each) to the three main regions Fezzan, Tripolitania and Cyrenaica. Due to the difference in the population size of each region, this concession caused one of the deepest tensions between Libyan factions, in terms of who gets to decide the future of Libya and how power should be shared. Another major issue was that the Amazigh boycotted the CDA, where the then Touareg and Tebu minorities followed the boycott. This is because minority groups in Libya and women felt that they were only given symbolic roles in participating in the new constitution drafting process. The Amazigh, Touareg and Tebu were only given two seats each in the CDA and only 10% of seats were reserved for women, even though a 35% female participation rate had actually been proposed.

Despite multiple tensions, elections for the Constitutional Drafting Assembly (CDA) were held in 2014, and the drafting of Libya's constitution commenced. The final draft was adopted in April 2016 after several revisions and delays; however, it was never submitted to a national referendum due to persistent political divisions, violence, and a lack of consensus. To this day, Libya remains without a permanent constitution, and its transitional process continues to be incomplete, highlighting the enduring challenges of state-building and democratic consolidation in the country.

4. Conclusion

The Libyan case demonstrates the profound challenges of post-conflict state-building and democratic transition in a society emerging from decades of authoritarian rule. While the fall of Qaddafi initially offered a moment of optimism, the collapse of centralized institutions, the proliferation of armed groups, and the absence of a functioning state apparatus quickly undermined the prospects for a stable transition. Elections, intended to consolidate democracy and legitimacy, instead deepened political divisions, heightened security risks, and facilitated

foreign intervention, ultimately entrenching the country in a cycle of competing governments and fragmented authority.

The constitution-making process, while envisioned as a foundational step toward a democratic Libya, similarly suffered from exclusion, regional disputes, and lack of consensus, leaving the country without a permanent legal framework. Attempts to implement transitional plans, from the NTC to the GNC and the CDA, were repeatedly thwarted by political rivalry, insufficient institutional capacity, and social divisions, particularly concerning minority representation and gender inclusion.

Libya's experience underscores a critical lesson for transitional states: democratic processes, including elections and constitution-making, cannot succeed in isolation. They must be grounded in reconciliation, dialogue, and inclusive participation, and supported by security, judicial, and institutional stability. Without these prerequisites, transitional initiatives risk exacerbating conflict rather than resolving it. As Libya continues its incomplete transition, its struggle serves as a cautionary example for other post-authoritarian or post-conflict contexts, illustrating that durable democracy requires both institutional foundations and societal consensus, not merely formal electoral procedures.

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Political party institutionalisation and democracy consolidation in Malawi

Golda Chilembwe Rapozo

1. Introduction

Malawi attained independence from the British in 1964, following which a constitution was adopted, providing a multi-party governance system. However, when Malawi became a republic in 1966, this constitution was set aside, and a new one was adopted. Under the new constitution, the Malawi Congress Party (MCP) was declared the only political party in the country, and Kamuzu Banda, the life president of the republic. Malawi went through at least 30 years of a one-party dictatorship. It was only after a referendum in 1993 when the Constitution was amended, allowing the registration of other political parties, that Malawi became a multi-party democracy.

Political parties are an integral part of democracy. They provide an avenue for the people to express their interests, and they promote a sense of solidarity (Stokes 1999, 246). Further, political parties act as a link between the people and the government (Kuenzi and Lambright 2001). Since the introduction of multiparty democracy in Malawi, over 50 political parties have been registered. A thriving multi-party democracy should be an indication that there is a consolidation of democracy in the country. However, the lack of constitutionalised political parties may pose a threat to the democratisation process. Political party institutionalisation is considered critical to the survival and healthy functioning of democracy (Casal Bértoa 2016, 2). This chapter will explore what party institutionalisation entails and how it pertains to the consolidation of democracy. It will focus on six political parties, namely MCP, United Democratic Front (UDF), Alliance for Democracy (AFORD), Democratic Progressive Party (DPP), People's Party (PP) and United Transformation Movement (UTM) and the impact they have had on the democratisation process in Malawi. These political parties have been pivotal in the democracy of Malawi either through winning elections or by being a ruling party.

2. Party institutionalisation and democracy consolidation

Party institutionalisation has been defined in different ways by different authors. According to Svåsand (2014, 277), party institutionalisation entails creating an enduring organisation that follows a set of guidelines and routinely carries out tasks like nominating candidates and serving as the foundation for an opposition or administration. Janda (1980, 19) characterises an institutionalised party as one that "displays recurring patterns of behaviour valued by those who

identify with it" and is "reified in the public mind so that the party exists as a social organisation apart from its momentary leaders." For the purposes of this chapter, party institutionalisation shall be defined as the process through which political parties transform from loose, individualised groups into dependable, well-organised institutions with established behavioural patterns, acknowledged worth, and legitimacy. It is the process by which parties transform from short-term platforms for personal goals into cohesive, long-lasting institutions.

Party institutionalisation falls into four dimensions: systemness, value infusion, reification and autonomy. Systemness has been described as 'the increasing scope, density and regularity of the interactions that constitute the party as a structure' by Casal Bertoa (2016, 7). This means that a party must have established structures and procedures with a regular decision-making process. Value infusion is defined as the degree to which party members and players develop a sense of loyalty and connection to a party (Casal Bertoa). The party is not just a tool for self-advancement, but the members internalise the values that the party stands for beyond immediate self-interest. Reification, according to Janda, entails that the existence of the party must be established in the mind of the public. This involves a constant presence in the public and not simply during elections. Finally, autonomy means that parties are not subordinate to other political or private entities (Mainwaring and Scully 1995, 5). This translates to the party being free from domination by party founders and ensures the survival of the party beyond the tenure of its founding members. It must be noted that there is no consensus amongst academics that parties fulfil all four dimensions to be considered institutionalised.

Political parties are integral to the consolidation of democracy because they are a means through which one can attain a policymaking position (Yardımcı-Geyikçi 2013, 528). Strong political parties mean strong oppositions, thus curtailing the threat of an authoritarian system emerging. Political party institutionalisation will result in stronger political parties that are rooted in party values and can survive elections. This chapter posits that party institutionalisation has a strong correlation to the consolidation of democracy in Malawi.

3. Emergence of political parties in Malawi

The Nyasaland African Congress (NAC) is the starting point for party politics in Malawi. Established in 1944, NAC, renamed the MCP in 1959, spearheaded the fight for independence under the leadership of Kamuzu Banda (Ihonvbere 1997). The Constitution adopted at independence made provision for a multiparty system of government. In 1966, Malawi was declared a republic with Banda as its first president. With the adoption of a new constitution that

banned all political parties save the MCP, Banda was proclaimed president for life. Every Malawian was required to be a member of MCP, and their membership had to be renewed annually. With the fall of the Berlin Wall, Dr Banda slowly lost the support from the West he had enjoyed due to his anti-communist ideals.

A majority of Malawians voted in favour of multiparty democracy in a 1993 referendum, leading to the end of the one-party system through a constitutional amendment. Two opposition groups were formed, the United Democratic Front (UDF) and the Alliance for Democracy (AFORD). UDF was headed by Bakili Muluzi, a former Secretary General of MCP, and AFORD was under the leadership of Chakufwa Chihana, who was known as a committed human rights activist and pro-democracy supporter. In 1994, the first multiparty elections were held post-independence with at least 6 parties participating. UDF came first with 46% of the votes and their torchbearer Bakili Muluzi became the first multiparty president of Malawi.

4. Analysis of political parties in Malawi

4.1. Malawi Congress Party

MCP is the oldest party in Malawi. From its formation in 1959 during the struggle for independence, it has been the one constant in Malawian politics. It enjoyed unfettered authority during the one-party state as the only constitutionally recognised party and has survived the emergence of multi-party politics. Following the referendum in 1993, MCP came second in the 1994 elections with 33% of the votes (Ihonvbere 1997). It also managed to win 56 out of 177 parliamentary seats. MCP currently appears to have a system in place through which decisions are made. For instance, it holds regular conventions during which party leadership is elected. Secondly, it has managed to survive the self-advancement attempts by some of its members. Following the end of the one-party rule, MCP was in the opposition for over 20 years. Yet, this did not spell out the demise of the party. It managed to maintain itself until 2020 when it finally returned to power, albeit under a coalition government. However, it would be a stretch to say that the members have internalised the values that MCP stand for because, as will be evident of most parties in Malawi, their values will change based on their alliances and needs at the time (Tenthani & Chinsinga 2016). However, despite having no clear values, MCP seems to be one of the few parties to have survived leadership changes, which entails that it has moved beyond the whims of the individual. This brings in the issue of autonomy. Before multiparty politics, MCP was essentially a tool for Dr Banda, and there was no separation between the party and the man. MCP has, however, managed to survive the demise of Dr Banda and most of its founding members, even boasting of a new generation of members that aim to separate and rehabilitate itself from its

dark past. Finally, when it comes to reification, MCP is well-known by the public. It is one of the few parties to consistently put up a candidate for parliamentary elections in every constituency in the country.

4.2. Alliance for Democracy

AFORD was founded by Chakufwa Chihana, one of the pioneers of democracy in Malawi. Chihana endured multiple arrests and was exiled due to his criticism of MCP and the one-party rule. AFORD was one of the first parties registered in Malawi after the referendum and a major contender in the 1994 elections. However, AFORD lacked a clear manifesto and was branded as a northern region party, as that was where Chihana was from. True to this, AFORD performed remarkably well in the north but still came third in the elections with 19.5% of the votes (Ihonvbere 1997, 237). After the elections, Chihana was branded a 'political prostitute' due to his tendency to align with any party that would offer him an advantage. He served as a second Vice President to Bakili and the UDF government for two terms and even allied with MCP on several occasions (Gondwe 2012). Like most political parties in Malawi, AFORD lacks clear policies and has struggled to find a successor to Chihana after his death. This has led to the slow disappearance of the party even in the north. Currently, the party only has two members of parliament, a far cry from the initial 36 in 1994 (Nation online 2024).

4.3. United Democratic Front

UDF, like AFORD was one of the proponents of multiparty democracy in Malawi. Although its membership consisted mostly of disgruntled and dismissed MCP members, it quickly rose to popularity (Ihonbevere 1997, 232). During the first multiparty elections, UDF won the presidency with Bakili Muluzi, although it failed to attain a majority in Parliament. It was thus forced to ally with AFORD to gain a parliamentary majority. UDF won the presidential elections in 1999 and again in 2004. After serving two terms as President of the Republic, Muluzi appointed Bingu wa Mutharika as the torch bearer for the party in 2004, a decision that did not go over well with some of the top officials, as Bingu was an unlikely candidate for the position (Young 2012, 112). Bingu did not have strong roots in the party and was little known in the political arena in Malawi. This is an indicator of a lack of democracy in the party as succession was up to Bakili as party leader. Once elected, Bingu and Muluzi quickly came to loggerheads, leading to Bingu resigning from the party and forming the Democratic Progressive Party (DPP) (Young 2012). UDF suddenly found itself in the opposition. During the 2009 elections, it allied with MCP. The alliance however failed to win the presidency, and following the retirement of Bakili from active politics, UDF has

struggled to make a comeback. It has now moved from a party with a majority in parliament in 1999 and 2004 to having no more than 10 members of parliament in 2019. UDF has failed to survive the departure of its founder.

4.4. Democratic Progressive Party

DPP was founded in 2005 by Bingu wa Mutharika as a breakaway from UDF. DPP's first election was in 2009, which it won by a landslide. For the first time in the country, a party had attained the presidency and a parliamentary majority. However, the party soon fell into a succession wrangle as Joyce Banda, the Vice President of the Republic, had assumed that she would be the logical successor, however, she found herself sidelined for the President's brother Peter Mutharika, who appeared to be the chosen successor. Eventually, Joyce Banda was dismissed from DPP, although they failed to fire her as vice president due to the constitutional safeguards. In 2012, Bingu died of a heart attack, and Joyce Banda became the president, leaving the DPP in the opposition (Svåsand 2014, 279). However, DPP managed to win the 2014 elections with Peter Mutharika as torchbearer. Mutharika won the 2019 elections, however, the constitutional court overturned the results due to cited irregularities. A rerun was ordered, and DPP lost to a coalition between MCP and UTM. DPP appears to suffer from succession issues. There seems to be minimal intra-party democracy, which is the procedure that guarantees that party members are involved in the decision-making process, particularly when it comes to party succession, despite the DPP holding conventions where they select party leadership. The party seems to be synonymous with the Mutharika name, and although some of its members have lamented that Mutharika is too old to be the party's torchbearer, he remains the same for the upcoming 2025 elections (Nation Online 2023). Those who had their sights set on the post have been either forced to resign from the party or have been dismissed to form their own parties. Further, there appears to be no obvious successor to Mutharika, which would explain why he is still the torchbearer. It must also be noted that the younger Mutharika does not hold the sway his brother did as the party no longer holds a majority in Parliament since Bingu's death, with only 62 members as opposed to the 114 it had during the 2009 elections (IFEAS 2019).

4.5. People's Party

The People's Party was founded by Joyce Banda whilst serving as Bingu's Vice President. Having been dismissed from DPP, Banda formed PP which quickly found itself in power after the death of Bingu. Banda and PP were in power for less than 2 years and failed to win the 2014 presidential elections. Having lost the elections, most members defected to other parties, and PP has fallen

into obscurity. In 2019, it only managed to get 5 members of parliament. PP is a classic example of a party that failed to institutionalise. Its members were more concerned with advancing themselves, and when they recognised they could no longer do so, they abandoned the party, leading to its collapse (Conduto and others 2024).

4.6. United Transformation Movement

DPP also produced another splinter party in the form of UTM. Mutharika had selected Saulos Chilima as his running mate in 2014. After winning the elections, the two gradually fell out of favour, a situation that culminated in Chilima resigning from the party in 2018 and forming UTM. Chilima was popular among the youth in the country and although UTM was barely 2 years old during the 2019 elections, it managed to come third. Chilima contested the election results, arguing that there were a lot of irregularities, a sentiment the Constitutional Court agreed with. The Supreme Court, in upholding the decision, also stated that it was not enough for a party to win by a simple majority, but that a majority meant attaining 50 plus 1% of the votes. Thus, UTM and MCP entered a coalition government that had Chakwera of MCP as the torchbearer and Chilima as the running mate. In 2020, Chilima began his second run as Vice President. Unfortunately, Chilima died in a plane crash in 2024, leaving a leadership gap in UTM (BBC News 2024). The Party held a convention and surprisingly, the winner was Dalitso Kabambe, who had recently defected from DPP, where he had made clear his presidential aspirations but had been sidelined (Nation online 2024). Although UTM has not been long on the scene, and it appears to have established systems, it is quite clear that the party was largely vibrant due to the charismatic leadership of Chilima. Without him, the survival of the party hangs in the balance.

5. Challenges to party institutionalisation

Chinsinga and Kayuni observe that the absence of intra-party democracy has significantly constrained the institutionalisation of political parties in Malawi. Political parties are often treated as personal entities belonging to their founders, who exercise exclusive authority over leadership succession, policy direction, and political alliances. Consequently, when party members become disillusioned with their prospects of attaining leadership positions, they frequently establish splinter parties. This trend is further exacerbated by gaps in the Political Parties Act of 2018, which does not mandate internal elections for the selection of party leaders. Moreover, the relative ease with which political parties can be registered has facilitated the proliferation of splinter groups (Svåsand 2014, 280).

The phenomenon of 'founder syndrome' remains deeply entrenched in Malawian political culture. In most cases, the fortunes of political parties are inextricably linked to their founders. When founders withdraw from active political life, the parties often fail to maintain cohesion and relevance, leading to their eventual decline. This pattern has been particularly evident in the cases of UDF, AFORD, and PP.

6. Political party institutionalisation and democracy consolidation

The failure of political parties in Malawi to institutionalise poses a significant threat to the consolidation of democracy. Political parties are crucial platforms for citizens to hold the government responsible, influence policies, and take part in governance. However, the democratic process is weakened rather than strengthened when parties are weak, fractured, and personalistic. Many Malawian political parties are focused on winning the presidency instead of becoming enduring institutions rooted in ideology and public service. This causes frequent party fragmentation, short-lived coalitions, and leadership crises, which in turn lead to a weak opposition. For instance, DPP has been a weak opposition to MCP as they failed to agree on a leader of opposition in Parliament due to leadership disputes within the party (Nation Online 2024). Such antics leave the government unchecked, thus creating a fertile ground for an authoritarian state to emerge. Further, a lack of intra-party democracy means that the voters fail to identify with the party representatives. This has led to voter apathy, which slows down the democratisation process. Political parties in Malawi will continue to thwart rather than promote democratic consolidation unless they become institutionalised, ideologically motivated, and democratically administered organisations. A thriving multiparty democracy is dependent not only on the presence of multiple parties but also on their capacity to serve as credible organisations that protect democratic values and promote the general welfare.

7. Recommendations and conclusion

The lack of institutionalisation among political parties remains a major challenge to the consolidation of democracy, even if the advent of multiparty democracy in 1993 was a landmark event. The majority of Malawi's political parties have been typified by a lack of long-term ideological commitments, personalistic leadership styles, and poor internal structures. These flaws have led to a diminished opposition, shaky coalitions, and party division—all of which threaten democratic administration. Without concerted efforts to make political parties more stable, independent, and values-based, Malawi runs the risk of reverting to de facto one-party rule, endangering the hard-won victories of its democratic transition. For Malawi's democracy to

be secure and strengthened, political players, and citizens must all commit to reforming and bolstering political parties.

For parties in Malawi to fully institutionalise, there is a need for intra-party democracy. The law must regulate parties, requiring them to hold conventions where party leaders are elected. This will promote a sense of ownership amongst its members, reducing voter apathy which is on the rise in the country. It is also imperative that parties have clear policies and values that they are held to. This will assist the party to survive past its founders as it will foster value fusion.

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Muzzling the Proverbial Fourth Estate: The erosion of media freedom in the Republic of Mali

Zororai Nkomo

1. Introduction

The political instability and insecurity crisis in the Republic of Mali, the second-largest West African Country, pose serious threats to the safety and security of media practitioners (Badji & Bahati 2024, 83). The Mali crisis started in 2012, when a Tuareg rebellion demanded independence for northern Mali before it erupted into a jihadist insurgency (Pellerin 2019). Before the crisis, Mali was among African states with progressive, dynamic, and press freedom (Badji & Bahati 2024, 85). For three decades, Mali's media landscape enjoyed media diversity, pluralism and independence, which were greatly affected in 2021 by a military coup (MFWA 2022). In the early 1990s, Mali achieved a historic record of democratisation as an African state following the demise of a long-standing military dictatorship (Pringle 2006, 2). The period was characterised by a historic political transition from authoritarianism, which saw Mali building its democratic institutions for almost twenty years (Freedom House 2022). This led to the proliferation of private media outlets – print, broadcast and online media. In 1992, Mali enacted the supreme law of the land – the Constitution, which guarantees freedom of expression (Constitution Article 7). In 1991, Mali had a single radio station, however, the country progressed substantially, with now having more than 140 FM radio stations broadcasting in local languages (Pringle 2006, 41). However, despite being a constitutional democracy, the country developed into a fragile state, which subsequently led to a 2012 military coup and the eruption of conflict in the Northern Rebellion (Cascais 2022). These insecurity developments led to the birth press freedom challenges, such as harassment of journalists, arbitrary detention of media professionals, unilateral suspension of media houses and practising journalists, and administration of draconian media legislation and regulations which led Mali to rank poorly in the international press freedom rankings (Badji & Bahati 2024, 84).

2. Mali's regional and international obligations

2.1. The Universal Declaration of Human Rights

The preamble of the Malian constitution clearly states that Mali subscribes to the Universal Declaration of the Rights of Man of 10 December 1948 (Constitution Preamble). Although the Universal Declaration of Human Rights (UDHR) is not a legally binding document, it is celebrated as the first document to set out fundamental human rights to be universally protected (UN, 2023).

This shows that Mali subscribes to the principles and objectives of the UDHR. Article 19 of the UDHR provides that:

> *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

Article 19 of the UDHR is the fulcrum to media freedom because it guarantees the press and individual right to access information, express opinion and freely disseminate ideas without undue interference from the government. Mali, as a constitutional democracy, is obliged to give effect to the spirit, purport and tenor of Article 19 of the UDHR.

2.2. International Covenant on Civil and Political Rights

In July 1974, Mali acceded to the International Covenant on Civil and Political Rights (ICCPR) (UN Treaty Bodies). Article 19(2) of the ICCPR provides that:

> *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Mali, as a member state of the ICCPR, is obliged to create a legal and regulatory environment which gives effect to article 9. This means that as a democratic society, it is obliged under international law to create a conducive environment where media and press freedom thrive.

2.3. African Charter on Human and Peoples' Rights

In December 1981, Mali ratified the African Charter on Human and Peoples' Rights (African Charter, 1981). Article 9 of the African Charter guarantees the right to receive, express and disseminate information and opinion within the confines of the law. An argument can arise where the member states can try to justify draconian legislation by citing that the African Charter provides that freedom must be exercised 'within the confines of the law' (African Charter, Article 9(2)). The phrase 'within the law' might be abused by states to mean their laws, which, in most cases, are draconian. This was well settled in the case of *Lohé Issa Konaté v. The Republic of Burkina Faso*, where a journalist was arrested and imprisoned for one year over defamation charges. The respondent averred that it acted within its laws. However, the court created important jurisprudence and held that (*Konate* para 129)

> *Though in the African Charter, the grounds of limitation to freedom of expression are not expressly provided as in other international and regional human rights treaties, the phrase "within the law", under Article 9 (2) provides a leeway to cautiously fit in legitimate and justifiable individual, collective and national interests as grounds of limitation11. Here, the phrase "within the law" must be interpreted in reference to international norms, which can provide grounds of limitation on freedom of expression.*

In the case of *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria*, the court held that

> *The fact that the government bans a specific publication is disproportionate and unexpected. Laws made to be applied specifically to an individual or corporate body are likely to be discriminatory and to fall short of equal treatment before the law, as guaranteed by Article 3. The banning of these publications is therefore inconsistent with the law and is therefore a violation of Article 9 (2)*

These two cases dealing with *locus classicus* with media freedom have shown that although media freedom should be exercised within the confines of the law, the restriction should be congruent with international human rights standards.

3. National instruments

Article 7 of the Constitution of Mali guarantees press freedom. In July 2020, the Republic of Mali enacted legislation No. 00-46/AN-RM of July 2000, which is commonly known as the Act of 7 July 2000 on the management of the press and press offences. This piece of legislation regulates offences related to media freedom and freedom of expression. While the mischief of promulgation and subsequent enactment of this legislation was to curb hate speech, the law is an albatross to freedom of expression.

4. Analysis of media freedom in Mali

4.1. Criminal defamation

Mali is among the African countries which continue to administer criminal defamation against journalists. In 2000, the legislature in Mali enacted the Press Law and Press Offences Law of 2000. This piece of legislation is a threat to media freedom and the work of journalists. Articles 33 to 51 of this legislation provide for criminal offences which can be committed by journalists through publishing. Article 38 of the Press Law and Press Offences Law defines defamation as:

Any allegation or imputation that is prejudicial to the honor or consideration of the person or body to which the fact is imputed.

Article 39 of the Press Law and Press Offences legislation further criminalises defamation against courts, constituted bodies, security forces and public administrators with a prison term of six months. In May 2021, the former head of the Land and Real Estate Sales Agency, Mamadou Tieni Konate, and a radio announcer, Kassim Traore of Radio Kledu, were arrested and charged with defamation (US Department of State 2021). The Bamako Commune II Tribunal charged them with defamation over claims that they said a local businessman was involved in corrupt activities. They were convicted and sentenced to six months imprisonment each and a fine of 150,000 CFA francs, which is equivalent to $270 (US Department of State, 2021). In the landmark case of *Lohé Issa Konaté v Burkina Faso (2014),* the African Court on Human and Peoples' Rights held that defamation violates the African Charter. In the case of Gavrilovic *v Moldavia,* the European Court on Human Rights (ECHR) held that criminal defamation laws should only be used as a last resort if there is a serious threat to the enjoyment of other human rights. In *Cumpana and Mazare v Romania,* the ECHR reasoned that hate speech and incitement of violence in exceptional circumstances can be used as a last resort to imprison for criminal defamation. In the case of *Palamara Iribarne v Chile,* the Inter-American Court of Human Rights (IACHR) rejected imprisonment for defamation, arguing that it was disproportionate and violated freedom of expression. The prison sentence of up to six months provided by Mali's Act of 7 July 2000 on the management of the press and press offence is not congruent with the African Charter, the Universal Declaration of Human Rights and other international human rights instruments.

4.2. Crime against offending the President

The Act of 7 July 2000 on the management of the press and press offences of Mali criminalise the publication of material offending the President of Mali, Foreign heads of state and Malian ministers and is punishable by three months to one year in prison and fines. Articles 36 and 46 of the Act of 7 July 2000 on the management of the press and press offences criminalise offending the President of Mali can attract a prison term of one year and fines. These legal provisions are problematic to freedom of expression. Article 9 of the African Charter on Human and Peoples' Rights guarantees the right to expression and opinions. Article 19(1) of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to hold opinions without interference. Article 19(2) of the ICCPR further guarantees this right in all forms, either in print or art. The provisions of these two articles create an interpretational challenge. It is not clear what form of publishable material exactly constitutes 'offending the President.' Due to its vagueness, this

provision is susceptible to abuse. Such criminal offences subsequently criminalise journalism. The president, ministers and all other politicians should accept a certain degree of criticism from the public through lampooning and political satire. In 2007, five journalists and a school teacher were convicted for 'insulting' Mali President, Amadou Toumani Toure, over a fictional school essay which portrayed a president involved in a sex scandal (CPJ, 2007). However, the criminalisation of offending the President and Ministers in Mali will curtail political satire through art and cartoons, which many people feel offended by.

4.3. Harassment and arrest of journalists

The crackdown on journalists in the Republic of Mali continues to breed a climate of fear, censorship and insecurity among journalists, a development which is stifling press freedom. Article 4 of the Malian Constitution guarantees freedom of thought, conscience, opinion, expression, and creation. The same constitution guarantees and recognises freedom of the media in Article 7. However, despite these constitutional guarantees, the situation in the country continues to threaten these entrenched freedoms. Political instability and violence in Mali have worsened the security of journalists in carrying out their duties of accessing and disseminating information. A report released by Amnesty International in 2023 revealed that journalists and human rights defenders were forcefully disappeared and government critics were arbitrarily detained (Amnesty International 2023). In March 2023, journalist Mohamed Youssouf Bathily was arrested and charged with making unfounded claims and discrediting the state after he mentioned on the radio that Soumeylou Boubèye Maïga was assassinated. He was acquitted on the first charge but remained in detention (Amnesty International, 2023). During the same month, journalist Rokiatou Doumbia was arrested for criticising government performance on TikTok (Amnesty International, 2023). She was charged with 'inciting revolt' and 'disturbing public order' and sentenced to one year in prison with a fine of USD 1,636 (Amnesty International 2023). The programmer director of radio DANAYA, Sory Koné, in Souba, Ségou region, was abducted from his house by unidentified individuals by suspected security forces (Amnesty International 2023). To date, his whereabouts remain unknown. Since Mali witnessed state fragility due to conflict and political insecurity, journalists and human rights defenders continue to face arrest and detention, a development which is against the African Charter and other international human rights instruments. The arrests and detention of journalists in their line of work violate the right to liberty and security of persons as espoused in Article 6 of the African Charter. This deprives journalists of their freedom without due process and violates their fundamental right to liberty. The harassment of journalists is not congruent with Article 9 of the African Charter, which guarantees the right to receive and disseminate information.

4.4. State of emergency laws and regulations

In 2024, Mali's media regulatory authority, the Higher Authority for Communication (HAC), suspended operations of three broadcasting media outlets for allegedly covering the conflict (CPJ, 2024). The Committee to Protect Journalists (CPJ) reported that the regulator, the HAC, suspended the Television station, TV5 Monde, for covering military drone bombing. The French television channel, the LCI, was suspended for two months, accused of false accusations against the Malian Army and its Russian counterpart (Wakatsera 2024). In 2021, the government indefinitely suspended France 24 and Radio France Internationale over false allegations, where the media outlets reported on abuses by the military. Mali is a state party to the ICCPR (UN Treaty Collection, 2025). Article 19(2) of the ICCPR guarantees the right to freedom of expression, freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. Article 7 of the Malian Constitution guarantees press freedom. The conduct by the government of Mali to suspend broadcasting media outlets was not only incongruent with regional and international human rights instruments but also inconsistent with the Malian supreme law of the land – the Malian Constitution. Principle 9 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa of 2019 provides that a state may limit freedom of expression and access to information if it is prescribed by law, serves a legitimate aim, and is a necessary and proportionate means to achieve the stated aim in a democratic society. The closure of media outlets by the government of Mali served no legitimate purpose but to muzzle and instill fear in the practice of journalism. This is not in line with the tenets of a democratic society where freedom, equality, and human dignity prevail. The suspensions of media outlets were a flagrant violation of the principles of media independence and pluralism enshrined in the Declaration of Principles on Freedom of Expression and Access to Information in Africa.

4.5. Ambiguous cyber laws and regulations

In December 2019, the president of Mali enacted into legislation Law n° 2019-056, which deals with the Suppression of Cybercrime. This law poses a threat to press freedom. Article 23 of the Cyber Law imposes a maximum of one year imprisonment or more than US$3000 for fake or illegal online content. Ironically, this piece of legislation does not fake or illegal online content. General principles of Criminal law provide that criminal laws must pursue a legitimate purpose. Criminal law should define criminal conduct clearly and precisely, it should be accessible. The law should establish the elements of the offence, as well as the grounds upon which a person can be arrested and detained. To achieve the legitimate objective, the conduct of law enforcement agents should be done within the parameters of a democratic society, based on equality, human dignity

and freedom. Therefore, failure to define fake or illegal online content creates interpretational challenges where such a provision will be prone to abuse. In May 2022, the Malian authorities used the Cybercrime law and the penal code to persecute four women over Facebook blog posts which criticised the head of the state security agency (Human Rights Watch 2022). The four women continued to languish in prison, although the judge ordered a conditional release in June 2022 pending a prosecutorial appeal (HRW 2022). In July 2022, law enforcement agents in Mali arrested and detained Alhassane Tangara, an online commentator, after he was denounced by pro-government groups on Facebook (HRW 2022). Such unfortunate developments of prosecuting and persecuting dissent online create fear among journalists and online content creators, which affects press freedom, media diversity and pluralism.

4.6. Restrictions on foreign journalists

In 2020, UN Secretary-General Antonio Guterres said (UNESCO 2021):

> *If we do not protect journalists, our ability to remain informed and make evidence-based decisions is severely hampered. When journalists cannot do their jobs in safety, we lose an important defence against the pandemic of misinformation and disinformation that has spread online.*

Restricting foreign journalists and media by the Malian authorities poses a serious infringement on press freedom, which has far-reaching implications for the country and the global community. Since Mali recorded political instability due to military coups, the country continues to be unsafe for foreign journalists and the foreign press. In July 2022, Mamadou Sylla, a journalist from Senegal, was arrested (BTI Report 2024). In February 2022, Benjamin Roger, a French journalist, was refused accreditation despite the granting of his visa; he was subsequently expelled for not having proper travel documents (Al Jazeera 2022). In November 2013, Ghislaine Dupont and Claude Verlona, French Radio journalists, were killed by armed rebels in Mali (UNESCO, 2021). This undermines media pluralism, which is always brought by the foreign press. Media pluralism is fundamental for any democracy because it presents various actors and various viewpoints (Mattis and others 2021). The behaviour of the Mali authorities in restricting foreign media damages the country's reputation at the international level and erodes trust, which can affect diplomatic relations with the international community. This further has a detrimental effect even to local media. The local media might also fear reporting critically on the government, which is a clear and flagrant violation of media freedom. Stifling foreign journalists and media houses undermines the right to information, which subsequently hinders accountability, diverse perspectives, and damages the country's international relations. Mali has an international and

regional obligation to uphold, promote and protect the principles of press freedom and allow journalists and media houses to operate freely.

5. Conclusion

The future of Mali's democratic trajectory is inextricably linked to a healthy media landscape where journalists and media houses execute their constitutional and democratic mandate through gathering, investigating and disseminating information in a free and democratic society. Creating a democratic environment where media freedom, diversity, and pluralism is not merely a matter of upholding fundamental rights and freedoms but an essential ingredient in building, inclusive and resilient society. The current threats to media freedom, harassment of journalists and use of draconian pieces of legislation to muzzle media freedom in Mali require a concerted effort from all stakeholders. The curtailment of media freedom has far-reaching implications. When the media is silenced, the public's constitutional right to receive information is greatly impaired. It erodes public discourse mechanisms, which severely undermines democratic processes and creates a conducive environment for misinformation and propaganda, which subsequently undermines informed decision-making from the citizenry. The government of Mali should demonstrate its genuine commitment to upholding, protecting and promoting constitutional guarantees through reforming restrictive media laws and ensuring the safety and security of journalists when executing their constitutional mandate.

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The state of freedom of expression in Mauritania

Ghady Zaayter

1. Introduction

The Islamic Republic of Mauritania is a largely-desert country in western sub-Saharan Africa. It has a population of over 5 million people who largely belong to several major demographic groups, including Beydanes (Arab-Berber Moors), Haratines (Black Moors, often descendants of slaves), and other sub-Saharan ethnic groups. Approximately one in three Mauritanians live in poverty and other acute social and political issues, such as ethnic discrimination and slavery, remain prevalent.

In all periods of Mauritania's recent history, freedom of expression has been harshly curtailed. From the late 19th century, Mauritania was under repressive French colonial rule. After gaining its independence in 1960, the country was governed by a series of oppressive military dictatorships that severely limited freedom of expression (Pazzanita 2008; Article 19 2007; Waheedi 2008). More recently, in 2008, General Mohamed Ould Abdel Aziz led a successful military coup against Mauritania's first democratically elected president, Sidi Ould Cheikh Abdallahi, reversed marginal improvements to freedom of expression that had been made a few years before (Article 19 2007; Waheedi 2008), and oversaw an increased suppression of dissent once more (U.S. Department of State 2008). General Aziz ruled until 2019 and was succeeded by Mohamed Ould Ghazouani: Ghazouani's tenure began with promises to improve and promote freedom of expression, yet his government, which was elected again in 2024, has continued to suppress dissent (The Guardian 2024).

The chapter addresses four areas: Mauritania's media, online speech, the capacity to peacefully protest and the ability of civil society to operate the country. The objective of this chapter is to demonstrate that, despite claims from the Mauritanian authorities that freedom of expression is being protected, and despite Mauritania being a signatory to the International Covenant on Civil and Political Rights (ICCPR), many individuals and organisations who have taken stances in opposition to state policy or practice, particularly on sensitive political issues, have faced significant repression from the authorities.

2. Attacks on press freedom

Freedom House's 2023 country report on Mauritania asserted that, 'Mauritania has a vibrant media landscape, with several privately owned newspapers, television stations, and radio stations

in operation' (Freedom House 2023). The BBC concurred in 2023, asserting that the privately-owned media in Mauritania 'provide competition for the state broadcaster' (BBC News 2023), despite Reporters Without Borders (RSF) asserting that media dissemination from private companies has declined in the last few years (Reporters Without Borders 2024 (b)). However, despite this 'vibrant' landscape, journalists who express critical opinions of the government have faced significant repression and opposition. Such examples include Moussa Seydi Camara and other journalists who have openly questioned the validity of Mauritania's recent presidential elections, as well as journalists such as Salek Zeid and others who have criticised the government's actions and policies on social media.

Despite Mauritania ranking 33rd out of 180 countries in RSF's 2024 World Press Freedom Index (Reporters Without Borders 2024 (b)), Freedom House included a critical detail in their aforementioned report: 'journalists who cover sensitive topics or scrutinize the political elite may face harassment, wiretapping, and occasional arrest' (Freedom House 2023). Whilst it is not uncommon to read similar statements,[1] the likelihood of abuses of this kind being perpetrated against journalists who actively choose to criticise government policy and practice is extremely high compared to those who do not, based on the available evidence.

Worrying examples of government suppression of journalistic expression previously arose in 2019, particularly around the time of the presidential election in June, when scores of human rights defenders, journalists, bloggers and political activists were subjected to intimidation, harassment, arbitrary arrests and detentions for questioning the outcome of the election, won by Mohamed Ould Ghazouani, who had served as defence minister under Mauritania's previous president, Mohamed Ould Abdel Aziz (Human Rights Watch 2019). One high-profile example was Moussa Seydi Camara, a journalist who was arrested on 26 June, 'accused of questioning election results' (Amnesty International 2020) and subsequently released on 3 July.

In 2023, the BBC reported that 'self-censorship is commonplace, especially when covering sensitive topics such as the military, (government) corruption, and slavery' (BBC News 2023). Similarly, the US State Department's 2023 country report on Mauritania highlighted the 'serious restrictions on freedom of expression and media freedom' in the country, 'including unjustified arrests of journalists' (U.S. Department of State 2024 (a)). The report goes on to say that most of the activists and journalists who were arrested in Mauritania were detained for posting criticisms of the government on social media. One example was the case of the investigative journalist, Salek

[1] Such as that contained in Freedom House's 2011 country report on Mauritania, 'Journalists *sometimes* face harassment and intimidation (in Mauritania)' (Freedom House 2011)

Zeid (Reporters Without Borders 2023), who was arrested by the police on 20 April 2023, after posting remarks on his Facebook page about crimes that had gone unpunished by the Mauritanian authorities. He was released four days later without charge but was forced to delete the post in question from his Facebook account (U.S. Department of State 2024 (a)).

In 2011, following sustained pressure from human rights organisations, Mauritania's parliament made amendments to the draconian 2006 Press Freedom Law (UNHCR 2016), abolishing prison sentences for slander and defamation, including critical speech of any kind about heads of state. However, despite these reforms, obstacles to Mauritania achieving a free and robust media remain. Rights groups have warned, for instance, that the 2021 Law on the Protection of National Symbols contains provisions that could be used to punish journalists covering certain sensitive political subjects or prominent figures, thereby potentially restricting journalistic activities (Access Now 2023). The US State Department similarly reported in its 2023 country report, that, 'on several occasions, the government forced individuals to remove posts on social media that they deemed in violation of the symbols law' (U.S. Department of State 2024 (a)).

3. Suppression of online speech and digital freedoms

In recent years, Mauritania's authorities have actively sought to bring about a digital transformation in the country, which include plans to 'improve access to public services' (Kassouwi 2025) and increase the number of Mauritanians who use the internet and boost engagement with the ICT sector through the National Digital Transformation Agenda (2022–2025) (Dig Watch 2022). However, according to Freedom House's 2023 Freedom in the World report, people have continued to suffer reprisals for voicing dissent against the government on social media, including being fired from jobs at government agencies (Freedom House 2023).

The Law on the Protection of National Symbols, referenced above, has been used to silence dissent among the broader public. Blogger Mohamed Vall Abdallah was arrested in November 2023 after calling on Facebook for Mauritania's president, Mohamed Ould Ghazouani, to be overthrown (Media Foundation for West Africa 2023). Despite him deleting the post and apologising, on 7 December, he was sentenced to a one-year suspended prison term and ordered to pay a fine of over 25,000 USD. Media Foundation for West Africa (MFWA) explained that Abdallah's arrest 'occurred in the context' (Media Foundation for West Africa 2023) of the enactment of the national symbols law, approved by Mauritania's National Assembly in November 2021 (Article 19 2021). Under the law, national symbols, such as the flag and the national anthem, as well as vague concepts like 'constant values' and 'sacred principles of Islam', are safeguarded, and insults

against the president and public officials are prohibited. MFWA noted that the law 'is actively being enforced to repress free speech in the country' (Media Foundation for West Africa 2023).

Extremely harsh penalties for blasphemy and sacrilege have also been employed to stifle freedom of expression. A key example of this emerged when, in 2018, the authorities changed Article 306 of Mauritania's Criminal Code, mandating that capital punishment be given to those found guilty of blasphemy (Amnesty International 2018 (c)) and removing the possibility of lighter sentences being granted because of acts of repentance. Amnesty International linked this legislative change to the case of Mohamed Cheikh Ould Mkhaïtir, who was given a death sentence in 2014 for 'posting an article online denouncing the use of religion to legitimize discriminatory practices against the blacksmith caste in Mauritania' (Amnesty International 2018 (c)). One week after Mkhaïtir's sentence had been reduced to two years in November 2017, despite already spending nearly three years in prison, the government approved and passed the amendment to Article 306. Whilst his sentence was reduced in 2017, he remained in detention until 2019, spending almost six years in prison (Reporters Without Borders 2019), amid public demands for his execution.

In June 2020, the Mauritanian authorities adopted a new law to combat 'fake news'[2] stories being disseminated on social media, raising serious concerns relating to freedom of expression. As the Bertelsmann Transformation Index (BTI) explains in its 2024 country report for Mauritania, opponents of the legislation have expressed concerns that the definitions of what the law characterises as 'fake news' are so broad and vague that it could be used to target activists and journalists who publish content regarded by the authorities as 'excessively critical of the government' (Bertelsmann Transformation Index 2024). BTI cites the case of blogger Hamda Ould Oubeidallah, arrested in early 2022 and given a six-month sentence for publishing videos on Facebook insulting the president and denouncing the lack of progress being made by the government in tackling problems related to living conditions (U.S. Department of State 2023).

Internet shutdowns have also been employed by the Mauritanian authorities to stifle dissent, particularly during politically sensitive periods. Following much highly disputed presidential elections in 2019 and 2024, both won by the ruling party's candidate, Mohamed Ould Ghazouani, despite promises 'improve access to information' (Reporters Without Borders 2024 (a)), access to mobile and fixed-line internet was interrupted after widespread protests emerged across the country, despite only 21% of Mauritania's population being online (Dahir, 2019). This also

[2] Fake news is defined as 'false stories that appear to be news, spread on the internet or using other media, usually created to influence political views or as a joke' (Cambridge Dictionary, nd).

occurred in 2023, following a prison break in March[3] and mass protests regarding the death of a young man, Oumar Diop, in police custody in June (Amnesty International 2024), violently broken up by police (Freedom House 2024). Critics of this practice have asserted that these actions are not appropriate or proportionate and allow for state authorities to commit human rights abuses out of sight of the public (Kataya 2023).

4. Protest Crackdowns

Article 10 of Mauritania's constitution enshrines several rights relating to freedom of expression, including freedom of opinion and thought, freedom of expression itself, and freedom of association. Some demonstrations that neither address politically sensitive issues, such as national celebrations and cultural events, nor actively support the government's position on a particular matter, have been allowed to go ahead with no interference from the authorities. However, the Mauritanian authorities have frequently denied or heavily suppressed protests they did not approve of, including those planned by organisations working to combat discrimination and slavery in Mauritania.

In October 2023, hundreds of Mauritanians marched in the capital city of Nouakchott in support of Gaza, demanding the international community to take steps to end Israel's 'genocide' (Voice of America 2023). Notably, the stance of the protestors mirrored that of the Mauritanian authorities (Voice of America 2023). However, whilst 'government-sponsored protests often occur without incident', demonstrations from opposition and civil society groups do not enjoy the same freedom to operate. Their requests to hold protests are often denied and those that go ahead 'are often met with police repression' (Freedom House 2024). Freedom House reported in 2021 that protests organised by opposition and activist parties, including the Forces of Progress for Change, which works to combat racism in the country, are 'often prevented or dispersed' (Freedom House 2021).

As alluded to above, anti-government protests have been met with violence. In 2023, Amnesty International reported that 10 people had been hospitalised after participating in a 'peaceful sit-in at the Ministry of Justice', organised by the Initiative for the Resurgence of the Abolitionist Movement (IRA) in opposition to the arrest and forcible disappearance of anti-slavery activist Youba Siby (CIVICUS 2023).[4] In 2016, the authorities also beat, tear-gassed, forcibly disappeared, detained and tortured peaceful protestors who were commemorating the one-year anniversary of

[3] "Four prisoners – classified as 'terrorists' by the Interior Ministry – escaped from a jail in Nouakchott. They killed two guards and wounded two others as they fled." (Kataya 2023).

[4] Slavery is believed to be continuing across Mauritania, one of the last countries 'to criminalize slavery.' (Offenhartz, Aftoora-Orsagos, Brito 2023).

leading anti-slavery activists: according to Abidine Merzough, the IRA's European Coordinator, 'There is an increase in violence against those trying to end the illegal practice of slavery in Mauritania.' (Kelly 2016).

5. Repression of Civil Society

In 2017, a delegation from Human Rights Watch visited Mauritania to investigate the conditions in which human rights activists and civil society organisations are forced to operate. During their visit, the delegation met with Mauritanian government officials, who pointed to the 'thousands of NGOs registered in the country' as evidence that, as Mauritania's Justice Minister later stated in a letter to Human Rights Watch, law-abiding civil society organisations do not face restrictions. (Human Rights Watch 2018). However, in reality, Mauritania's authorities have continued to act in a repressive manner towards civil society organisations, particularly those which focus on ethnic and caste discrimination and slavery.

Mauritania's authorities have routinely employed a variety of tactics intended to silence civil society, ranging from denying organisations the authorisation they require to operate legally, to forcibly breaking up peaceful meetings. This issue is exemplified in Mauritania's legislation addressing NGOs: Human Rights Watch have reported that the highly restrictive 1964 Mauritanian Associations Law (Human Rights Watch 2020), whilst amended in 2021, continues to allow 'for excessive government control over people's right to form or operate within associations' (Human Rights Watch 2021). Under the amended law, Mauritania's Interior Ministry retains the power to 'suspend associations without notice' (Freedom House 2023). In 2020, CIVICUS and West African Human Right Defenders Network reported that NGOs, 'Working to end slavery, speaking out against ethnic and racial discrimination and seeking justice for past human rights abuses, have never received authorisation to operate, despite applying for legal status' (CIVICUS 2023). Frontline Defenders have also addressed limitations on the creation and registration of NGOs focusing on 'sensitive issues' (Frontline Defenders 2020), such as IRA-Mauritania, the collective 'Hands Off My Nationality'. The Alliance for the Refoundation of the Mauritanian State, an organisation which works to bring an end to Mauritania's caste system, has faced scrutiny from the authorities, who have disrupted meetings and arrested the organisation's members (Freedom House 2023).

In August 2018, the founder and president of the IRA, Biram Dah Abeid, was arbitrarily arrested and charged with 'insurrection to violence and threats to people's lives' (Frontline Defenders n.d.). He was accused of assaulting a journalist making a documentary about him. Yet, despite the journalist later withdrawing the charges (Amnesty International 2019 (a)), his case moved

forward. Moreover, according to the Raoul Wallenberg Centre for Human Rights, these charges were issued against him only to prevent his participation in the September 2018 parliamentary elections, in which Biram was due to run on an oppositional, anti-slavery ticket (The Raoul Wallenberg Centre for Human Rights 2018). Indeed, his arrest occurred 'on the same day that his name was put forward as a candidate' (Amnesty International 2019 (a)). In response to Abeid's detention, 12 IRA members, including his wife, were hospitalised after police violently attacked them for staging a peaceful sit-in, calling for his release' (Frontline Defenders n.d.).

Mauritania acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2004 and ratified its Optional Protocol in 2012 (Office of the United Nations High Commissioner for Human Rights nd). Under this specific Convention and Optional Protocol, Mauritania has the obligation to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" (United Nations Office of the High Commissioner of Human Rights 1984). Yet, Amnesty International, in a 2018 report, revealed that activists and others working to combat slavery and other systematic discrimination in Mauritania have faced arbitrary arrest and torture, as well as 'vicious smear campaigns, assaults and death threats' (Amnesty International 2018 (b)). Between 2014 and 2018, there were at least 63 instances in which anti-slavery IRA members were detained on grounds of their peaceful human rights work, at least 15 of whom receiving prison sentences as a result of grossly unfair trials. Some, according to Amnesty, were tortured whilst in detention, including being 'beaten, chained, subjected to death threats and deprived of food, water and sleep' (Amnesty International 2019 (b)).

6. Conclusion

Despite the Mauritanian authorities' claims of reform and openness, those who raise their voices in opposition to the government, especially on issues relating to caste discrimination, the continued practice of slavery or government abuses, have been met with systematic repression. Journalists have been arrested and harassed, activists have been tortured and protestors beaten: civil society is very tightly controlled in Mauritania, and protest has effectively been criminalised. The persistence of slavery, inequality, and the silencing of civil society starkly reveals that any claims of progress in the country are largely illusory, as true freedom of expression cannot exist when basic human rights remain unaddressed. In summary, while freedom of expression is enshrined in Mauritania's legislation, it remains substantially unprotected in practice.

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Reclaiming political narratives in Morocco: Amazigh feminism as a force for democratic renewal

Alba Nor Benissa Mercader

1. Introduction

The trajectory of democratic development in Morocco has undergone notable shifts over the past few decades, particularly from the early 2000s onward, culminating in the landmark constitutional reforms of 2011. These reforms, though significant, were not solely the product of internal political will, they were also driven by growing internal demands for justice, inclusivity, and political participation, as well as international pressures advocating for democratisation and human rights. While Morocco has taken considerable steps toward establishing a legal framework that promotes democratic principles, significant challenges remain, especially in addressing deep-rooted structural inequalities.

One of the most persistent of these inequalities concerns the status of ethnolinguistic minorities, particularly the Amazigh population. Despite constitutional recognition of the Amazigh identity and language, the community continues to face social, political, and economic marginalisation. Within this context, Amazigh women occupy a uniquely disadvantaged position, as they contend not only with systemic ethnic exclusion but also with gender-based discrimination. Their experiences are shaped by a complex interplay of intersecting factors, including gender, ethnicity, rural marginalisation, and linguistic identity, placing them at the margins of both mainstream Moroccan society and dominant feminist discourses.[1]

This chapter explores the dynamics of political pluralism and ethnic inclusion in contemporary Morocco through the lens of Amazigh women's political engagement and representation. Political pluralism, in this context, refers to the active participation and equitable representation of diverse social groups within the political system, including the safeguarding of minority rights, cultural recognition, and the institutional commitment to diverse voices. Ethnic inclusion builds on this

[1] *Dominant feminist discourses* refer to the mainstream ways in which gender issues are framed and discussed, often shaped by global narratives rooted in Western, white, and secular perspectives. Scholars like Chandra Talpade Mohanty (1984) have critiqued these approaches for treating women's experiences as universal, overlooking the specific histories and identities of women in non-Western contexts. In Morocco, dominant discourses are largely shaped by secular and Islamic feminist movements, both of which have played important roles in advancing women's rights. However, as Fatima Sadiqi (2014, 2016) points out, these movements often sideline the voices and realities of Amazigh women, whose experiences are shaped by overlapping layers of linguistic, ethnic, and rural marginalisation.

foundation by emphasizing the need for state mechanisms that protect and promote the cultural, linguistic, and historical distinctiveness of marginalised ethnic communities.

To critically examine these dynamics, this chapter draws on intersectional feminist theory as its primary theoretical framework and engages with postcolonial ethnic studies as a complementary lens. Intersectional feminist theory, rooted in the work of scholars like Kimberlé Crenshaw and Chandra Tapalde Mohanty, offers a way to understand how multiple and overlapping systems of oppression, based on gender, ethnicity, class, and geography, interact to shape the lived experiences of Amazigh women. Postcolonial ethnic studies provides a methodological and analytical approach that centres the legacy of colonialism, the politics of identity, and the ethnicised structures that continue to influence power relations in postcolonial states like Morocco. Together, these frameworks allow for a nuanced reading of the structural barriers faced by Amazigh women in the sociopolitical arena. Through this lens, the chapter argues for moving beyond bureaucratic notions of equality toward more substantive and inclusive democratic practices that reflect the realities of historically marginalised communities.

2. The Amazigh Community: From its historical marginalisation to its contemporary struggles

The marginalisation of the Amazigh people in post-independence Morocco has its roots in state-led Arabization policies that prioritised Arab-Islamic identity while suppressing Amazigh language and culture. These policies affected education, media, and governance, leading to the systemic erasure of Tamazight language and cultural practices from the public sphere. The exclusion extended to political participation, where Amazigh individuals, particularly women, were absent from institutional decision-making processes (Laghssais 2023).

Over the past two decades, the Amazigh cultural movement has gained momentum, pushing for linguistic rights, cultural recognition, and political representation (Sadiqi 2016b). The *Dahir*, or Royal Decree of October 2001, which called for the establishment of the Royal Institute of Amazigh Culture (IRCAM), and the constitutional recognition of Tamazight in 2011, were major milestones. However, as Jaldi and Isbayene argue, these gains have not always translated into equitable policies on the ground. The slow integration of Tamazight into public education and the lack of resources allocated to Amazigh-speaking regions demonstrate the ongoing disparities (Jaldi and Isbayene 2021). This marginalisation is particularly critical for Amazigh women, who face additional obstacles due to rural isolation, illiteracy, and patriarchal social norms.

3. The 2011 constitutional reforms and their impact on Amazigh representation

The February 20 Movement (20FM), inspired by the broader Arab Spring, catalysed a moment of national introspection and reform in Morocco (Sadiqi 2016a). The movement's calls for democratic accountability, social justice, and rights for marginalised groups influenced the drafting of the 2011 Constitution. According to Laghssais, this moment created a unique 'apolitical' space where different ideological factions converged to advocate for inclusive reforms, including the recognition of Amazigh culture and the rights of women (Laghssais 2023). This moment of instability favoured the creation of a space to recognise and focus on ethnic distinctiveness, leading to the revival of the Amazigh movement in Morocco (Chtatou 2020). Sadiqi exemplifies this as the Moroccan ideological 'center', which implied that it was of neither secular, nor Islamic character (Sadiqi 2016a, 22-25).

The new Constitution of 2011, formally acknowledged Morocco's Amazigh heritage, declared Tamazight an official language alongside Standard Arabic, and committed to pluralism and equality. It also introduced a gender action plan grounded in international human rights conventions like Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Morocco ratified in 1993. As Chekrouni and El Nquirmi (2023, 5) explain, this plan comprised eight pillars: the institutionalisation of the principle of equality; the fight against all forms of discrimination and violence against women; the upgrading of the education system; equitable access to health services; the development of basic infrastructure to improve the living conditions of women and young girls; the social and economic empowerment of women; equal access to political and economic decision-making positions; equal opportunities in the labour market. However, the implementation of these provisions remains inconsistent. Many Amazigh women, especially those in remote areas, are unaware of their constitutional rights. Moreover, structural issues, such as limited access to education and legal services, hinder their ability to benefit from these reforms.

4. The path towards the Amazigh particularity: Moroccan women's struggle of political participation and social rights

Amazigh women face a dual burden of exclusion: they are marginalised both within mainstream feminist movements, which often focus on urban and Arab populations, and within Amazigh movements, which remain strongly embedded in patriarchal structures (Sadiqi 2016c). Yet, over time, their visibility and participation have grown. Makhoukh (2019) emphasises how the 2011

reforms sparked a surge in Amazigh women's civic engagement, leading to the formation of grassroots associations focused on both gender and ethnic rights.

The 2004 revision of the *Moudawana* (Family Code) represented a significant legal shift. The reform raised the minimum marriage age to 18, abolished the requirement for male guardianship over adult women, and allowed judicial divorce for women (Laghssais 2023). These changes were considered the first major legal steps toward gender equality. However, practical application remains problematic. As Jaldi and Isbayene (2021) point out, in practice, early marriage still occurs frequently in rural areas due to loopholes in the law. Furthermore, the fact that the *Moudawana* is published officially only in Standard Arabic means that many rural and Amazigh-speaking women cannot access or understand the legal text (Laghssais 2023).

Salime (2011) and Jaldi and Isbayene (2021) underline that cultural practices and patriarchal interpretations of Sharia continue to shape women's realities, despite legal reforms. This disjunction between law and lived experience is particularly severe for Amazigh women, who are often not reached by awareness campaigns or legal literacy programs. Laghssais (2023) further critiques the *Moudawana* for its silence on key issues such as violence against women (VAW), inheritance, and polygamy, noting that implementation often depends on individual judges' interpretations. In the political realm, the inclusion of Amazigh women remains modest. While the Constitution encourages gender parity in decision-making, actual representation of Amazigh women in elected positions is minimal. Berahab and Bouba (2017) argue that centralised state power and elite-driven politics limit the impact of grassroots initiatives, creating a gap between constitutional ideals and political reality.

Moroccan feminism is shaped by local sociopolitical and religious contexts, distinguishing it from global or Western mainstream feminist frameworks that often prioritise secularism and individual rights. In contrast, Moroccan feminism operates through a dual dynamic: secular and Islamic currents that reflect the country's complex interplay between modern legal reforms and religious traditions. Both strands have been pivotal in shaping gender-related policies, notably the 2004 reform of the Moudawana (family code), which has been viewed as a compromise between progressive demands and religious principles (Salime, 2012).

The secular feminist movement in Morocco emerged in the 1940s, initially aligned with nationalist and anti-colonial struggles. It evolved through successive waves, institutionalising its efforts through organizations such as ADFM (Association Démocratique des Femmes du Maroc) and UAF (Union de l'Action Féminine) (Salime 2011; Sadiqi 2014). These groups focused on legal reform,

advocacy, and public awareness, playing a key role in legislative achievements and promoting women's rights in the public sphere. Their discourse, however, has largely centered on the concerns of urban, French-speaking, middle-class women, leaving rural and ethnolinguistic minorities at the margins.

Islamic feminism gained prominence in the 1990s, offering a faith-based interpretation of women's rights grounded in re-readings of Shari'a. Eddouada and Pepicelli (2010) describe the 2004 Moudawana reform as partially embodying Islamic feminist ideals. Yet, critics like Elliot (2014) argue that it ultimately reinforced patriarchal norms under the guise of reform. The rise of the Islamist Justice and Development Party (PJD) party further constrained progress, with religious conservatives limiting the scope of women's rights reforms (Ennaji, 2016). Like their secular counterparts, Islamic feminist discourses have primarily resonated with urban, educated women and often fail to reflect the lived realities of rural or marginalized populations.

Tensions between the two strands came to the fore during the debate over The National Plan of Action for Integrating Women into Development (PANIFID), where secular feminists faced backlash and fatwas for excluding Islamic references (Sadiqi 2016b). In practice, secular and Islamic feminists operate through different modalities: the former through legal literacy campaigns and policy advocacy, the latter through religious discourse, preaching, and community-based charity work (Sadiqi 2014).

Despite their influence, both fail to adequately address marginalised groups like Amazigh women, paving the way for a broader discussion on decolonial and indigenous feminisms in Morocco. At the same time, there remains a significant gap in addressing the particular experiences of Amazigh women, whose activism often unfolds at the grassroots level. Rather than relying on formal institutions or elite discourse, their efforts are grounded in community-building, cultural preservation, and local forms of agency. These practices challenge dominant feminist paradigms by centering collective empowerment and resistance rooted in indigenous knowledge and everyday lived realities.

5. The emergence of Amazigh feminism: Amazigh women's activism and mobilisation

A political and social vacuum has emerged in which the representation of Amazigh women is completely absent. Scholars such as Fatima Sadiqi, Laghssais, Gagliardi, and Schaefer and Bordat have addressed this issue through an intersectional lens. The two main feminist movements in

Morocco have often been criticised for being elitist and urban-centred, failing to incorporate the voices and lived experiences of the Amazigh community, especially those of rural women (Laghssais 2023). The systematic and deliberate marginalisation of the Amazigh people led the Amazigh Cultural Movement (ACM) to broaden its struggle, evolving from a cultural campaign into a broader effort to promote Amazigh identity, language, and heritage. This movement eventually succeeded in securing the official recognition of Tamazight, alongside key gender reforms and the creation of IRCAM. These advances were possible as they were driven by the growth of Amazigh feminist non-governmental organisations (NGOs), which played a crucial role in pushing these agendas forward.

One notable example is *Imsli* (La Voix de la Femme Amazigh), founded in 2009 in Morocco, which emerged as a pioneer organisation dedicated specifically to advancing the legal rights of Amazigh women and promoting legal literacy within marginalised communities. At the time of its creation, there were already organizations engaged in either the promotion of Amazigh culture and language or, separately, in advancing gender equality on a national level. However, *Imsli* filled a critical gap by focusing on the intersection of these two areas: centering the specific needs and realities of Amazigh women, especially those living in rural and often underserved regions.

The organisation's work stems from the recognition that Amazigh women face compounded forms of vulnerability, rooted not only in gender discrimination but also in ethnic exclusion, geographic isolation, and linguistic marginalisation. Their approach emphasises empowerment through education, advocacy, and grassroots mobilisation, with the long-term ambition of contributing to the formation of a North African coalition that would seek international recognition of the rights and status of Amazigh women across the region.

In this sense, such initiatives can be seen as part of a nascent Amazigh feminist movement, this being one that forges its own path rather than aligning with the more established secular or Islamic feminist currents in Morocco (Sadiqi 2016c; Laghssais 2023). This emerging strand of feminism is distinctly intersectional, grounded in the intertwined experiences of gender, ethnicity, and rurality. It represents not merely an adaptation of existing feminist paradigms but a challenge to them, advocating for a model that recognises the added value of Amazigh identity within Morocco's broader democratic and political discourse. While it is not aimed to seek inclusion on existing terms, Amazigh feminism asserts a transformative vision, which is aimed at dismantling systemic marginalisation, resisting cultural erasure, and promoting a pluralistic national identity in which Amazigh voices, especially those of women, are not only heard but empowered to shape the political future of the country.

6. Pathways to an inclusive democracy: pluralism and empowerment

For Morocco to achieve a truly inclusive democracy, it must move beyond symbolic legal reforms and translate them into practical policies that reach all citizens, especially those historically excluded. The empowerment of Amazigh women, in particular, requires a multi-layered and sustained approach that addresses deep-rooted inequalities. One critical area is education: national curricula should reflect Amazigh history and language, while schools in Amazigh-speaking and rural areas must be equipped with the necessary infrastructure and resources to provide quality education. Additionally, access to healthcare, legal support, and economic opportunities must be extended to women in remote and underserved regions, where intersecting barriers continue to hinder progress.

The PANIFID, launched in 1999, represented the country's first comprehensive feminist policy initiative (Salime 2011). Although it initially faced strong public and political resistance, PANIFID laid the groundwork for gender-conscious development strategies. More recently, the New Development Model (NDM), developed between 2018 and 2021, sought to build on this foundation by placing gender equality and women's empowerment at the heart of Morocco's broader socioeconomic transformation. However, as Jaldi and Isbayene (2021) point out, the implementation of these goals remains inconsistent, hindered by structural barriers and regional inequalities. While PANIFID has been renowned by many scholars as 'a historical turning point for gender issues in contemporary Morocco' (Eddouada 2016, 23), its impact has largely bypassed Amazigh and rural women, who remain on the periphery of the benefits it was intended to deliver.

It is important to situate these developments within the broader political context. The 2017 governing coalition, comprising the PJD, National Rally of Independents, Constitutional Union, Popular Movement, Party of Progress and Socialism, and Socialist Union of Popular Forces,[2] marked a shift toward greater female political participation, with the number of women holding ministerial positions rising from four to nine, the highest in Moroccan history to the date (Reifeld 2017). Yet, despite these symbolic gains, the inclusivity of such reforms remains limited unless

[2] PJD – Justice and Development Party (moderate Islamist, regarded as largely uncorrupted)
RNI – National Rally of Independents (social-liberal)
UC – Constitutional Union (reform party, liberal)
MP – Popular Movement (liberal-conservative)
PPS – Party of Progress and Socialism (older Communist Party)
USFP – Socialist Union of Popular Forces (social-democratic) (Reifeld, 2017, p.92)

they are extended to encompass the diverse realities of all Moroccan women, including those from Amazigh and rural communities.

Ottaway and Riley (2006) had already anticipated that the efforts of civil society organisations in Morocco would not outweigh those of political parties when it came to limiting the concentration of power within the monarchy and encouraging a more democratic process. As they pointed out, 'They lack the clout to compel the regime to implement reforms it does not want, and they would certainly fail if they tried to challenge the monarchy to give up some of its power' (Ottaway & Riley 2006, 20). Effective governance must be rooted in citizen participation, and decentralisation should be treated as a core priority. By combining these two elements, Morocco can move closer to achieving inclusive and diversified governance. In this regard, decision-making processes must actively include local voices, especially those of women's organisations in Amazigh regions. While there are cases in some rural communes where Amazigh women have been elected as representatives, such inclusion needs to be systematically embedded within the mandates of all political parties to ensure equal and meaningful representation.

A notable shift in narrative followed the King's speech (late King Hassan II in 1994) acknowledging Amazigh identity, which, as Makhoukh (2019) notes, 'allowed Istiqlal to include new voices from Amazigh women in their ranks'. However, to ensure a truly inclusive and diverse democratic system, it is essential to implement multilingual communication at the legislative, administrative, and educational levels. Building strong links between the state and civil society is also fundamental for ensuring that the needs of marginalised populations are met and that outreach and accountability are achieved.

Initially, promises were made to incorporate real-time translation services and qualified Tamazight-speaking staff across all public institutions, including hospitals, schools, courts, and even the Parliament. A major source of criticism, however, has been the government's failure to consult with the Royal Institute of Amazigh Culture (IRCAM) regarding the action plan for implementing the standardisation of Tamazight using the Tifinagh script. This lack of consultation contributed to two major setbacks: first, the Amazigh community did not benefit from a robust or accessible linguistic acquisition framework; and second, it raised concerns that the government of Morocco was pursuing a political gesture rather than a genuine commitment to linguistic and cultural advancement (Colon 2018; Idhssaine 2022).

While the contributions of IRCAM to the Amazigh Cultural Movement (ACM) are undeniable, the institution has faced considerable criticism. Initially, most of the main Amazigh movements

supported the establishment of IRCAM (Chtatou, 2019). However, over time, questions arose about the true motivations behind its creation. Was IRCAM established to silence the growing demands of the ACM? Or was it genuinely intended to support the preservation and promotion of Amazigh language and culture?

In this context, Feliu (2004) warns that yielding to institutional frameworks such as IRCAM carries the significant risk of legitimizing the government while allowing it to avoid enacting more substantial or forward reforms. Makhoukh (2019), for instance, has described IRCAM as 'less independent' compared to other Amazigh cultural and linguistic centres, due to its lack of autonomy from the state.

At present, IRCAM appears to be in a state of decline, having become largely disconnected from civil society, grassroots associations, and Amazigh activists. This disconnect has deepened the divide between rural and urban communities (Crawford & Silverstein 2004). All indications suggest that IRCAM has been instrumentalised by the government to implement only moderate-impact measures, such as introducing Tamazight in a limited number of educational institutions. Meanwhile, the majority of public institutions, including urban schools, courts, administrative offices, and official publications, remain untouched by these reforms. This selective implementation has effectively sidelined Amazigh activists who have long demanded greater recognition, including more meaningful political representation (Chtatou 2019).

7. Conclusion

Although Morocco did not undergo a large-scale revolution like some of its neighbours, both the Moroccan Arab Spring in 2011 and the precedent Berber Spring of 1980 generated significant momentum for rethinking the structure of state power and opening new spaces for democratic reform. These two pivotal moments, one rooted in demands for political participation, the other in cultural and linguistic recognition, paved the way for a broader democratic project that increasingly engages with questions of identity, justice, and inclusion. Importantly, they also set the stage for gender to become part of this national conversation, highlighting how Amazigh women continue to stand at the intersection of political, cultural, and social struggle.

Throughout this chapter, it is evident that while Morocco has made formal progress, especially in constitutional and legal frameworks, this progress has often fallen short of creating meaningful, inclusive change on the ground. The state's recognition of Tamazight as an official language, and its adoption of gender equality policies, are important milestones. However, without intentional

implementation and structural reform, these measures risk remaining symbolic. Amazigh women continue to experience marginalisation within national feminist movements, political institutions, and even within the broader Amazigh movement itself. Their realities, which are shaped by rural marginality, linguistic exclusion, and patriarchal norms, require more than inclusion; they demand transformation.

Amazigh feminism challenges existing political narratives by reframing democracy through an intersectional and decolonial lens. It brings attention to the limitations of top-down reforms and elite-driven politics, and instead centres the knowledge, needs, and leadership of women who have long been excluded from national decision-making. This movement does not seek visibility on someone else's terms, it asserts its own framework, one that reimagines pluralism as a process rooted in equal access, local participation, and cultural recognition.

For Morocco to move towards a truly pluralistic democracy, it must prioritise decentralisation, linguistic justice, and the full political and social integration of historically marginalised groups. Amazigh women have already begun to lead this work, from the grassroots level to regional platforms, and their participation should be recognised not as an afterthought, but as a vital force shaping Morocco's democratic future. Their activism reminds us that political pluralism is not simply about representation–it is about reconfiguring the very terms of participation and power.

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Pragmatic ways for overcoming authoritarianism: Lessons from Senegal's 2024 elections

Laurian Wilberforce Magaka

1. Introduction

Senegal has long been regarded as a beacon of democracy among the former French colonies in Africa (Lambert 2006, 1). The factors that have contributed to Senegal's democratic consolidation, compared to its peers, include the absence of bloodshed, violence, or revolution since regaining independence from France in 1960 (Lambert 2006, 1). To date, Senegal has witnessed two successful democratic transitions of power from ruling parties to opposition parties in 2000-2001 and 2012 (Jakubiak 2020, 386). Overall, at no time in post-independence Senegal has the country been plagued by political disorder to a degree that undermines its constitutional order (Jakubiak 2020, 388).

In the 2024 Democracy Index by the Economist Intelligence Unit (EIU), Senegal is categorised as a hybrid regime with an overall score of 5.93 out of 10, ranking 74th in the world out of 167 countries (EIU 2024, 17). Senegal has a score of 7.42 out of 10 in the electoral process and pluralism, a score of 5.36 out of 10 in the functioning of government, a score of 4.44 out of 10 in political participation, a score of 6.25 out of 10 in political culture and a score of 6.18 out of 10 in civil liberties (EIU 2024, 17). In sub-Saharan Africa, Senegal is ranked 8th, lagging behind Mauritius, Botswana, Cabo Verde, South Africa, Namibia, Ghana, and Lesotho (EIU 2024, 73-74).

In 2025, Freedom House's Freedom in the World, Senegal has improved its status from Partly Free to Free for the year 2024 (Freedom House 2025, 22). This improvement is premised on the democratic institution's resistance to the incumbent's attempt to unduly delay the presidential elections that were slotted for February 2024 (Freedom House 2025, 22). Another factor is the opposition coalition's resilience to overcome significant barriers to winning the presidential and parliamentary elections (Freedom House 2025, 22).

Generally, since 1988, Senegal has been categorised as a semi-democracy whose main feature is electoral democracy (Brossier 2024, 1). Senegal is so regarded because it has established and nurtured democratic institutions. Nevertheless, the quality of its democracy still faces fundamental clampdowns and restraints. As such, Senegal has been described to be a 'democracy without democrats' (Brossier 2024, 1).

2. Democratic consolidation in Senegal

The consolidation of democracy in Senegal has been a gradual and incremental one, and can be well understood from, among other things, the history of French colonisation and its unique democratic transition (Lambert 2006, 1). The two factors are dissected below to appreciate the democratic consolidation project that has been carried out in Senegal over the years.

2.1. The contribution of the French colonial rule

The democratic consolidation in Senegal cannot be separated from the uniqueness of the French colonial rule (Lambert 2006, 8). The French colonisers liberalised and democratised Senegal in terms of formulation and promulgation of policies, which had an impact on social expectations and post-independent politics (Lambert 2006, 8-9). This was because the elites in the colony were introduced to the life of political debates and thus mastered techniques of political mobilisation, organisation, and management, unlike the other French colonies (Lambert 2006, 9).

Historically, the French colonial system throughout the globe was based on the direct administrative rule through the assimilation policy whereby the French embarked on *mission civilisatrice,* which can be translated into the English language as 'civilisation mission' (Lambert 2006, 9-10). Through this mission, the French aimed to eradicate what they perceived as primitive African economies, politics, and cultures, among other things, and replace them with French values and ideals such as the Republican form of governance (Lambert 2006, 10). In their civilisation mission, the French, for instance, abolished African languages, slavery, customary law, and chieftainships (Lambert 2006, 10).

However, this was not the case for Senegal, for it was a profitable colony for its lucrative peanut farming, which had already burgeoned even before the advent of French colonialism, and which had benefitted a lot from the traditional chiefs (Lambert 2006, 10). Thus, the French decided to keep on collaborating with the old chiefs to ensure the success of the peanut economy (Lambert 2006, 10). For this economic motive, the traditional feudal chieftainships in Senegal were preserved, with minimal interventions, unlike in the rest of the French colonies where dismantlement of traditional rule was the order of the day (Lambert 2006, 10). These chieftainships were enriched by the French democratic principles and culture to lay a foundation for the democratic consolidation in post-colonial Senegal.

Secondly, in Senegal, the French applied both association and assimilation (Lambert 2006, 10). Association was a policy that was applied by Great Britain to rule their colonies in Africa through the indirect administration rule, which encouraged and supported traditional African institutions, values, and ideals (Lambert 2006, 7). The application of features of the association policy of

colonialism has enabled Senegal to attain democratic consolidation enjoyed by the former British colonies on the continent such as Ghana, Kenya, and Botswana.

Thirdly, in the mid-19th century, France granted citizenship to a small number of Senegalese who could vote for their representative in the French National Assembly known as a deputy (Lambert 2006, 12). This democratic right and privilege were practised through the Four Communes namely, Saint Louis, Dakar, Goree, and Rufisque (Lambert 2006, 12). Briefly, French colonialists categorised the African continent under their domination into various unique groups according to individual statuses, namely, *sujets*, *métis*, *originaires*, *tirailleurs*, and *assimilés* (Smith 2017). This categorisation carried with it different privileges in terms of access to goods and services within the French Empire (Smith 2017). As a result of the privileges accorded to different groups, four privileged cities known as the Four Communes were born in Senegal, namely Saint-Louis, Dakar, Gorée, and Rufisque (Smith 2017). The Africans living in these Four Communes for no less than five years were the first to be permitted to vote in the French elections as their "blood tax" for defending the French Empire (Smith 2017). This granted opportunity to a few Senegalese to exercise political rights as early as the 19th century.

Fourthly, in 1879, the General Council was introduced in Senegal by the French government, which was composed of representatives elected from the Four Communes (Lambert 2006, 12). The continued liberalisation and democratisation of Senegal, unlike the other French colonies, allowed Blaise Diange to serve in the French government as the first black African deputy in 1914 (Lambert 2006, 12). Subsequently, in 1920, the French citizenship and the right to elect representatives were extended beyond the Four Communes to the rest of Senegal through a decree (Lambert 2006, 13). In 1956, universal suffrage was recognised in Senegal (Gellar 2013, 120).

Therefore, the French rule in Senegal respected the people's freedom of association whereby they formed and organised themselves into political parties, trade unions, cooperatives, and other varieties of political and socio-economic associations (Gellar 2013, 120). During this period there were regular elections which turned out to be relatively fair and open (Gellar 2013, 120).

This democratic tradition bolstered the consolidation of democracy in the aftermath of French rule in Senegal. The independence constitution of Senegal that was adopted in 1960 was based on the 1958 French Constitution and advocated for liberal and parliamentary democracy and guaranteed civil liberties (Lambert 2006, 13).

2.2. The process of democratic transition

In terms of democratic transition, Senegal regained its political independence from the French on 6 April 1960 peacefully under the leadership of Leopold Sedar Senghor through the Senegalese Progressive Union (UPS), which was later renamed the Socialist Party (PS) (Lambert 2006, 22). Following the period after independence, Senegal was a de facto one-party state (Lambert 2006, 22). The constitutional amendments in 1976 and 1978 introduced a limited multi-party democracy allowing the functioning of four different political parties of four different currents, namely socialist, liberal, conservative, and communist (Jakubiak 2020, 397). In 1981, President Abdou Diouf, successor to Senghor, fully operationalised multipartyism by lifting restrictions on the number of political parties and their underlying ideological foundations (Jakubiak 2020, 398).

Despite the introduction of multiparty politics, the PS continued to win the presidency and to control the majority of seats in the parliament until 2000. Before the 2000 elections, major reforms to the electoral system were introduced. In 1992, the Electoral Code was amended to introduce secret ballots and lower the voting age to 18 years (Lambert 2006, 27). In 1997, Senegal created an independent and impartial elections management body, the National Observatory of Elections which was regarded to be capable of delivering free and fair elections (Lambert 2006, 26).

As an indicator of democratic land sliding, in 1998, the constitution was amended to remove the presidential term limit (Jakubiak 2020, 395). This reform enabled President Diouf to run for president for another term. He, however, lost the race to Abdoulaye Wade of *Parti Démocratique Sénégalais* (PDS) (Lambert 2006, 27). Wade's regime started by ushering in a new constitution that was adopted in 2001, which fixed two presidential terms of five years each (Lambert 2006, 27). In 2008, the duration of the presidential term was elongated from the initial five years to seven years (Jakubiak 2020, 396).

In 2012, Wade lost the presidential elections to Macky Sall in what would have been his third term in office (Jakubiak 2020, 396). Wade's bid for a third term was cleared by the Constitutional Council, which held that when he was voted in office in 2000, the presidential terms did not exist (Jakubiak 2020, 396). In 2016, the constitution was further amended by reducing the presidential term from seven years to five years and limiting the presidential limits to two consecutive mandates (Senegal Amendment Constitution 2016).

3. Senegal's 2024 elections

In 2024, Senegal conducted an election whose results led to 44-year-old Bassirou Diomay Faye, being elected as Senegal's youngest-ever President (Emordi and others 2024, 53). The 2024

elections were preceded by an unprecedented announcement of postponement of the elections indefinitely by the then sitting President Macky Sall on 3 February 2024 (Emordi and others 2024, 53). The President, in a televised address to the nation, proclaimed an indefinite postponement of the elections that had been scheduled to take place, three weeks later, on 25 February 2025, and a few hours before the launching of presidential campaigns allegedly due to a dispute on the candidate list (Emordi and others 2024, 53). The President promised to embark on a national dialogue to bring about the conditions for a free, fair, and credible elections. One month before the President's announcement, the Constitutional Council excluded from the presidential candidate list prominent opposition figures (Emordi and others 2024, 53). The postponement of the vote brought about mixed reactions in the country, whereby it was in agreement with an early submission made by PDS whose candidate was Karim Wade, son of Abdoulaye Wade, but the announcement was at loggerheads with the official position of the Patriots of Senegal for Work, Ethics and Fraternity (PASTEF) (Emordi and others 2024, 53). Nevertheless, there were speculations that the postponement of the elections was an attempt by Macky Sall to stay in power longer (Dione & Prentice, 2024). It was also said that Sall and his coalition, *Benno Bokk Yakaar* (BBY), thwarted the elections because they were unsure about Amadou Ba, their presidential candidate's ability to win the elections and therefore wanted time to strategise (Dione & Prentice, 2024).

The postponement was, however, short-lived as on 6 March 2024, the Constitutional Council overturned it and stated that the elections must be held before the expiry of Macky Sall's tenure on 2 April 2024 (VOA 2024). The ruling prompted Macky Sall to schedule the vote on 24 March 2024, the date which was later approved by the country's apex court (VOA 2024). The approval of the election date by the Constitutional Council meant that the 19 candidates had only two weeks for campaigns, which for the first time would take place in the holy month of Ramadan, the month for Muslims to fast, in the Muslim-dominant country (VOA 2024). On the polls held on 24 March 2024, Bassirou Diomay Faye emerged victorious in the first round with 54% of the total votes against Prime Minister Amadou Ba of the ruling party, *Alliance pour la Republique* (APR), who gained 36% (Ngom and Ricart-Huguet 2024, 2-3). Faye won the presidency despite the fact he was released from prison together with his political ally, Ousmane Sonko, on 14 March 2024, just ten days before the voting day (Kohnert 2024, 2).

Despite the turbulence before the general elections and the general democratic backsliding in the later years of Mack Sally, the democratic institutions in Senegal proved worthy of protecting

democracy and overshadowing anarchism and authoritarianism. The democratic tradition was defended in the following manner.

3.1. Parliamentary contestation

Following President Macky Sally's announcement to indefinitely postpone the elections, the National Assembly on 5 March 2024 backed up that decision by passing a bill that scheduled the elections for 15 December 2024 (Al Jazeera 2024). The bill was supported by 105 out of 106 National Assembly members (Al Jazeera 2024). The passage of the Bill was, however, not smooth as it turned to be very chaotic with some assembly members forcefully taken out of the house during the debates and others trying a physical blockade of the passage (Al Jazeera 2024). As a result, three opposition members of the assembly were arrested, including Guy Marius Sagna, who tried to halt the voting by blocking the dias (Al Jazeera 2024).

3.2. Popular protests and riots

While the debate over the bill was ongoing in the House, the popular protests and riots continued on the streets against the bill (Al Jazeera 2024). These demonstrations, protests, peaceful marches, and riots were organised across the country (Rich 2024). They were staged by the disillusioned youths facing a couple of economic challenges, which the reigning government under Macky Sall had failed to address, and placed their hope for a better tomorrow under Ousmane Sonko (Emordi and others 2024, 57).

Due to the political unrest, four deaths were recorded in Dakar, Saint-Louis, and Ziguinchor (Emordi and others 2024, 57). The political unrest also resulted in several injuries (Emordi and others 2024, 53). To calm down the situation, the Senegalese police used live ammunition and open tear gas against the protesters (Emordi and others 2024, 53). Between 4 and 6 February 2024, 150 protesters were arrested in the capital, Dakar (Akinpelu 2024). The opposition and civil society organisations called for demonstrations and peaceful marches to put pressure on the President to rescind his indefinite postponement of the elections decree (Al Jazeera 2024).

3.3. Judicial recourse

At the same time, opposition parties and lawmakers approached the court to challenge the postponement of the elections (Ba and others 2024). The Constitutional Council on its judgment delivered on 15 February 2024 held that President Macky Sall's postponement of the elections lacked legal basis, the law passed by the National Assembly to abrogate the elections was unconstitutional and ordered the authorities to organise the elections as soon as possible before the end of Sall's tenure on 2 April 2024 (Rich 2024). As a result, on 7 March 2024, the President

and the Constitutional Council agreed the elections to be held on 24 March 2024 shortening the campaigning period by four days from 21 days to 17 days and for the first time in Senegal's history, the campaigns were conducted during the holy month of Ramadan. Wade's petition to cancel the elections on the ground that they would be held too soon was rejected by the Supreme Court (Rich 2024). The recourse to the Constitutional Council was resorted to even though it has been accused of being biased in favour of the incumbent president, who acts as the appointing authority of its seven members (Kohnert & Marfaing 2019, 12).

3.4. Boycotting

To calm the country's political crisis following the indefinite postponement of the elections, President Macky Sally organised talks with opposition leaders and civil societies (VOA 2024). The expected attendees were 19 approved presidential candidates, disqualified presidential aspirants, leaders of civil society organisations, religious leaders, and community leaders (VOA 2024). The talks faced a boycott of the attendants, where 16 out of 19 approved presidential candidates confirmed to boycott the talks (VOA 2024). The group of over 100 civil groups and personalities against delaying the election, called the Aar Sunu Election (Protect Our Election), also confirmed to have boycotted the talks (VOA 2024).

3.5. The international pressure

The Presidential announcement met with adverse reactions from foreign countries and international institutions (VOA 2024). The United States Department of State stated that the cancellation of the polling was against Senegal's strong democratic traditions. On the one hand, the Economic Community of West African States (ECOWAS), West Africa's economic block, suggested that the move to postpone the elections could be unconstitutional (VOA 2024). On the other hand, the African Union issued a statement calling for the elections to be held as soon as possible, transparently, peacefully, and in national harmony (VOA 2024).

4. Conclusion

The road to democracy is not always linear and straightforward, but rather is full of stumbling blocks and regressions. When the hiccups that aim to derail the democratic trajectory come, the democratic institutions must be ready and prepared to contain the situation. As was the case for Senegal, the institutional integrity and people's power took a major role in defending democracy even at the expense of losses of innocent lives. The parliament and the judiciary, though composed of a number of the conservatives and beneficiaries of the government of the day, contributed to thwarting the rising anarchism and authoritarianism in the person of Macky Sall. The internal

factors combined to act as a rationale for the international community to condemn the situation and call for the respect of democratic principles by the government. The resilience of the democratic institutions won despite the havoc that was ongoing in Senegal. Senegal sets another example for the rest of Africa to follow the suit in defending democracy, especially in these trying times when the continent is experiencing the rise of authoritarianism and decline of democracy.

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State of Democracy in South Africa: Accountability and Rule of Law

Qobo Ningiza

South Africa is largely considered to be a successful democracy and a beacon of hope for democracy in Africa (Mubangizi, 2023). The existence of free and regular elections, openly functioning opposition parties, an independent judiciary, and a lively - often highly critical - media testify to the correctness of or enhance the argument that classifies contemporary South Africa as a democracy and places it among the leading liberal democracies in the world (Southhall, 2003).

On the back of this apparently solid grounding of democracy is the 1996 Constitution of the Republic of South Africa (Constitution). The Constitution is celebrated as a progressive constitution grounded on human rights and freedoms as well as the rule of law and accountability(Klare, 2017). It makes this clear in its introductory section 1(c) where it explains the values upon which the Constitution is founded by stating that 'the Republic of South Africa is one, sovereign democratic state founded on supremacy of the Constitution and the rule of law,' and 'universal adult suffrage, a national common voter's roll, regular elections and a multiparty system of democratic government to ensure accountability, responsiveness and openness'.

However, despite what appears to be a solid entrenchment of the rule of law and accountability in South Africa's democracy, it is an imperfect democracy. It is imperfect because, though progressive strides have been made since the fall of apartheid and the first democratic elections in 1994, there is still much to be desired with the implementation of the Constitution and the democratic system thus adopted. There are many shortcomings that leave one with ideas of disenfranchisement in important respects. Chief among these are the low levels of accountability by public officials to the electorate and the rule of law alike.

This Chapter attempts to delineate the intricacies of democracy in South Africa, with reference to accountability and the rule of law, which are but a species of the same cloth. It argues that the rule of law in South Africa is sometimes strong, although much depends on where it plays out between the branches of government. Its efficiency and results differ depending on whether it plays out in the courts, or in the legislature, or in the executive. As a result, accountability likewise follows the same fashion: its effectiveness depends on who applies it and who the subject is.

This Chapter begins by attempting to describe accountability and the rule of law as well as their import. It then attempts to describe the mechanisms used to apply accountability and the rule of

law, whereafter it analyses South Africa's performance in relation to their application and then concludes.

1. Understanding the rule of law and accountability

There are many references to the rule of law in legal systems around the world, but one will be fortunate to find a concrete description of what it entails. Tamanaha (2004) describes the rule of law as an exceedingly elusive notion giving rise to a rampant divergence of understandings and analogous to the notion of the good in the sense that 'everyone is for it, but everyone also has contrasting convictions about what it is,' and that it is too uncertain and subjective an expression to be meaningful. He further contends that,

> "*Disagreements exist on what the rule of law means among casual users of the phrase, among government officials, and among theorists. The danger of the rampant uncertainty is that the rule of law might devolve to an empty phrase, so lacking in meaning that it can be proclaimed with impunity by malevolent governments.*"

In the South African context, the Constitution refers to the rule of law only once in its text, although there is much reference to it in case law. For example, in *Khumalo (2014)*, the court stated that the rule of law is a founding value of our constitutional democracy, and that it is the duty of the courts to insist that the state operates within the confines of the law and remains accountable . The supremacy of the Constitution and the guarantees in the Bill of Rights, including its values, add depth and content to the rule of law.'

This position was amplified in *Masetlha* (2009) where the court said the rule of law requires legality; that is, that public power must be exercised in compliance with the law and within the boundaries of the law, free of arbitrariness and lack of rationality.

Clearly, one must understand the rule of law through placing the Constitution as the supreme law which governs their conduct, particularly in public service, and respecting, promoting and fulfilling the rights in the bill of rights for their conduct to be in accordance with the rule of law. Thus, the formal rule of law theory suggests that actions, especially by public officials, should be backed by law or they must only act through laws. This is tied to the principle of legality, described by the Constitutional Court in the *Fedsure Life Assurance* (1999) case as denoting the principle that the legislature and the executive, and all public office bearers, may exercise no power and perform no function beyond that conferred to them by the law.

In the international sphere, the United Nations considers the rule of law to be a principle of governance in which all persons, institutions and entities, public and private (including the state

itself), are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent to international human rights norms and standards. The only addition this conception of the rule of law makes to the South African conception is the requirement of consistency with international human rights norms and standards, which is not explicit in section 1 of the South African Constitution. However, this is arguably attenuated by the fact that the Constitution mandates the consideration of international law (and international norms and standards) in any interpretation of the Bill of Rights. What is clear from the foregoing is that the rule of law is tied to accountability, which the court in the *Economic Freedom Fighters (2016)* case said constitutes the sharp and mighty sword ready to chop the ugly head of impunity off its stiffened neck. Accountability, like the rule of law, is one of the founding values of the Constitution and thus merits a separate discussion.

2. The principle of accountability

As with the rule of law, a discussion of the principle of accountability must begin from its conception as a constitutional value. In its introductory section, the Constitution states that the Republic of South Africa is one, sovereign democratic state founded on universal adult suffrage, a national common voters roll and a multiparty system of democracy to ensure accountability, responsiveness and openness. Although responsiveness and openness are mentioned alongside accountability as stand-alone values, they are offshoots to the all-embracing principle of accountability.

The all-encompassing nature of the principle of accountability means that it is infused in all actions by public authorities. Justice Ngcobo, in the Masetlha case (2008), linked accountability to the exercise of all public power, whether administrative or executive, because the Constitution embodies an objective, normative value system that is fundamental to all areas of law. This is so because, as the court held in *Nyathi* (2008), certain values in the Constitution have been designed as foundational to our core democracy, and that if these values are not observed and their precepts not carried out conscientiously, we have a recipe for a constitutional crisis of great magnitude. To ensure maintenance of the rule of law, the court in *Nyathi* continued, all persons should be driven by a moral (and legal) obligation to ensure the survival of democracy by ensuring that there is accountability. Thus, the principle that government and all organs of state are accountable for their conduct is an important principle that bears on the construction of constitutional and statutory obligations, which give content to the rule of law discussed above. Accountability, therefore, is an aspect of the rule of law and requires that conduct, especially by public officials, must be governed by law and supported by it. It is the law that governs the conduct of public

officials. Thus, where there is rigorous compliance to the rule of law, there is accountability, and where there is no compliance to the rule of law, there is no accountability. It is against this backdrop that South Africa's performance or compliance with the rule of law and accountability must be measured. But first, it is necessary to briefly discuss mechanisms that guide, or are supposed to guide, compliance with the rule of law and accountability in South Africa.

3. Mechanisms for accountability and rule of law

There are various public institutions that are responsible for enforcing compliance with the rule of law and accountability in South Africa. Of relevance to this chapter are parliament, the judiciary and the executive. This is not all there is to mechanisms for accountability in South Africa, there are other institutions commonly referred to as Chapter 9 institutions which also carry the mandate of ensuring accountability and supporting constitutional democracy.[1] However, a discussion of those institutions is beyond the scope of this chapter.

To begin, the Constitution vests judicial authority in the courts, which must be independent and subject only to the Constitution and the law, and which they must apply impartially without fear, favour or prejudice. Their decisions or orders bind all persons to whom and organs to which they apply. Since the judiciary is subject only to the Constitution, it does not account to any other branch of the state as its accountability is purely to the Constitution. This does not mean members of the judiciary are left unchecked, or that they check their own conduct against the Constitution, because the Constitution establishes a Judicial Service Commission whose function is, among other things, to establish a judicial conduct committee to receive and deal with complaints about judges from the public and other institutions and to provide for a code of judicial conduct which serves as the prevailing standard of accountability for judges.[2] What it means is that courts, while required to explain their judgments to the public and to public officials who appear before them, cannot be held accountable for their judgments by litigants, inclusive of members of the legislature and the executive.

[1] Section 181 of the Constitution lists these institutions as (a) the Public Protector; (b) the South African Human Rights Commission; (c) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; (d) the Commission for Gender Equality; (e) the Auditor-General; and (f) the Electoral Commission.

[2] Section 178 of the Constitution establishes and regulates the Judicial Service Commission. Matters incidental to the judiciary are then regulated, in finer detail, by the Judicial Service Commission Act 9 of 1994, as amended by Act 20 of 2008. It is the later that regulates the conduct of judges and is empowered under chapter 2 of the Judicial Service Commission Act to exercise oversight into judicial conduct and accountability of judicial officers.

The core function of the judiciary is to ensure that other branches of the state, the legislature and the executive, comply with the rule of law and, by extension, are accountable to the law. For example, the Constitutional Court may decide disputes between organs of state in the national and provincial sphere concerning the constitutional status, powers and functions of any of those organs of state and makes the final decision on whether an Act of parliament or conduct of the President is consistent with the rule of law. The judiciary, therefore, is a fundamental mechanism in the pursuit of accountability and rule of law. Its performance of this function is assessed in the next section further below.

The second mechanism in the pursuit of the rule of law and accountability is parliament, which is vested with its own powers to ensure accountability and rule of law.[3] It is mandated to provide mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it and maintain oversight of the exercise of national executive authority and any organ of state. The core function of parliament is to enable public participation in the running of the country and accountability in how it is run. It is to parliament that the President and Ministers appointed by the President must account for the performance of their functions, which must at all times be in accordance with the rule of law.

The third mechanism for accountability and the rule of law in public service is the executive, which is headed by the President. Members of the executive are accountable collectively and individually to parliament for the exercise of their powers and performance of their functions and must act in accordance with the Constitution and provide parliament with full and regular reports concerning matters under their control. This branch of government, therefore, accounts to parliament while the judiciary acts as a custodian to ensure that it performs its functions in accordance with the rule of law. Here, parliament ensures accountability of the executive while the judiciary ensures their functions are performed in accordance with the rule of law. The performance of these mechanisms of accountability is discussed next.

4. How South Africa fares in terms of accountability and rule of law

The preceding section grouped the mechanisms for accountability and rule of law as the three branches of government: parliament, the executive and the judiciary.

[3] Section 42(3) of the Constitution states that the National Assembly is elected to represent the people and to ensure governance by the people under the Constitution. It does this by choosing the president, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.

It is perhaps apposite to begin an assessment of the rule of law and accountability with reference to the judiciary, which is the custodian of the rule of law. It is widely accepted that the judiciary in South Africa exercises its powers independently and without fear, favour or prejudice (Mubangizi, 2023). This is because the judiciary routinely makes findings against both the executive and legislature on matters brought before it, even going as far as to strike down government policy and decisions for the lack of compliance with the rule of law. A classic example is the *Treatment Action Campaign* case (2002) where the government developed a policy to deal with mother-to-child transmissions of the HIV/AIDS pandemic which civil society perceived as inadequate. The government had refused to make available an antiretroviral drug known as nevirapine in the public health care system and placed restrictions on its national rollout, and it refused to provide a timeframe for the rollout of the national programme to prevent mother-to-child infections nationwide.

The court found that the government had acted unreasonably in restricting the use of nevirapine to two research and training sites per province and accordingly reviewed and set aside the decision and policy of the government.

Another example is the judgment of the Constitutional Court in *My Vote Counts* (2018) where a challenge was brought against the constitutional validity of the Promotion of Access to Information Act (PAIA) to the extent that it failed to give citizens access to information about the funding of political parties and independent candidates for public office. The court ruled that the state is under an obligation to do everything reasonably possible, including passing appropriate legislation, to give practical and meaningful expression to the right to access information and the right to vote. This is because there is a vital connection between the right to vote and access to information, and a wide dissemination of information is necessary for the proper functioning and vibrancy of a constitutional democracy. This judgment effectively put an end to secrecy of political party funding and presidential campaigns

In a more recent case, the Constitutional Court has held that the President, who is the head of the executive, has violated his oath of office to uphold, defend and respect the Constitution as the supreme law by failing to comply with remedial action taken against him by the Office of the Public Protector, a chapter 9 institution supporting constitutional democracy. It further held that the resolution taken by parliament to absolve the President from compliance with remedial action taken by the Public Protector was inconsistent with the Constitution and set it aside as a result. These decisions demonstrate the strength of the judiciary as a custodian of the rule of law in South Africa and a mechanism for accountability.

But they also demonstrate a concerning weakness in the National Assembly and the executive as mechanisms for accountability and the rule of law; executive power is gradually expanding and overpowering the legislature, thus weakening the latter's ability to hold the former accountable as is the latter's constitutional mandate. Many believe that the speaker of parliament, who is a senior member of the African National Congress (ANC) - the largest party in the Government of National Unity (GNU) – cannot make decisions that call the President to account, and that past speakers of the National Assembly, also being members of the former ruling party before the formation of the GNU, the ANC, used their powers to silence dissent rather than foster accountability and rule of law.

The handling of the Report of the Section 89 Independent Panel[4] into Phala-Phala, a game farming business belonging to President Cyril Ramaphosa, is an example of this. The Panel was tasked to conduct an enquiry into whether the President had committed a serious violation of the Constitution or the law, or serious misconduct. This followed the discovery that a large sum of foreign currency, estimated to be more than 580 000 US dollars, was stolen from the President's private residence and that the President failed to report the matter to the South African Police Service (SAPS) for investigation. Instead, the President directed his presidential protection unit to investigate the matter in what was an apparent attempt to conceal it from the appropriate body responsible for investigating crime, the SAPS, and the general public. Questions abound about the source of the foreign currency and whether it had been declared to the South African Reserve Bank which administers exchange control regulations and investigates contraventions of these regulations.

The Panel concluded that the evidence disclosed a *prima facie* violation of the Constitution by the President as he placed himself in a situation that could result in conflict between his public office and private interests, and he appeared to be receiving remuneration outside his official duties as President.

Despite this glaring finding and others of serious misconduct by the President, which were presented to parliament, it failed to take any further steps. It voted against the impeachment of the President and against further investigation, and the matter was removed from its agenda. This is arguably because the South African democratic system is based on a closed list of proportional representation where citizens vote for the political party of their choice and the political party

[4] Report of the Section 89 Independent Panel appointed to conduct a preliminary enquiry on the motion proposing a section 89 enquiry.

elects its members to parliament. Because of this, the elected representatives do not account directly to the citizens or to the Constitution as mandated. Rather, they account to the political party that elevated them to parliament and fail to ensure accountability of the executive and to exercise oversight on the executive as required of them by the Constitution and the rule of law.

Perhaps the most glaring example of the executive and parliament's loath for accountability and rule of law is the disbanding of the Directorate for Special Operations, commonly known as the Scorpions. The Scorpions were a highly respected independent police unit with a conviction success rate of between 82% and 94% (Dlamini, 2018). In 2008, six years after it was formed, the ANC proposed that the Scorpions be disbanded and become part of the SAPS and, using its majority in parliament, it successfully voted to disband the Scorpions. At the time of its disbandment, the Scorpions had already convicted seven members of the ANC's National Executive Committee, the party's top structure, while other six members were the subjects of ongoing criminal investigation (Dlamini, 2018). Parliament then replaced the Scorpions with the Directorate for Priority Crime Investigation, commonly known as the Hawks, which is not independent and whose activities and policy guidelines must be coordinated by a cabinet minister, who is a Presidential and political appointee.

Another case, the Strategic Defence Package, was handled by parliament and the executive similarly to the Scorpions case. This case concerned the refurbishment of the South African National Defence Force ammunition by purchasing military equipment abroad, although it was found that the contract for procurement of the equipment was improperly awarded to the winning bidder due to bribes solicited by and paid to Cabinet Ministers and the then President and Deputy President of the country (Evan et al, 2004).

Accordingly, parliament and the executive as mechanisms of accountability and rule of law are not performing their role properly, and this weakens democracy, accountability and the rule of law. For parliament to ensure the rule of law and accountability, much depends on the identity of the persons concerned. This is because, at times, there have been some strong independent committees such as the section 194 enquiry into the fitness of the preceding Public Protector to hold office, Busisiwe Mkhwebane.[5] The Committee for the Section 194 Enquiry into the fitness of the Public Protector to hold office had recommended the removal of Busisiwe Mkhwebane as Public Protector on grounds of misconduct and incompetence. Parliament adopted the

[5] Section 194(1)(a) of the Constitution makes provision for the removal of the Public Protector, the Auditor-General or a Member of a Commission on grounds of misconduct, incapacity or incompetence.

recommendation and removed the Public Protector, a removal that signalled the first removal from office of a sitting Public Protector in democratic South Africa. This is an example of the identity politics at play in accountability and rule of law insofar as the executive and legislative branches of government are concerned.

Thus, the executive and legislative branches of government in South Africa are not strong institutions on accountability and the rule of law; there is much to be desired, and this weakens the exercise of democracy in South Africa, leaving it as an 'imperfect democracy.'

5. Conclusion

South Africa is a sovereign democratic state founded on the principles of accountability and the rule of law. It has regular elections, an independent judiciary, functioning and sometimes vibrant opposition parties and a critical media, and all these are characteristics of a democracy. However, even though it is a country founded on the rule of law and accountability, the former is scantily defined and compliance to it varies depending on which branch of government is the actor. The three branches of government discussed in this chapter are the judiciary, which is the custodian of the rule of law, the executive, whose primary function is to develop and to implement policy in pursuit of legitimate national interests, and the legislature, whose primary function is to hold the executive accountable and ensure public participation in government.

The judiciary, as the custodian of the rule of law, continues to appear independent despite notable declines in other branches of government. In contrast, the executive and the legislature are inconsistent in their application of the rule of law and accountability mechanisms in place to ensure a strong democracy. For them, much of their actions are influenced by political party interests rather than the rule of law and accountability demanded by the Constitution. This leaves South Africa as an imperfect democracy with much to be desired.

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Between legal guarantees and political constraints: An appraisal of public participation in Sudan

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Freedom, Peace, and Justice – Civilian Rule is the People's Choice[6]

1. Introduction

Since gaining independence in 1956, Sudan has experienced a persistent cycle of military coups, authoritarian rule, and interrupted democratic transitions. The country has witnessed over thirty coup attempts, six of which were successful, alongside multiple transitional governments that have largely failed to establish sustainable political stability or entrench strong civilian governance structures (De Waal 2023, 3-4; International Crisis Group 2019, 2).

The most recent effort to transition towards democracy began in 2019 with the ousting of long-time authoritarian ruler Omar al-Bashir, who had been in power for over thirty years. This pivotal moment was driven by nationwide protests, where civilians from all walks of life took to the streets demanding an end to military rule and a shift toward a democratic, civilian-led government (Human Rights Watch 2020). However, the hopes of the Sudanese people were once again derailed when a military coup in 2021 dismantled the fragile transitional process. By 2023, the situation had further deteriorated into civil war between the Sudanese Armed Forces and the Rapid Support Forces militia (UN High Commissioner for Human Rights 2023).

Despite these recurrent setbacks and prolonged instability, the Sudanese people have demonstrated an unwavering commitment to exercising their right to public participation in the country's political affairs. Through sustained mass mobilisations, the formation of local resistance committees, and various forms of civic engagement, citizens have consistently asserted their agency and demanded accountability, exemplifying a powerful tradition of grassroots participation (Khair 2022).

The right to public participation in democratic processes is protected under multiple international and regional legal frameworks that Sudan has committed to, including the International Covenant

[6] Chant used by protestors during Sudan's 2019 popular revolution, expressing the collective demand for freedom, peace, and justice, and affirming that civilian rule is the people's choice. The slogan reflects the people's assertion of their right to political participation, as enshrined in international human rights law, by calling for a governance system rooted in civilian, not military authority.

on Civil and Political Rights (ICCPR 1966, art. 25), the African Charter on Human and Peoples' Rights (African Charter on Human and Peoples' Rights 1981, art. 13), and the African Charter on Democracy, Elections and Governance (African Charter on Democracy, Elections and Governance 2007, art 3(7)), all of which establish public participation as fundamental to democratic governance and stability in Africa.

As elaborated throughout this chapter, Sudan's complex political landscape—marked by recurring instability, authoritarian legacies, and conflict—has frequently undermined the exercise of this right. Political, legal, economic, and social constraints continue to impede the realisation of participatory rights, particularly for marginalised groups such as ethnic minorities, religious communities, women, and youth, who have been systematically excluded from political processes (OHCHR 2022; El Saadany and Al-Karib 2023).

This chapter aims to unpack the nature of the right to public participation in the Sudanese context and assess the extent to which normative standards are upheld in practice. It will explore the capacity of Sudanese citizens to exercise this right by evaluating the legal, political, and social conditions that shape their access to and engagement with decision-making processes.

2. Conceptualising public participation

Public participation emerged as a cornerstone of good governance following its introduction by the World Bank in the 1990s as part of a framework for regulating economic and social assets. The United Nations (UN) Economic and Social Commission for Asia and the Pacific identified participation as the first component of good governance through its emphasis on channeling diverse voices into decision-making processes (UCLG ASPAC 2021).

The Universal Declaration of Human Rights (1948) was the first human rights instrument to provide for this right in Article 21, stating that 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives' (Universal Declaration of Human Rights 1948, art. 21).

Consequently, public participation in democratic governance manifests through both direct and indirect mechanisms. Direct participation occurs when citizens exercise power as members of legislative bodies, hold executive office, engage in constitutional decision-making processes, participate in referendums, contribute to popular assemblies with authority over local issues, or join representative bodies established for governmental consultation. Such direct participation should be free from discrimination and unreasonable restrictions (UN Human Rights Committee 1996, para. 6).

Nonetheless, meaningful participation extends beyond mere consultation to encompass substantive engagement characterised by deliberation. In this framework, stakeholders make decisions through dialogue, mutual learning, and exchange rather than through the simple aggregation of individual interests (Quick and Bryson 2016, 1).

Indirect participation, conversely, takes place when citizens elect representatives who exercise governmental power within constitutional boundaries and remain accountable through electoral processes (African Commission on Human and Peoples' Rights 2017, secs. 12, 25, 26). Additionally, citizens influence public affairs indirectly through public debate, dialogue with representatives, and collective organisation activities protected by the rights of freedoms of expression, assembly, and association (UN General Comment No 25: para.7).

These complementary modes of participation form the foundation of effective democratic engagement and civic influence (UN General Comment No 25: para. 8).

3. Legal and policy framework in Sudan

The right to public participation is protected under international human rights instruments. Such as the International Covenant on Civil and Political Rights (ICCPR) to which Sudan is a party, article 25 of the ICCPR establishes citizens' right to participate in public affairs (ICCPR 1966, art.25).

General Comment No. 25 of the UN Human Rights Committee, which focuses on the right to participate in public affairs under Article 25 of the ICCPR, provides a set of benchmarks that must be met for meaningful participation to exist. Participation must be genuine and effective, which imposes a positive obligation on states, requiring them to remove all barriers that could potentially impact citizens' right to access information, freedom of expression, and the rights to assembly and association (UN General Comment No 25; Republic of Sudan, Constitutional Declaration, 2019; ICCPR 1996, art.25). These rights are considered the foundation for genuine elections as stated in Article 25.

Furthermore, beyond removing barriers, states are also required to adopt measures that promote and facilitate equal participation for all citizens, with a particular focus on marginalised and vulnerable groups. These measures may include legal and electoral reforms, policy changes, and civic education (UN General Comment No 25: paras. 10–12). While Article 25 of the ICCPR does

not specify an electoral system for states to follow, General Comment 25 indicates that any system adopted by a member state must align with the rights provided under Article 25 (Ibid., para. 21).

Similar to the ICCPR, at the regional level, the African Charter on Human and Peoples' Rights in Article 13(1) stipulates that 'Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law'.

This right is further strengthened under the African Charter on Democracy, Elections and Governance (thereafter African Charter on Democracy), as Article 27 provides that states parties must 'ensure the effective participation of citizens in democratic and development processes and in governance of public affairs' (African Charter on Democracy, Elections and Governance 2007, arts. 3(7), 27(2)), and to foster popular participation and partnership with civil society organisations (CSOs), which is necessary for the political, economic and social advancement of state parties. Democratic theorists argue that robust civic space and associational networks significantly enhance democratic transitions and sustainability, as they foster accountability, transparency, and inclusivity while mitigating the 'conflict trap' that threatens post-conflict societies like Sudan (International IDEA 2022, 16).

Furthermore, the African Charter on Democracy explicitly provides for the inclusion of women, youth, different social groups, and people with disabilities in democratic processes (African Charter on Democracy, Elections and Governance 2007, arts. 8(2), 29, 31, 40, 43).

The African Commission on Human and Peoples' Rights, mandated to promote and protect human rights on the continent, adopted Guidelines on Freedom of Association and Assembly in Africa. These guidelines specify that for citizens to exercise their right to participation, several requirements need to be in place, including a safe and enabling environment where individuals and groups can organise, express themselves freely, and influence decision-making without fear of reprisals (African Commission on Human and Peoples' Rights 2017, secs. 2.2–3.2).

Domestically, the Sudanese Constitutional Document of 2019 recognised in its preamble the role that women and youth played in achieving the overthrow of the Al-Bashir dictatorial regime and their active participation in building a democratic republic (Republic of Sudan, Constitutional Document 2019). It emphasised that the constitution aims to build a state based on political pluralism and inclusivity that acknowledges the diversity of the Sudanese people. Additionally, Article 59 of the Constitution stipulated the right to political participation in public affairs, and

Article 68(11) guaranteed the rights of displaced persons and refugees to participate in general elections and the Constitutional Conference (Republic of Sudan, Constitutional Document 2019, arts 59 and 68(11).

The applicable law governing elections in Sudan is the National Election Act, which similarly calls for the inclusion of women, youth, and people with disabilities (National Election Act (2008), secs. 29,31,41). However, it sets the eligibility criteria for voters to hold Sudanese national citizenship, thereby eliminating the participation of refugees in elections (National Election Act, sec 22). Notably, the Act guarantees a quota of 25% for women in the National Assembly to be elected on the basis of proportional representation at the State level from separate and closed women's party lists (National Election Act, sec 29). During Al-Bashir's regime, elected female representatives were exclusively regime loyalists, systematically excluding independent women's groups from political participation. This selective inclusion resulted in merely symbolic female representation that reinforced culturally restrictive gender ideologies rather than facilitating meaningful participation in governance (Abdalla and others 2023, 11).

4. The reality of participation in practice

Sudan's public participation landscape reveals a stark disconnect between aspirations and reality. Despite formal adherence to international standards and constitutional provisions guaranteeing citizen involvement, genuine participation continues to face formidable barriers rooted in deeply entrenched historical patterns of exclusion (International IDEA 2022, 13-17).

Public participation has been systematically limited to the Arab-Muslim elite primarily situated in the central Nile Valley, with only eleven years of parliamentary rule since independence in 1956 (Orakçı 2021, 52-53). This has resulted in a systemic exclusion of peripheral regions, women, and youth from the political scene of the country.

This has also been the adopted trend with the Peace Agreements' processes in Sudan. Thus, they have attempted but largely failed to broaden participation beyond elite accommodation. The Comprehensive Peace Agreement (CPA) of 2005, while ending the North-South conflict,[7] was negotiated primarily between the National Congress Party and the Sudan People's Liberation

[7] The CPA (Comprehensive Peace Agreement) ended decades of war between northern and southern Sudan, signed on January 9, 2005 after negotiations concluded on December 31, 2004. It established a framework for power-sharing, wealth distribution, and security arrangements between the Government of Sudan (GoS) and the Sudan People's Liberation Movement (SPLM). Key provisions included representation in national institutions, implementation of Sharia law in the North, and a self-determination referendum for South Sudan following a six-year interim period.

Movement/Sudan People's Liberation Army (SPLM/A), representing only a minority of the population. It neglected other marginalised regions like Darfur and the Eastern regions and excluded crucial constituencies, including women and CSOs (Carolan 2020, 11-12).

Similarly, the Juba Peace Agreement (2020) brought regional armed groups into the transitional government but focused on elite power-sharing rather than addressing fundamental regional grievances, evidenced by key groups like SPLM-N al-Hilu[8] and SLM al-Nur[9] refusing to sign (Rift Valley Institute 2021, 10).

On one hand, women's representation in National Assemblies remained chronically low (0-9%) until modest increases following the 2005 peace agreement (Abdalla and others 2023, 6-11). Despite a 25% quota established under the 2008 National Election Law (ibid), women have been consistently sidelined from critical processes, including both the CPA agreement and the Juba Peace negotiations (James 2024).

Even during the short-lived transitional period, gender exclusion remained pervasive in Sudan despite the significant role of women in the December 2018 Revolution. This exclusion is often justified through references to conservative culture or purported lack of political experience Abdalla and others 2023, 6-11). However, recently, in August 2024, women have gained some representation in U.S.-mediated peace talks (James 2024).

On the other hand, youth participation has similarly been constrained, though resistance committees have emerged as relatively effective alternative participation mechanisms in some areas, like Al Gazeira (International IDEA 2022, 23).

Closely tied to the issue of representation is the persistent lack of transparency in decision-making processes. Policies and regulations have often been developed through a top-down approach, with little to no public consultation. Even during periods of democratic transition, citizens reported that policies were formulated and imposed without explanation or justification (African Union Commission 2020, 21). This lack of transparency undermines public trust and fosters a sense of exclusion, which amplifies the view that political power is confined to a privileged elite (ibid).

[8] SPLM-N al-Hilu is one of two main factions of the Sudan People's Liberation Movement-North (SPLM-N), a political party and militant organisation operating in Sudan's Blue Nile and South Kordofan states. The faction is named after its leader and emerged from internal divisions within the SPLM-N.

[9] The Sudan Liberation Movement/Army (SLM/A), originally founded as the Darfur Liberation Front, is a Sudanese rebel group established by members of the Fur, Zaghawa, and Masalit ethnic groups in Darfur. The SLM faction led by Abdul Wahid al-Nur (a Fur tribesman) is specifically known as SLM al-Nur.

Another structural impediment to participation is the lack of widespread civic education. A large segment of the Sudanese society is affected by the lack of meaningful civic education, which has left many, especially in rural and conflict-affected areas, unaware of their rights or how to claim them. This deficit of knowledge undermines citizens' ability to meaningfully participate in public processes, organise, and hold leaders accountable (UNESCO 2020, 164).

Not to forget the crackdown on civic space in recent years. Civil society organisations, resistance committees, and journalists in Sudan have faced harassment, detention, and violence for exercising their right to dissent and participate in the political life of the country. Peaceful protests have often been met with excessive use of force, arbitrary arrests, and even lethal violence, particularly during the 2019 uprising, where security forces cracked down on demonstrators demanding a transition to civilian rule, and the post-2021 military coup protests (Amnesty International 2020; Human Rights Watch 2023). These patterns of state behaviour not only violate the Guidelines but also further suppress the democratic aspirations of Sudanese citizens.

Ultimately, electoral processes did not serve the purpose of building inclusive governance but rather led to negative results, particularly under authoritarian regimes like Omar al-Bashir's. Under these regimes, elections have been consistently manipulated, undermining genuine popular participation. They have functioned as tools to legitimise governments rather than pathways to democracy or to fostering true democratic engagement (Rift Valley Institute 2021, 64-79).

5. Conclusion & recommendations

Sudan's legal framework, anchored in international instruments such as the ICCPR and regional commitments under the African Charter on Human and Peoples' Rights and the African Charter on Democracy, Elections and Governance, unequivocally guarantees the right to public participation in governance. However, in practice, these legal obligations have fallen short due to entrenched authoritarian practices, limited transparency, and systematic exclusion of marginalised groups. Historical patterns of elite domination and restrictive domestic laws have created significant barriers for women, youth, ethnic minorities, and civil society, thereby undermining the spirit of these international and constitutional mandates.[10]

[10] See ICCPR, Art. 25; African Charter on Human and Peoples' Rights, Art. 13; African Charter on Democracy, Elections and Governance, Arts. 3(7) and 27(2). For discussion on exclusion and barriers in Sudan, see OHCHR, Human Rights in Sudan: A Gendered and Intersectional Perspective (2022); Human Rights Watch, Sudan: Military, Paramilitary Forces Brutalise Protesters (2023).

To reconcile Sudan's normative standards with the lived realities of political exclusion, a comprehensive suite of reforms is imperative. This chapter suggests the following recommendations, each aimed at addressing specific structural, legal, and sociopolitical obstacles to meaningful public participation.

First, to address the lack of inclusive governance and persistent marginalisation in electoral processes, Sudan should reform its legal and institutional frameworks. This includes amending the National Election Act to incorporate displaced persons and refugees into the voter roll, strengthening the enforcement of gender and youth quotas, and enhancing transparency in party candidate selection. Institutionalising public consultations in all legislative and policy development processes is essential to ensure that citizen input is meaningful and not symbolic. Electoral bodies and public commissions must also be made independent and representative of women, youth, and historically excluded regions.

Second, to counter the elitism and exclusion that have historically characterised Sudan's political processes, political dialogue and peacebuilding efforts must be restructured into inclusive and participatory forums. These processes should be guided by the principles enshrined in the African Charter on Democracy and the African Union's Lomé Declaration. The participation of women, youth, civil society actors, and minority groups should be mandatory in all peace negotiations and implementation mechanisms. Grassroots resistance committees and local community forums should be formally recognised as legitimate actors in governance and policy formation.

Third, in response to the restricted civic space and legal barriers faced by civil society organisations (CSOs), Sudan must strengthen civil society by reforming laws that allow arbitrary interference, dissolution, or surveillance. A national civil society strategy should be developed to institutionalise regular dialogue between CSOs and public institutions, provide targeted financial and capacity-building support to local organisations, and promote collaborative policy and programme design. These efforts must be decentralised to ensure that civic engagement reaches historically marginalised and conflict-affected communities.

Fourth, to tackle widespread ignorance of rights and ensure informed public engagement, civic education initiatives must be prioritised. These should raise awareness about constitutional rights, electoral processes, and participatory governance mechanisms. At the same time, measures that guarantee media freedom are crucial to ensure that the public has access to independent, diverse, and pluralistic information. As recognised in UN General Comment No. 25 and the African Commission's Declaration on Freedom of Expression and Access to Information in Africa, media plurality is essential for citizens to make informed decisions in public life.

Fifth, to address the deterrent impact on participation resulting from intimidation and state repression, Sudan must take immediate steps to protect civic space and ensure the safety of activists. This includes repealing restrictive laws, ending the surveillance and arbitrary deregistration of CSOs, and establishing legal protections for human rights defenders. Sudan must uphold the Guidelines on Freedom of Association and Assembly in Africa, which require a safe and enabling environment for participation without fear of reprisals.

Sixth, to confront the entrenched exclusion of women, youth, and minorities from political processes—especially in regions like Darfur, East Sudan, and South Kordofan—Sudan should enact and enforce anti-discrimination legislation. Institutions must also conduct diversity audits and set inclusion targets across public service and political bodies. Specialised civic education campaigns should be tailored to excluded and conflict-affected communities. At the policy level, a robust national data system should be created to monitor participation trends across identity and regional lines to support inclusive and evidence-based policymaking.

Ultimately, implementing these interlinked reforms within Sudan's governance framework is critical to bridging the gap between its constitutional and international obligations and the everyday realities of political exclusion. Ensuring that all citizens have a genuine and protected voice in shaping the nation's political direction is not only a matter of fulfilling legal commitments but also a foundational requirement for sustainable peace, democratic legitimacy, and inclusive development.

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Togolese's participation in political affairs

Lidawh-wè Fabienne Dontema

1. Introduction

Participatory democracy is described as the set of mechanisms that encourage citizens to get involved in the political affairs of their community, especially in decisions that affect them (Koba Civique 2017). While democracy creates the framework for the effective participation in political affairs, for its part, political participation facilitates the consolidation of democracy. In consideration of this key role on democracy, the participation in political affairs is enshrined as a human right, recognised by article 21 of the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR), ratified by the Togolese Republic (Togo) in May 1984.

In compliance with the international norms, Togo also recognises international human rights. This is revealed in the Annex of the State's Constitution titled the 'Solemn declaration of the fundamental rights and duties of individuals and citizens' which is the equivalent of the bill of rights in other countries. In the sphere of the right to political participation, unlike the Constitutions of Kenya (Constitution of Kenya 2010) or South Africa (Constitution of the Republic of South Africa 1996), that expressly guarantee the right to participate in political affairs in their bill of rights, the Togolese Constitution, like many others in Africa such as Benin and Senegal, does not expressly guarantee this right.

Despite this unexpressed constitutional recognition, the protection of the right to participate in political affairs can, however, be drawn from the guarantee of related rights. These are: the right to access information (Constitution of the Togolese Republic 2024), freedom of expression (Constitution of the Togolese Republic 2024), freedom of association (Constitution of the Togolese Republic 2024), freedom of peaceful assembly (Constitution of the Togolese Republic 2024), the right to vote (Constitution of the Togolese Republic 2024), and the right to access public service (Constitution of the Togolese Republic 2024).

In fact, the participation in political affairs requires firstly to be informed of the stake of democracy, secondly to be able to freely express opinions by all available means including through elections, and thirdly to fully enjoy the freedom to gather and protest against decisions deemed not to consolidate democracy (Sustainable Development Goals 16). Thus, the above-mentioned

rights guaranteed by the Togolese Constitution facilitate the exercise of the right to participate in political affairs.

Regarding the scope of the right to participate in political affairs, Teorell, Torcal, and Montero recognised five main ways to exercise this right: electoral participation, party activities, protest activities, contact activities, and consumer participation (Degruyter 2020).

Additionally, in its description of the right to participate in political affairs, article 25 of the ICCPR not only recognises its universality and inalienability but also describes the scope of its exercise which can be direct or through freely chosen representatives, through vote, and include the access to public services. As configured, the right to participate in political affairs permits individuals to get involved in the safeguarding of strong democracies and rule of law. Particularly, the political participation intends 'to influence the outcomes of political institutions or their structures (…)' (Degruyter 2020) and affects 'either directly or indirectly, government action' (Degruyter 2020).

Yet, despite the indirect recognition of the right to participate in political affairs in the country, the eagerness of Togolese to participate in the country's political life seems weakened by many factors.

Thus, considering the importance of the concerned right, and especially in view of the Togolese context, this chapter aims at analysing the propensity of Togolese regarding the participation in the country's political affairs focusing on three components: the right to vote (I), to be elected (II) and to participate through public disagreement (III).

2. The right to vote

Considering the voting requirements and its procedures, this paragraph analyses the exercise of the right to vote.

2.1. The voting requirements

According to article 40 paragraph 1 of Act 2012-002 on Electoral Code, the right to vote is recognised to 'Togolese of both genders, of at least 18 years old, enjoying their civil and political rights, registered on the electoral roll and not subject to any of the incapacities provided for by law', and living either on the territory or abroad. The exercise of this right by Togolese living abroad is subject to the registration on an electoral roll available at the Togolese embassy of their

country of residence (Electoral Code 2019). Consequently, in respect of the above-mentioned conditions, any Togolese can participate in political affairs.
Overall, these conditions are in line with the principles in the General Comment 25 of the United Nations (UN) on the right to participate in public affairs, voting rights and the right to equal access to public service (Human rights Committee 1996).

However, it should be pointed out that persons disqualified from voting or election by virtue of a conviction for a crime, a suspended or non-suspended prison sentence of more than six months with or without a fine, persons in absentia, incapacitated adults, and bankrupts who have not been rehabilitated are deprived of direct suffrage (Electoral Code 2012). The temporary withdrawal of the right to vote in these circumstances is arguable, especially in view of the fact that some countries on the continent (Botswana, Ghana, Kenya, Mozambique, Nigeria, Uganda, South Africa) do not use convictions as a reason to disqualify people from voting. While the voting requirements facilitate individuals' political participation, the next section considers the achievement of this right through the voting procedures.

2.2. The voting procedures

Togo recognises the direct and indirect universal electoral suffrage (Constitution of the Togolese Republic 2024). The voting procedures begin with the establishment of the electoral roll. These are done at the municipality or prefecture of the place of residence or at the embassy of place of residency for persons living abroad to facilitate every citizen's participation (Electoral Code 2019).

The direct universal suffrage allows all Togolese to participate in political affairs by choosing their representatives (Electoral Code 2012). The legislative (1961, 1963, 1979, 1985, 1990, 1994, 1999, 2002, 2007, 2013, 2018, 2024), regional (2024) and municipal (1987, 2019, 2025) elections are done under this direct universal suffrage. Presidential elections (1961, 1963, 1979, 1986, 1993, 1998, 2003, 2005, 2010, 2015, 2020) were also under the direct system until the constitutional amendment of 6 May 2024 when the designation of the President has been transferred under the indirect suffrage (Constitution of the Togolese Republic 2024).

As for the indirect universal suffrage, it is restricted to local representatives (Electoral Code 2012). For instance, the senatorial election is done under indirect universal suffrage. Consequently, it is restricted to municipal and regional councillors. To date, Togo only had one election under the indirect suffrage. That was during its first senatorial election of 15 February 2025 (VOA 2025).

Besides election by ballot, the Togolese Constitution provides for election by referendum. The referendums can be used to pass a law (Constitution of the Togolese Republic 2024) and to amend the constitution (Constitution of the Togolese Republic 2024). Since its independence on 27 April 1960, Togolese has had five constitutional referendums. The referendum of 9 April 1961 introduced a semi-presidential system (Fiveable 2025, Digithèque MJP 2023). The one of 5 May 1963 introduced a presidential system with a one-chamber parliament (Digithèque MJP 2023). The referendum of 9 January 1972 was on the continuation of the ruling of Gnassingbé Eyadéma (Digithèque MJP 2023). On 30 December 1979, the referendum aimed at confirming the presidential system, but based on a single political party (Digithèque MJP 2023); and the last referendum of 27 September 1992 was on the draft constitution in accordance with the decisions of the Sovereign National Conference (1992) (Gazette 1992).

In light of the requirements and procedures to the right to vote, it is clear that the measures facilitating Togolese's political participation through voting are adopted and set up. The next section looks at political participation via representation.

3. The right to be elected

Article 65 of Act 2012-002 of the Electoral Code states that 'All Togolese can be candidate and be elected subject to age conditions, incapacities and ineligibilities cases provided by law'. The following positions are subject to elections: President of the Republic, senator, deputy, governor, and mayor.

3.1. President of the Republic

Under the previous Constitution, the President of the Republic was elected by a direct, universal, uninominal majority ballot suffrage of two rounds, when the absolute majority was not obtained in the first round (Constitution of the Togolese Republic 2019). The Electoral Code further determines the additional requirements for the election of the President (Electoral Code 2021). Under the previous system, 'when the President's office is vacant, the office of President is temporarily assumed by the President of the National Assembly' (Constitution of the Togolese Republic 2019). Hereinafter, the Togolese presidents elected under that system since the independence: Sylvanus Olympio (1960 - 1963), Emmanuel Bodjollé (13 – 16 January 1963), Nicolas Grunitzky (1963 – 1967), Kléber Dadjo (14 January – 14 April 1967), Eyadema Gnassingbé (1967 – 2005), Abbas Bonfoh (February – May 2005), Faure Gnassingbé (2005 - 2025). Of all the

Togolese presidents over 65 years of independence, the longest terms were held by Eyadema Gnassingbé who did 37 years and Faure Gnassingbé who did 20 years.
Even though the possibility to participate in political affairs by being elected as President of the Republic exists, the diversity of people who reach this position is quite limited. However, regarding the participation in political affairs through the right to vote, the participation rate in the last presidential election was 76,63 % (Portail Officiel de la République Togolaise 2020).

Yet, the mode of designation of the President of the Republic has changed since the constitutional amendment of May 2024. From then, the President of the Republic is now elected by the National Assembly and the Senate, meeting in congress (Constitution of the Togolese Republic 2024). According to the same constitution, only parliamentary groups duly constituted in the National Assembly may propose candidates for the office of President of the Republic (Constitution of the Togolese Republic 2024); which limits the wide participation of Togolese to the designation of the President of the Republic.
Also, under the 2024's Constitution, the access to the President of the Republic's position is limited to Togolese by birth, of at least 50 years old, enjoying their civil and political rights, who provide a report of physical and mental wellbeing and live on the territory for at least 12 months (Constitution of the Togolese Republic 2024). In line with the new Constitution, on 3 May 2025, Jean-Lucien Savi de Tové was elected by the congress as the new President of the Togolese Republic.

3.2. Senator

Although provided under the previous Constitution (Constitution of the Togolese Republic 2019), the operationalisation of Togo's senate occurred on 15 February 2025 (Constitution of the Togolese Republic 2024).
The Electoral Code had, by its requirements (Electoral Code 2021), disqualified the members of the Economic and Social Council, the National Electoral and Independent Commission, the National Commission on Human's Rights, the High Authority on Audiovisual and Communication (HAAC) and the Ombudsman from senatorial positions (Electoral Code 2021).

Regarding their designation, 2/3 of the senators are elected by local representatives, while 1/3 are appointed by the President of the Council (Constitution of the Togolese Republic 2024).
In the transitional period of the 2024 Constitution, 2/3 of the senators were elected by municipal and regional councillors (Constitution of the Togolese Republic 2024). During the last senatorial elections of February 2025, of the 41 seats available, 34 were won by the *Union pour la République*

(UNIR). It was followed by the *Bloc Alternatif Togolais pour une Innovation Républicaine* (BATIR) with two seats, *Le Togo Autrement* with one seat, the *Alliance des Démocrates pour le Développement Intégral* (ADDI) with one seat, the *Union des Forces de Changement* (UFC) with one seat, the *Cercle des Leaders Émergents* (CLE) with one seat, and '*Les deux bisons*' with one seat (Ministère de l'Administration Territoriale, de la Décentralisation et de la Chefferie Coutumière 2025). This diversity of political parties and independent candidates is a sign of the Togolese's access to political affairs. Regarding the political participation in the election of the 2/3 of the senators, there was a general participation rate of 91,50 % (TogoBreakingNews 2025), with a clear dominance of UNIR, a situation that questions the deep diversity of opinions in the decision-making process for the respect of democracy.

In the same dynamic, on 5 March 2025, Faure Gnassingbé appointed 20 figures as 1/3 of the remaining senators (Portail Officiel de la République Togolaise 2025).

3.3. Deputy

The Constitution provides for deputies' election (Constitution of the Togolese Republic 2019, Constitution of the Togolese Republic 2024). It states that deputies are elected through direct, universal, and secret suffrage for six years, renewable twice (Constitution of the Togolese Republic 2019, Constitution of the Togolese Republic 2024). These conditions are completed by the provisions of the Electoral Code (Electoral Code 2021).

Ahead of the 2024 legislative elections, the National Assembly adopted the Act 2024-002 amending Act 2012-013 laying down the number of deputies at the National Assembly, the conditions of eligibility, the system of incompatibilities and the conditions under which vacant seats are filled. The said Act increased the number of deputies from 91 to 113 (Gazette 2024).

Additionally, the Decree 2024-008/PR on the distribution of seats for members of the National Assembly by electoral district fixed the repartition of deputies according to electoral district. Thus, on the basis of administrative divisions and, also, of the size of the electorate, some electoral districts are represented by two deputies, while others by eight (Gazette 2024). These measures set and guarantee citizens' political participation either through vote or representation.

During the last legislative elections of 29 April 2024, with a participation rate of 61,55 % (Gazette 2024), UNIR won 108 seats, ADDI won two, and Alliance Nationale pour le Changement (ANC), Dynamique pour la Majorité du Peuple (DMP) and Forces Démocratiques pour la République (FDR) won one seat each. These results not only confirm the participation in the election process of deputies but also show that the first chamber of Togolese parliament also has an impressive

majority of UNIR; which made the whole Parliament being controlled by the same political party. This may constitute a serious risk to democracy as the diversity of opinions and considerations of opponents' legitimate demands may be rejected.

3.4. Regional councillors

As part of the implementation of the decentralisation policies, the Togolese Constitution provides for the election of councillors in charge of municipalities and regions (Constitution of the Togolese Republic 2019, Constitution of the Togolese Republic 2024). This provision is reinforced by Act 2019-006 amending Act 2007-011 on Decentralisation and Local Freedoms as amended by Act 2018-003. The people's representation by the regional councillors has been a reality in Togo only on 29 April 2024 although provided by the 2012's Act on Electoral Code.

The regional elections are open without any particular restrictions to Togolese who meet the general conditions of voters (Electoral Code 2012). The regional councillors are elected by direct universal suffrage for six years renewable twice. The Togolese participation rate in that last election was 60,63 % (Atop 2024).

Of the 179 seats available, the political breakdown is as followed : UNIR won 137, ANC won nine seats, ADDI won eight seats, BATIR and UFC obtained five seats each, DMP earned four seats, FDR took three seats, *Pacte Socialiste pour le Renouveau* (PSR) won two seats, and the following political parties and independent candidates won one seat each: *Nouvel Engagement Togolais* (NET), *Parti des Démocrates Panafricains* (PDP), *Comité d'Action pour le Renouveau* (CAR), *La voix des sans voix*, *Le Nouveau Départ*, *Honneur aux Paysans*. Here again, UNIR is ahead of the other parties and candidates. Despite the fact there is a better representation of the Togolese political diversity, there is still the dominance of UNIR.

Equally, while the regional councillors are decentralised entities, the governors, that are deconcentrated authorities facilitating the implementation of public policies in each region of Togo, were appointed on 23 August 2024 over five regions by Faure Gnassingbé (PORTAIL OFFICIEL DE LA RÉPUBLIQUE TOGOLAISE 2024). The appointment of the governor of the last region is still pending.

3.5. Municipal councillors

The election of municipal councillors is respectively regulated by the Constitution (Constitution of the Togolese Republic 2019, Constitution of the Togolese Republic 2024), and Act 2019-006 amending Act 2007-011 on Decentralisation and Local Freedoms as amended by Act 2018-003, and the Electoral Code (Electoral Code 2021). After being elected through a direct suffrage, the municipal councillors elect among themselves a mayor for administrative purposes.

Since 1987, Togo has not had municipal elections. It is only in 2019 that the country restarted the municipal elections with the organisation of two elections in the same year due to some technical issues in five municipalities during the first election. These municipal elections organised after 32 years had a participation rate of 52,46 % (Gazette 2019) for the election of 30 June 2019 and a participation rate of 64,59 % (Gazette 2019) for the election of 15 August 2019. Politically, over 1527 seats, UNIR won 920 (PORTAIL OFFICIEL DE LA RÉPUBLIQUE TOGOLAISE 2019). The discomfort of diverse political boards for the safeguarding of democracy is questioned once again at the level of municipal councillors. Besides, the country will be organising municipal elections on 17 July 2025 (PORTAIL OFFICIEL DE LA RÉPUBLIQUE TOGOLAISE 2025) after updating the electoral roll from 7 to 23 April 2025.

In conclusion, there are settled legal frameworks that guarantee and ensure Togolese participation in political affairs through the right to vote and to be elected. Although political diversity should be effective to allow the consolidation of democracy, we noticed that UNIR has a vast majority whether in the Senate, National Assembly, or with regional and municipal councillors. This dominance is a big risk for the respect of critical opinions for democracy, and rule of law.

Noticing that, at different levels, Togolese enjoy their right to participate in political affairs by being quite informed of the stake of democracy and expressing their vote to the political parties and independent candidates, the following section analyses the Togolese participation in political affairs through the public expression of their disagreements.

4. The participation in political affairs through public disagreements

Citizens exercise their right to participate in political affairs also by expressing their disagreement regarding politics either by not renewing the representatives' terms or through public protests. Hence, the participation in political affairs required the beforehand enjoyment of civic space rights of which the freedom of peaceful assembly. In the exercise of this way of participation in political affairs, some people even faced sanctions.

Since the socio-political crisis in Togo between 2017 and 2020, the enjoyment of the freedom of peaceful assembly in Togo has been further conditioned. Between August and October 2020, protests and meetings related to election results were banned (Amnesty International 2021). For instance, several public assemblies were organised in that period to protest against constitutional reforms in the realisation of the right to participate in political affairs. The main political opponent

party leader of those protests, the Parti National Panafricain (PNP), called for another nationwide protest on 13 April 2019 which was banned by the Ministry of territorial administration on the grounds of risk to public order, except in three towns. During the protests, people were injured, others were arrested, and sentenced to imprisonment for aggravated public disorder and one man died (Amnesty International 2020).

On 20 April 2019, Ouro-Djikpa Tchatikpi, PNP counsellor, was detained by security forces for organising unauthorised protests. He was released on 10 August 2019 (US Department of State 2019).

In March 2022, the Minister of territorial administration banned the protest organised by the Dynamique Monseigneur Kpodzro (DMK) (U.S. Department of State 2022). The Ministry of security and civil protection banned a DMK protest on 22 June 2022 arguing that this would 'compromise ongoing efforts to preserve public order and national security.' The same justification was used by the Prefect of Agoè-Nyivé on 29 June 2022 to ban a political protest of the ANC (Amnesty International 2023).

On 29 September 2024, while holding a public meeting in Togo with the DMP as part of his activities as an Economic Community of West African States (ECOWAS) parliament's deputy, Guy Marius Sagna, a Senegalese deputy, was attacked. The attack took place at the headquarters of the CDPA, an opponent political party (27avril.com 2024). This aggression follows Sagna's criticism, in July 2024, of the anti-democratic events happening in Togo (Senego 2024).

On 12 January 2025, SOKPOR Koffi Sitsope alias AFFECTIO, an activist, was arrested. For calling for action through a poem shared on social media where he was criticising the politics, he was charged with revolt against the State's institutions (rfi 2025), he has since been detained and deprived from provisional release (rfi 2025).

Recently, on 26 May 2025, Aamron, an artist, was also arrested for criticising the politics during a live performance on TikTok (HC2TV 2025). This arrest led to a wide public protest on 6 June 2025. From reports, people were arrested and injured during that protest (New Afrique 2025).

Briefly, the participation in political affairs through the public expression of disagreements, while allowed by the Constitution and Act 2019-010 amending Act 2011-010 on the Conditions for the Exercise of Freedom of Assembly and Peaceful Public Demonstrations, is subject to several conditions; thus, protests can be banned by public authorities on the ground of protection of public order. Also, despite this recognition of the freedom of assembly and peaceful public demonstrations, the management of protests by security forces sometimes leads to injuries and even deaths; what makes this type of participation risky for citizens.

5. Conclusion

In a nutshell, the right to participate in political affairs is indirectly recognised to Togolese through the guarantee of related rights in the Constitution. The consequence of the unexpressed recognition of this right is that no one can claim it as a fundamental right in Togo. Nevertheless, the realisation of this right is strengthened by its protection through subsequent laws.

Despite this framework, Togolese participation in political affairs seems to be facing challenges such as the insufficiency of diversity of political boards in several institutions. Additionally, between past socio-political crises, the criticised ruling of the Gnassingbé family, the frequent call to boycott of the oppositions' political leaders, and reprisals that some people faced following their critics and comments on politics, the eagerness of some Togolese to participate in political affairs is being weakened.

Lastly, the lack of massive participation in political affairs may be justified by the lack of understanding of its importance in the consolidation of a strong democratic society and rule of law. Therefore, capacity-strengthening activities aiming at civic education should be increased to encourage Togolese participation in political affairs on one hand. On the other hand, public authorities must align with the international standards for the respect, protection and fulfilment of Togolese's right to safely participate in political affairs in all available ways.

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Disillusionment and Dissent: Examining Tunisia's Post-Revolution Democratic Trajectory through Social Movements

Chiraz Arbi

1. Introduction

In the wake of the 2011 revolution, Tunisia was lauded as one of the Arab world's rare democratic success stories (Ben Hassen 2021). It came to challenge Samuel Huntington's democratisation theory that Islam and democracy are inherently incompatible (Huntington 1991). A process of political liberalisation was initiated in the country and marked by fair and transparent elections, a multiparty system, and institutional frameworks aimed at upholding the rule of law and the protection of human rights and liberties. These institutional and political transformations created a climate of hope. Still, the socioeconomic grievances that were at the heart of the revolution, including youth unemployment, regional disparities, and long-standing economic marginalisation, were largely disregarded. More than a decade after the revolution, the economic situation remains very poor, with almost half (49 %) citing this issue as the country's biggest challenge (Arab Barometer 2023).

The persistence of these challenges, combined with public policies that have proven inadequate in resolving these fundamental issues, has resulted in a loss of trust in the state institutions. This disillusionment is most pronounced among young people and underprivileged communities. These sentiments have inspired a wave of community mobilisation, bringing people together around important issues that have languished on the periphery of successive governments' agendas since 2011. These movements operate outside of traditional institutional frameworks[1] and represent a rising collective understanding of the importance of working together outside of existing structures to pressure the government to make reforms.

The nature of collective action in Tunisia has changed significantly since 2011. Initially, it was driven by active citizens' strong desire to reclaim public spaces, which had previously been inaccessible and tightly controlled by a police state, as open, safe arenas where they could voice their demands, engage with the government, and make their voices heard peacefully. The protests were organised by a wide range of political actors, including leftist parties, the Islamist Ennahda

[1] Political parties, civil society organisations, professional organisations and trade unions

movement, the Tunisian General Labour Union (UGTT), the country's largest workers' union, and numerous civil society organisations. Typically, such demonstrations were linked with their organising bodies' agendas, with identifiable leadership and well-defined goals.

However, a different form of grassroots mobilisation has surfaced, defying typical trends. Often initiated by citizens who are directly affected by certain concerns, these social movements are characterised by their spontaneous, horizontal nature. Unlike previous protests, these movements operate without any political agenda and do not have predetermined goals or prearranged leaders (Saidani 2021). Participants are frequently drawn from the same geographic area because they have similar problems and a desire for a broader social change. This trend is consistent with the definition of social movements provided by sociologist Anthony Giddens, who defined them as 'a collective attempt to further a common interest or secure a common goal through collective action outside the sphere of established institutions' (Scott, 1990).

This chapter examines Tunisia's post-revolutionary democratic trajectory by focusing on the rise and evolution of social movements as they represent both a symptom of democratic disenchantment and a potential catalyst for democratic renewal.

2. Rising Expectations and the Politics of Representation: Analysing Post-Revolutionary Discontent

The 2011 Tunisian uprising ignited a collective demand for dignity, equality, and democratic reform. In the years that followed, the country took groundbreaking steps toward establishing a rights-based system, most significantly through its 2014 Constitution that enshrined protections for free expression, belief, and political participation (Democracy Reporting International)
Structural changes reinforced these principles. New institutions, like the Supreme Judicial Council and an independent electoral authority, were created to safeguard democratic processes. Meanwhile, the Truth and Dignity Commission, formed in 2014, began the transitional justice process and was entrusted with investigating state repression and corruption dating back to independence (International Center for Transitional Justice 2015).

Five independent constitutional bodies were also introduced to oversee critical areas such as human rights protection, electoral integrity, and anti-corruption efforts (Venice Commission 2013). Civil society organisations gained influence, successfully advocating for progressive legislation, including a 2017 law that criminalised gender-based violence (The Legal Agenda 2017)

and closed a notorious legal loophole allowing rapists to avoid prosecution by marrying their victims (Center for Arab Women for Training And Research 2019).

Despite these progressive accomplishments, many Tunisians feel that their daily conditions have not improved, which has created a gap between them and the governing elite who are viewed as disconnected from citizens' needs and priorities. A nationwide survey conducted in 2020 by the International Republican Institute's (IRI) revealed that a significant majority of Tunisians believed their 'government (85 %), ministries (81 5) and parliament (88 %) are doing little or nothing to address the needs of ordinary citizens' (International Republican Institute 2021). The perceived failure of elected representatives to respond effectively to grassroots concerns has contributed to the rise of new forms of collective action that want to take things into their own hands. In this context, social movements have emerged as alternative arenas for political participation, particularly for disenfranchised communities.

The striking case of the 'El Kamour movement' reflects this growing dynamic. The movement, named after the El Kamour oil pumping station in Tataouine, a region rich in oil yet still underdeveloped, began in 2017 with the primary demand that a percentage of oil revenues be allocated to support the region's social and economic development and to provide employment opportunities for youth in a region where the unemployment rate in the region stood at 27.2% in 2014, well above the national average (United Nations Development Programme 2018).

This movement, which refused political instrumentalisation or co-optation, breaking with the usual pattern of demands of an economic nature being appropriated by leftist parties or unions, highlighted a crisis of representation and trust. They appointed a worker as their leader and spokesperson, differing from traditional political figures (Ben Jelloul 2024).

After three years of social mobilisation marked by sit-ins and protests, during which they negotiated directly with the government, the Kamour movement succeeded in achieving part of their demands. The Kamour movement instilled significant confidence in the power of social movements to effect change.

Across the country, a new dynamic of locally led mobilisation has emerged and gained momentum. In 2017 alone, approximately 11,000 social mobilisations were recorded, predominantly composed of individuals unaffiliated with to any political parties or formal organisations (Temlali, 2018; Ben Jaloul, 2024). This surge in grassroots activism has positioned Tunisia among the

countries with “some of the highest demonstration levels in Africa” which has been consistent for several years (Armed Conflict Location & Event Data Project 2020).

3. Democratic Backslide: The Erosion of Civic Space

Following the 2011 revolution, Tunisia emerged as a rare success story in democratic reform. The 2014 Constitution codified civil liberties, which allowed for a vibrant civil society and an open civic space. Youth-led organisations, independent media, and digital activism, particularly on social media, sustained civic engagement, building on the momentum that toppled Ben Ali (Breuer, Landman, and Farquhar 2012). By 2016, Freedom House classified Tunisia as ‘Free’ (Freedom House 2016) and the Economist Intelligence Unit recognised it as a democracy (Economist Intelligence Unit 2014).

However, this trajectory began to reverse significantly by 2021. On 25 July 2021, President Kais Saied invoked Article 80 of the Constitution to suspend Parliament, dismiss the Prime Minister, and assume executive power. Although justified as a response to national emergency conditions and a cumulative crisis of representation, these actions marked the beginning of a broader dismantling of democratic institutions (Carnegie Middle East Center 2021). The Superior Council of the Judiciary was subsequently dissolved and replaced by a provisional body under executive control. Saied also assumed authority to unilaterally dismiss judges, raising concerns over judicial independence (Office of the United Nations High Commissioner for Human Rights 2022).

The 2022 constitutional referendum, criticised for lacking transparency, further concentrated power in the presidency. This was followed by parliamentary elections that registered a historic low voter turnout of just 11% (Agence Tunis Afrique Presse 2022) and were boycotted by most major political parties. . By 2024, Tunisia was reclassified as an electoral autocracy (V-Dem 2024), with Freedom House downgrading it to ‘Partly Free’ due to eroding liberties (Freedom House 2024). The CIVICUS Monitor have also downgraded Tunisia’s civic space to ‘repressed’ in 2023, reflecting broader limitations on freedom of speech, association, and assembly.

Civil society groups have faced increasing operational constraints, including bureaucratic hurdles and financial restrictions. Some banks have reportedly denied new associations the ability to open operational accounts, impeding their functioning, while journalists, lawyers and political figures endured arrests under Decree-Law 54, a cybercrime measure weaponised against free speech (International Commission of Jurists 2023). This environment has curtailed digital freedoms in a context where internet access has grown significantly—from 41.4% in 2012 to 71.9% in 2022

(International Telecommunication Union 2022). Social media platforms, once central to political mobilisation, have become subject to increased surveillance and restrictions.

Repression, both online and offline, has undermined participation in public life. From 2022 to 2024, over 70 activists were arrested and detained arbitrary. On 19 April 2025, the country took a dark turn in its human rights record as 40 individuals including opposition political figures, lawyers and activists were sentenced to serve between 13 and 66 years in prison on charges of "conspiracy against the state" (Amnesty International 2025).

President Kais Saied's governance model has further diminished avenues for civic and political participation. Central to his approach is the rejection of intermediary structures (Tunigate 2024). For the first time since the revolution, unions, political parties, and civil society have found themselves entirely sidelined. This mode of governance draws its essence from a populist model where "the leader seeks to govern based on direct and unmediated support from their followers" (Mudde and Kaltwasser 2017).

In the context of a shrinking civic space, both online and offline, exacerbated by an increasingly populist governance model, diverse forms of mobilisation and organisational structures have progressively become the primary force capable of compelling dialogue with the government. By doing so, they have successfully carved out new civic spaces, challenging the constraints imposed by the current political climate which testifies to the resilience of Tunisian civic actors in the face of authoritarian tendencies. According to the Arab Barometer (2019), 12% of Tunisians reported participating in peaceful demonstrations within the preceding year. The Tunisian Forum for Social and Economic Rights (2022) notes a steady rise in protest activity since 2018, intensifying under conditions of increasing authoritarianism.

4. Between Institutional Disenchantment and Informal Innovation

Contrary to narratives suggesting political disengagement among youth, recent mobilisation trends indicate continued political interest, though increasingly expressed through informal and non-institutionalised means. Protests, sit-ins, and digital campaigns have become dominant forms of civic expression.

Recent years have also witnessed a shift toward national coordination among social movements, many of which are youth-led. For the first time since independence, issue-based mobilisations, from environmental campaigns to demands for water access and economic reforms, have begun

to collaborate across regional and thematic boundaries. In 2016, the Summer University of Social Movements convened in Korba, leading to the formation of the National Coordination of Social Movements. This initiative was further strengthened by the 2017 National Congress of Social Movements, where "for the first time since the Independence, social movements, spanning all regions and causes, have united" (Tunisian Forum for Economic and Social Rights (FTDES 2017)

5. The Rising Power of Social Movements for Environmental rights and accountability

In recent years, Tunisian social movements have become key advocates for third-generation human rights, often referred to as solidarity rights. Unlike the first and the second generations of rights, solidarity rights emphasise environmental sustainability and collective and intergenerational dimensions of justice. "In 2023 for instance, protests addressing issues such as the right to water accounted for 13.5 % of all demonstrations, representing a substantial increase from the previous year when environmental protests comprised only 7 % of total protests(Tunisian Forum for Social and Economic Rights 2023).

Environmental mobilisation in Tunisia has been shaped by two parallel developments. First, the revolution opened access to information and enabled associative work, allowing researchers and activists to investigate environmental policies and their real-world impact in a country increasingly affected by climate change (World Bank Group 2023). Second, there has been a growing awareness that the right to a healthy environment is a fundamental human right and a condition for a decent life. This perspective extends citizens' aspirations by integrating a progressive and holistic vision of 'dignity' and 'social justice', which were central to the revolution's ethos.

A notable example is the "Manich Msab" ("I am not a landfill") movement, which began in 2018 in the town of Agareb (The Legal Agenda 2022). The movement arose in response to the continued operation of the El Gonna landfill, which residents claimed posed significant health and environmental risks. Despite earlier state commitments to close the site, the landfill remained active, prompting widespread local mobilisation. Protesters—primarily composed of youth and community organisers—engaged in roadblocks, sit-ins, and other forms of collective action. The campaign also gathered over 1,000 signatures on a petition demanding the landfill's closure (Delpuech and Poletti 2021). This organisational effort secured the campaign's participation in direct negotiations with the government, resulting in an agreement to reduce emissions and ensure the landfill's closure by 2021 (The Legal Agenda 2021).

‘Manich Msab’ represents a broader trend within Tunisia’s evolving civic landscape: decentralised, locally rooted activism that operates independently of traditional political parties and institutions. The movement leveraged digital platforms to build public awareness and reframe its demands in terms of environmental rights and human dignity. Although participants faced state repression, including arrests and legal penalties, the campaign succeeded in drawing national attention to issues of environmental governance and state accountability. The case illustrates the capacity of local communities to initiate action in response to institutional shortcomings.

6. Social Movements and the Quest for Local Democracy

A screening of social mobilisation since 2011 reveals that major social movements have emerged from marginalised regions, a trend that has persisted over time. Tunisia’s post-independence development model has been shaped by regional imbalances and territorial disparities, driven by a highly centralised state. These disparities significantly contributed to the conditions that sparked the 2011 uprising. Notably, the protests in the Gafsa mining basin between 2008 and 2010 calling for territorial justice are believed to be the precursors to the revolution. These events brought local governance to the forefront for civil society actors and engaged citizens, who saw it as essential for democratic consolidation.. In this context, the 2014 Constitution introduced decentralisation as a new territorial framework.

Local councils were granted financial and administrative autonomy, enabling them to formulate local budgets and policies independently of the central state (International Crisis Group 2019).

Despite this progress, the implementation of decentralisation encountered structural challenges. Limited financial allocations to local governments constrained their capacity to deliver meaningful outcomes, particularly in historically marginalised interior regions (High Authority for Local Finance 2020). Initiatives such as participatory budgeting (Code of Local Government of Tunisia 2018) failed to produce tangible improvements in economic or environmental conditions, leading to public disillusionment with the process and perceptions of decentralisation as an unfulfilled promise.

This trajectory shifted markedly in 2023, when President Kais Saied dissolved all elected local councils and replaced them with appointed municipal structures. This move effectively reversed the decentralisation process and echoed practices associated with the pre-revolutionary authoritarian regime (Al Bawsala 2025). Saied alternative model, described as a “bottom-up structure,” recentralised authority and curtailed the financial and administrative autonomy of

local institutions, undermining principles of transparency, oversight, and accountability (Arbi 2023).

As formal avenues for local representation have diminished, social movements have increasingly mobilised around local grievances, filling the void left by weakened institutions. The emergence of new local structures devoid of prerogatives and lacking decision-making power has prompted disadvantaged communities to respond through collective mobilisation around local issues. Data from 2019 indicate that the historically underrepresented governorates continue to experience the highest levels of protest activity. According to the Tunisian Forum for Economic and Social Rights (FTDES), marginalised governorates such as Gafsa (216 protests), Kairouan (364 protests), Sidi Bouzid (172 protests), Kasserine (127 protests), and Jendouba (189 protests) recorded the highest number of social protests. This trend that is projected to persist, reflecting continued dissatisfaction with governance outcomes and unaddressed regional inequalities.

7. Conclusion

Some analysts argue that the evolution of social movements signals a democratic alienation, as citizens increasingly lose faith in political and civil democratic institutions to drive positive change. These movements are somehow perceived as organic forms of dissent, primarily aimed at making noise and pushing the boundaries of collective disobedience and defiance, a cry of anger in response to the deteriorating conditions faced by citizens.

However, the Tunisian experience has demonstrated that these alternative forms of activism strive to reclaim the democratic achievements of 2011 by advocating for popular sovereignty, participatory governance, and accountability as pillars for improving social, economic and environmental conditions. The 2023 Arab Barometer survey indicates that support for Democracy in Tunisia is high at 72%. The same report interestingly indicates that "approximately the same percentage of citizens say democracy is the best system now compared with in 2011 (+2 points)." Citizens remain committed to democratic values despite all issues as an ideal but are seeking innovative ways to counter authoritarian drift and non-responsive public policies.

Thus, Tunisia's social movements represent a potent force in the country's evolving democratic landscape, actively redefining the possibilities of democratic engagement 14 years after the revolution. They constitute alternative imaginaries of democracy, rooted in everyday struggles, local solidarities, and cross-regional cooperation.

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Uganda: A Limping Democracy

Michael Aboneka

1. Introduction

The Constitution under article 99(1) vests executive power in the President, who is elected for a term of five years by direct and universal suffrage. Parliament repealed presidential term limits subsequent to the introduction of multi-party democracy by referendum in 2005 (Daily Monitor 2015). Legislative power lies exclusively with Parliament, which can override a presidential veto by a two-thirds majority (Constitution 1995). Uganda follows the common law legal system, and it has ratified most international and regional instruments relevant to the protection of civil and political rights related to elections (OHCHR 2025).

Over the past few decades, the country has made some progress toward establishing a functional democracy and despite elections, constitutional amendments, and a visible opposition, Uganda's continues to restrict political freedoms. This chapter aims to unpack the disconnect between democratic ideals and the prevailing political practices. The chapter examines the state of democracy of Uganda in as far as violence in elections, separation of powers, and freedom of assembly and expression is concerned. It provides a critical analysis of the situation of each theme as against the International, regional and national legal frameworks, policies and standards.

2. Bloody Elections

Uganda has so far held six presidential and parliamentary elections since the takeover of government by the NRM guerrilla movement in1986; 2005,2006, 2009, 2011, 2016 & 2021 (Electoral Commission 2025). Important to note that these elections have always been highly contested. In 1980, general elections were conducted and Uganda Patriotic Movement (UPM), which was Museveni's party contested the elections, thereby resorting to an armed struggle challenging the results. The armed struggle took over 6 years and in January 1986, Museveni overthrew the military government and established the National Resistance Movement (NRM) government. The NRM government governed through the no-part system (known as the movement system) until the 2005 referendum which changed the political system to multiparty system. The subsequent elections from 2006 were conducted under a multiparty system allowing other parties other than the NRM participate in the elections (Electoral Commission 2025).

Given the above history, ever since 1986, all elections have been marred with violence with the army and security agencies making a huge contribution (Serumaga 2016). The 2006 elections were not an exception to violence orchestrated by the security agents.

In the 2006 general elections, the army was heavily deployed and incidents of shooting live bullets into the crowds were witnessed. For example, the week before the elections, Lieutenant Ramathan Magala shot at a crowd of Forum for Democratic Change (FDC) supporters at Bulange, killing three and injuring several, and he was never prosecuted. Further, Colonel Bugingo, head of the Military Police slapped Major Ruranga (head of election management in FDC) at the FDC offices at Najjanankumbi and a military convoy rammed into a group of Besigye supporters at Mukono town as Besigye addressed them a few days before the elections, leaving many critically injured. Further, Fox Odoi, who then was President Museveni's senior legal aide was depicted in the press pointing a gun at opposition party supporters in Tororo on election day and no action was ever taken against him (Gloppen, et al 2006). In the 2011 elections, similar patterns of violence by the military and state officials were noted. The EU Election observer mission, in their preliminary report stated that, 'notwithstanding a number of incidents of violence and intimidation, especially on Election Day, the electoral campaign and polling day were conducted in a peaceful manner' (EU 2021) and further, the UPC/FDC petition questioned the massive deployment of armed security personnel throughout the country allegedly to intimidate voters (EU 2021). It was also reported that the army and police forces brutally quelled protests, leaving several people killed and several opposition leaders arrested (Gibb, 2012).

In the 2016 Elections, the heavy deployment of security personnel was further witnessed and as Nakijoba says, the deployment instilled fear among the public especially women and may have discouraged some of them from exercising their right to vote. Further, on February 15 2016, there was violence in Kampala with the death of one person when Besigye attempted to tour some parts of the city centre. Beyond physical violence, the security sexually assaulted women as for example Remy Bahati of NBS TV was fondled and sexually assaulted by security personnel on March 1 2016 while covering am incident at Besigye's home (Oloka-Onyango & Ahikire 2016, 224,226).

The police continued to fire live bullets into the crowd in order to disperse people to stop Besigye from talking to the internally displaced people at Teriet Camp in Bukwo district on January 6 2016 January 6 2016, police opened fire with live bullets (Mukibi 2016). In another incident, the Secretary General of the NRM party warned youth that the state was prepared to shoot and kill anybody who they deemed to be disorganising and destabilising the peace and security in Kampala

and Wakiso (Asiimwe & Gaaki 2016). These incidents which continue to go unchecked impute impunity exhibited by the state through its agents and is injurious to democracy.

The 2021 elections were not any better, they were worse. They were characterised by killings, violent arrests and harassment of the opposition presidential candidates Patrick Amuriat of the Forum for Democratic Change and Robert Kyagulanyi, of the National Unity Platform, their supporters and journalists. On November 18 and 19, security forces violently clamped down on protests following the arrest of Kyagulanyi leading to 54 deaths. (HRW 2021). Police fired teargas and live bullets to disperse crowds during opposition rallies in the name of Covid-19 regulations restricting public gatherings. (The Observer 2020) To make it worse, Security Minister Elly Tumwine told the public that the police have the right "to shoot you and kill you." (NTV 2020).

The most recent elections in Uganda were the by-elections in Kawempe North that happened in March 2025. The by-election, held on March 13, 2025, triggered by the death of former MP Muhammad Ssegirinya, was won by the National Unity Platform (NUP) candidate Elias Luyimbazi Nalukoola with 17,764 votes, while the NRM's Faridah Nambi finished second with 8,593 votes (Mulindwa 2025). The elections were characterised by heavy military deployment, violence, beating and many were left injured. The opposition candidate from the National Unity Platform (NUP), Nalukoola Elias was beaten on the day of nominations, with his shirt torn by the security agencies and a number of journalists were beaten by the army. Nalukola filed a suit against the government for his torture and Matovu reports in an article that "Mr Nalukoola says he was denied medical treatment and forced into a drone van, where he was stuffed beneath the rear seat and continuously punched and stepped on" (Matovu 2025). Many NUP supporters and mobilizers were violently beaten and injured. The Parliament of Uganda condemned the security excesses in the elections, and the Minister for State of Internal Affairs acknowledged the same and promised to take action (Parliament 2025).

What is common is the direct involvement and participation of the military and state officials in the violence during the election which undermines democracy, as the will of the people. The bloody elections reflect a dying democracy as the elections are a military operation and there is nothing much the Electoral Commission, which is a civilian body can do as there is a thin line between war and elections in Uganda. This is exhibits the weak democracy-especially when the commander in chief does not come out to unequivocally condemn these acts of violence. Uganda goes to the general polls in January 2026 and the trend as examined above is mostly likely to happen and even get worse until Uganda decides to remove the army and other institutions of coercion from elections.

3. Fusion of arms of government

Separation of powers is a cornerstone for any democracy. As it has been argued by many scholars, especially Dicey, separation of powers is the essence of constitutionalism and a universal criterion of constitutional government (Vile 1967). In essence, the ideal of separation of powers sets the rubric in which all actors must exercise their powers in ensuring the running of government in accordance with the rule of law. As indicated in the introduction of this chapter, Uganda is supposedly a democracy anchored in the principle of separation of powers, independence of the arms of government and the interdependence of checks and balance. Chapter Seven of the Constitution provides for the executive, which includes the President, the Vice President, Prime Minister and the ministers. Uganda has one of the largest cabinets in the world with 81 ministers, beating Turkey's, Kenya's and Namibia's cabinets. The president exercises wide executive authority through the appointment of his advisors, all heads of the national commissions, the judges of the high court, the justices of the court of appeal and the Supreme Court. He further, appoints the Judicial service commission, which is responsible for the recruitment and discipline of the judicial officers.

3.1. MPs doubling as Minister violates separation of powers

The Ugandan Constitution under articles 113 and 114 permits the President to appoint a Member of Parliament (MP) to concurrently serve as a Minister. This provision has sparked debates about its constitutionality, particularly considering the principles of separation of powers and public interest. The Constitutional Court delivered a landmark judgement in the *Constitutional Petition No. 10 of 2018* and *Petition 16 of 2016* in which it emphasised that a judicial officer who has not resigned from their judicial position/office cannot simultaneously hold public office through a Presidential appointment, as this practice breaches the principle of separation of powers and undermines independence of the judiciary among others (Muhwezi, 2010 UGCC 10 and Kasango, 2021 UGCC 2).

This judgment has made it clear that a judicial officer cannot serve with one leg in the executive and the other in the judiciary. Similarly, there is growing concern about the fusion between the executive and the legislature, as 60 MPs are appointed as Ministers. This fusion compromises the principle of separation of powers and warrants further scrutiny. While some may argue in favour of this practice, the principle of separation of power remains at risk. MPs doubling as Ministers continue to be an issue that undermines the public's delegated power, as defined in the social contract. Having MPs double as Ministers creates a fusion between the Executive and the Legislature, which directly violates the principle of separation of powers. Ministers are bound by

the principle of collective responsibility, even when decisions made at the executive level conflict with the interest of their constituents. The problem arises when cabinet decisions do not align with the needs of the voters. The power entrusted to MPs by the public is compromised, as voters unknowingly lose their ability to hold Ministers accountable for decisions that affect them. For example, being bound by collective responsibility, when cabinet takes a decision such as tabling a new law or compulsorily acquire land, the Minister is expected to present and vehemently present and support the decision regardless of the position of their electorates.

Article 85(2) of the Constitution prohibits an MP from holding any office of profit or emoluments likely to compromise his or her office. However, MPs who are appointed as Ministers violate this provision, receiving multiple benefits such as vehicles, fuel allowances, and furnished offices for both their roles as MPs and as Ministers. This creates a conflict of interest, as these MPs are meant to hold the Executive accountable while benefiting from being part of it.

Another significant issue is the representation gap that arises when MPs double as Ministers. In such cases, MPs do not effectively represent their constituents in the house because they are always occupied with state duties. The Speaker of Parliament has raised concerns about the absenteeism of Ministers in the House on various occasions. (Wadero, 2023). The MPs are supposed to provide oversight over the government, which they do in the Parliamentary committees. The MPs who double as Ministers do not participate since they are Ministers denying the representation of their constituents the oversight function.

The conflict of interest is particularly evident when balancing ministerial collective responsibility with the views and needs of the voters. For instance, how can the Minister of Lands articulate the grievances of their voters in opposition to a government bill on land? How will they present both views? If they are bound by the collective responsibility principle, then who represents the dissenting views of their constituency? This means that their voters are left out completely with no representation on this issue. When an MP is voted in, the terms of reference are clear, to represent the voters. When they are appointed as ministers and they hardly have time to respond to the community needs as they are busy with state duties, which is a breach of the social contract.

This fusion of the Executive and Legislature needs to be addressed to ensure a clear separation of powers. The guidance provided by the Constitutional Court in the aforementioned petitions should be considered a step towards rectifying this issue. A constitutional Petition was filed to challenge this democratic anomaly, and it is hoped that the constitutional court will not depart from its earlier positions in the petitions above and find that a serving officer of one arm of government

cannot simultaneously serve in another unless they relinquish their original position (Aboneka, 2025).

3.2. Partiality of the Speaker of Parliament in issue

The Parliament provided for under Chapter Six of the Constitution is the legislative arm of the government and oversees all other arms of government and institutions of government. To effectively carry out these roles, the speaker and deputy must be free from any bias, favour and conflict of interest. As it is with the British Parliament, the Speaker of parliament once elected, resign from their political party so as to stir the house with impartiality. The aim is to allow the house to exercise its functions without interference and safeguard the sovereignty of the parliament. (Rangarajan, 2024). Uganda's speaker and deputy speaker subscribe to the NRM Party and also attend the NRM Caucuses. It is, therefore, difficult to comprehend that the speaker and deputy will be neutral and objective in stirring the house a day after attending the NRM caucus where collective decisions are taken and thereby parliamentary sessions are a mere rubber stamping. The biggest question then is, if the party has taken a position on an issue to which the speaker is privy to, what then is the debate for? Will the Speaker of the House stir the debate in the house objectively yet, there is an existing party position on the same? This does not promote organic processing and debate of issues in the house as most of the issues are predetermined.

The Speaker of Parliament has on some occasions been seen to shut up the MPs while they are submitting on the floor of parliament and demanding apologies and withdraw of their statements from members of parliament (Kiyonga 2024). During the debating and finally the passing of the National Coffee Amendment Bill[1], there were concerns about the impartiality of the speaker, Annita Annet Among with the leader of the opposition asking the Speaker to recuse herself for the statements she had made earlier, which were allegedly targeting some MPs. The speaker refused to recuse herself, but also failed to explain why there was heavy deployment of security in and around Parliament (UBC 2024).

Further, after the house was suspended because of the scuffle that ensued, lights were switched off and six opposition MPs were violently arrested by the plane-clothed security operatives (The Ultimate Post 2024). Under section 2 of the Parliament (Powers and Privileges Act), the MPS enjoy qualified privilege and therefore, their views and their person are protected. The fact that the

[1] The Bill's purpose was to amend the National Coffee Act, 2021 and dissolve the Uganda Coffee Development Authority in order to align with Government's policy of rationalisation. The scrapping of the authority sparked heated debates as majority of those opposing the move intimated how this would weaken the coffee sector given the alleged inefficiency of government departments. The bill, was however passed on 6 November 2025 amidst heightened contestations.

Speaker of the House failed to protect her members but only rushed out for her own security begs the question of whether the institution of Parliament is independent and safe. The attack on MPs inside the august house is regrettable and an overstepping of executive security.

3.3. Army in a civilian Parliament?

Uganda's Constitution provides for ten army MPs representing the army (Article 78 2(b)). Much as the rationale was based on Uganda's unstable past, there is no justification for maintaining the army in the parliament in this modern era. The Constitution prohibits the army from participating in political activities and indeed, the Parliament is an arena of partisan politics. Besides this, the serving military officers are accountable to the Commander in chief who is the head of the executive and it is an offence in the martial law to defy the orders of your commander. This, therefore means that all times, the army MPs will always accountable to their commander in chief and less of the Parliament and its people. It is not known at what point the army MPs vote on a clear-cut partisan issue between the government and the opposition. This dual role creates a fusion between the executive and the legislature and in the modern democracy, there is no place for the active army in civilian spaces such as parliament.

4. Freedom of assembly under attack

The right to freedom of peaceful assembly and association is a fundamental human right, as it is one of the key facets of civic space for any open and democratic state. (UDHR 20), (ICCPR 21 &22), (African Charter 11) (Constitution 29(1)(d)). This right enables citizen to participate in the democratic governance of their country through collective actions. It is a form of expression which must be protected. Uganda has both a negative obligation, not to violate the right and a positive one, to protect to the latter the protesters and any form of assembly. Uganda has shutdown internet several times, in 2006 during the first presidential election debate and in the 2016 and 2021 elections (Access Now 2023). Facebook too has been closed since 2021 for reasons that it was arrogant (Daily Monitor 2022). These have impeded the people in Uganda from exercising their freedom of expression and participating in democratic processes of holding their leaders to account among others.

In 2024, Ugandan citizens held peaceful anti-corruption protests demanding for the resignation of the Speaker of Parliament and other corrupt members of parliament (MPs) a lifestyle audit of all MPs; and a reduction in their salaries and allowances. Such protests are what are expected in a free and open democratic state but in this case, the protest was foiled from the start by the brutal arrest and torture of over one hundred protesters by the Military (Ajuna 2024).

Despite constitutional protections and the fact that the Constitutional Court declared seeking police permission and arbitrary stop of a public meeting, the police still insist on notifications which are by implication, permission and still stop public gatherings. On July 18, 2024, the police summoned organizers of the recent anti-corruption protests and informed them that they would not allow demonstrations to take place on the pretext that some 'wrong elements' wanted to use the gatherings to disrupt public order and incite violence. Likewise, from July 23 2024, over forty peaceful protesters were charged with common nuisance for allegedly causing inconvenience to the public (Kiiza, 2024).

According to the Civicus Monitor 2024, Uganda scored 30/100 in terms of civic space and is marked as repressed. The report notes that;

> On 17th July 2024, police injured four journalists with tear gas canisters while disrupting a meeting organised by local leaders to inform residents of their rights against ongoing evictions by the National Environmental Authority (NEMA). Joseph Balikuddembe from 89.2 CBS FM, Tonny Ngambo from 88.8 CBS FM, Ali Mubiru from Pearl FM, and Victoria Bagaya from NBS TV sustained serious injuries. (Civicus, 2024).

Conclusively, it is manifestly obvious that the state is using subordinate laws as convenient tools at their disposal to both curtail and criminalize the right to peaceful protest. Uganda is experiencing clear patterns of repression against peaceful assembly, association and expression as well as constrained work of activists and journalists, as is reported by the Civicus Monitor.

5. Conclusion

Uganda is on a worrying trajectory as it is regressing, replacing democratic normalcy with impunity and excesses of the army and security agencies which goes unchecked. The high level of intolerance, clamping down of the freedoms of associations, assembly is a threat to democracy. The bloody elections leave a permanent scar on the lives of Uganda and subverts the will of the people and therefore the army should get out elections since they are a civic exercise and not a military operation.

6. Recommendations

There is a need to have the army out of civic exercises like the elections to mitigate the damages caused and further establish an independent civilian oversight authority to hold security agencies accountable for their acts as it is in other jurisdictions such as Kenya and South Africa.

Uganda needs to undertake legal reforms to ensure that ministers do not double as members of Parliament and further ensure that Parliament remains independent to play its oversight function.

On the whole, there is a need to respect constitutionalism and the rule of law to ensure that every actor performs their roles under the established legal framework with dire consequences for the violations and abuse of the same.

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The State of Freedom of Expression in Zambia

Kafula Mwangilwa Kasonde

1. Introduction

The internet is fundamental to modern day communication; a platform to access information and exchange ideas. It has revolutionised dissemination of information; allowing for multitudes to be reached all at once. For Zambians, as for any other nation, the internet has made expression of views easier; allowing one to reach multitudes with a click of button. The internet has created a medium through which Zambians can more easily and conveniently discuss issues of democracy. Thus the focus of this chapter will be on freedom of expression on the internet in Zambia. The chapter analyses the laws around use of the internet in Zambia and how this affects the right to freedom of expression and ultimately the state of democracy. The chapter anchors its discussion of the right to freedom of expression on the international normative standard of the right. Although the chapter does not go into details about it, it succinctly but comprehensively highlights this standard by referring to case law on the right. Against this background, it then discusses Zambia's legal provisions that provide for and regulate the right to freedom of expression as well as case law on the same. The discussion ends with a conclusion about how well Zambia is fairing as a democratic state in terms of ensuring that its citizens can freely express their opinions by means of the internet.

However, this presents its own challenges. The most tangible is the spread of misinformation, cyberbullying, sharing of obscene material and defamatory stories. This can threaten both private citizens and is a potential threat to national security and public order (N'gambi 2021, 209-210. While these sides appear opposed to each other, they can work to complement each other once a proper balance is struck. The international normative standard discussed below strives to maintain this balance.

2. International normative standard on the right to freedom of expression

The African Commission on Human and Peoples' Rights (the Commission) has, under principle 5 of its Principles on Freedom of Expression and Access to Information in Africa (2019) emphasised the need for states to interpret and implement the protection of the right to freedom of expression in line with international standards. The international standard is embodied in international instruments that Zambia is a party to, and which create binding obligations such as the International Covenant on Civil and Political Rights and the African charter on Human and

Peoples' Rights (African Charter); both of which were ratified by Zambia in 1984. Another example is the African Charter on Democracy, Elections and Good Governance which, according to the African Union, was ratified by Zambia in 2011. It is also embodied in soft laws that are created by the treaty bodies of the inter-governmental organisations or those created pursuant to the treaties mentioned above.

The Commission stated in the case of *Amnesty International v Zambia (1998 para. 54)* that freedom of expression is a basic human right; vital to an individual's personal development and political consciousness, and participation in the conduct of the public affairs of his country. It further stated in the case of *Ghazi Suleiman v Sudan (2003)* that freedom of expression is the cornerstone of democracy and a means of ensuring respect for all human rights and freedoms. In its judgement, the African Court also quoted the case of *Handyside v United Kingdom (1976, para 49)* where the European Court on Human Rights stated that freedom of expression extends to cover even information or ideas that offend, shock or disturb the state or any sector of the population in line with principles of pluralism, tolerance and broadmindedness, without which there is no democratic society.

The Commission carefully noted in *Garreth Anver Prince v South Africa (2004 para. 44)* that it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance. The only legitimate reasons to limit freedom of expression are found in Article 27(2) of the African Charter (the rights of others, collective security, morality and common interest). In addition, the limitation, although based on these reasons, must meet the three-part test. The test was referred to in the case of *Agnes Uwimana-Nkusi v Rwanda (2019 para. 163)***.** The derogation must be provided for by law, serve a legitimate interest and must be necessary in a democratic society.

2.1. The restriction must be provided for by law

On the basis of its jurisprudence and applicable international law, the Commission has guided on Article 9(2) allowing for restrictions to the right to freedom of expression within the law. It only accommodates national laws drafted with sufficient clarity, of general application and conforming to international standards. Thus states are not allowed to evade their obligations or adopt laws inconsistent with binding international laws. The commission emphasised this in the case of *Constitutional Rights Project v. Nigeria, Communication (1994)* and added that allowing national law to take precedence would, make the right ineffective. It would defeat the purpose of codifying certain rights in international law and indeed, the whole essence of treaty making. This position

was also adopted by the African Court on Human and Peoples' Rights (African Court) in the case of *Konate v Burkina Faso, (2013)*.

2.2. The restriction must serve a legitimate interest or purpose

The conditions for legitimate interest are those as outline in Article 27(2) of the African Charter as stated above. In addition, the restriction must apply in clearly established circumstances and uphold a public interest. In the case of *Legal Resources Foundation v Zambia (2001 para. 72)* the Commission stated that the reasons for possible limitations must be based on legitimate public interests. In addition, the disadvantages of the limitation must be strictly proportionate to and absolutely necessary for the benefits to be gained. It cautioned in the case of *Constitutional Rights Project v Nigeria (1999 para. 69)* that a limitation should not consequently make the right illusory.

2.3. The restriction must be necessary in a democratic society

Necessity commands a consideration of the proportionality between the extent of the limitation measured against the nature of right and, on the other hand, aims to prevent unreasonably excessive limitations. Therefore, the justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow as stated in *Scanlen and Holderness v Zimbabwe, (2009 para. 94-98, 42)*. Even where a limitation is necessary, the state still has a duty to take the least intrusive measure available.

According to the case of *Zimbabwe Lawyers for Human Rights v. Zimbabwe (2009)*, proportionality entails that the punishment for a particular offence should be proportionate to the gravity of the offense itself. It aims to determine whether there has been a balance between protecting the rights and freedom of the individual and the interest of the society. It is therefore necessary to consider whether: there are sufficient reasons to justify the action; there is a less restrictive solution; and if the action destroys the guaranteed right.

Even restrictions on the basis of national security can only be entertained where there is a real risk of harm and a close causal link between the expression and the harm. National security was defined in *Sudan Human Rights Organisation v. Sudan Communication (2003)* as how the State protects the physical integrity of its citizens from external threats, such as invasion, terrorism, and bio-security risks to human health. The Principles on Freedom of Expression and Access to Information in Africa (2019) under principle 22(5) provide that the relationship between the imposition of limitations and public order or national security interests must be explicitly justified. This invariably extends to prohibition of any propaganda of war, advocacy of national, racial or

religious hatred that constitutes incitement to discrimination, hostility or violence, as established by international human rights law and jurisprudence.

3. Constitutional basis for the right to freedom of expression in Zambia

The Constitution of Zambia provides for non-discrimination under Article 11 on the grounds of race, place of origin, political opinions, colour, creed, sex or marital status. Freedom of expression is provided for under Article 20. It provides as follows:

> Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

The right can be limited where it is reasonably required in the interests of defence, public safety, public order, public morality or public health. It can be limited where it is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, for preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television.

The provision does not expressly provide for opinions expressed over the internet. Even the argument that it has been impliedly covered under wireless broadcasting in the derogation clause is far reaching. It is subject to debate as to whether internet broadcasting comes under the meaning of wireless broadcasting. Thus, the right to freely express one's opinion over the internet has been limited using cyber related and electronic communications related laws in addition to provisions in the penal code; all of which are examined below.

4. Other laws

4.1. The Penal Code Act, Chapter 87 of the Laws of Zambia (Penal Code)

Section 53 of the Penal Code gives the President the power to prohibit publications contrary to public interest; whether published within or outside Zambia. Publication, as used here means to communicate to a third party. The President may prohibit all publications by a person or an association of persons and the order can apply retrospectively. It can also affect subsequent

publications by the same person or association of persons even if published under any other name if the publication is a continuation of the prohibited publication. Distribution, reproduction or possession of the prohibited material is also an offence.

Section 53 gives the President absolute discretion to prohibit publications. Therefore, the latter is not answerable to anyone over the decision to ban publications. There are no safeguards to ensure that this power is exercised reasonably, and it does not violate one's freedom of expression. The relevance of this law is questioned given that it is a colonial legacy. It is challenging to find its relevance in the statute book when there are several other laws regulating expressions and limiting the exercise of this freedom. It is argued that a person whose publication is prohibited is left with no remedy because this decision cannot be challenged in court (Ng'ambi 2021, 208). However, the Supreme court in the case of *Attorney General v Roy Clarke (2008)*, stated that all decisions made by public offices are amenable to judicial review and 'there is nothing like unfettered discretion immune from judicial review. In a government under law, like ours, there can be no such thing as unreviewable discretion.'

Section 57 of the Penal Code provides for sedition by criminalising uttering seditious words, publishing, distributing and reproducing any seditious publication. Although sedition is not defined, section 60 is useful in understanding the meaning of the word. It provides that seditious intention is an act to bring into hatred or contempt or to excite disaffection against the Government as by law established. Section 61 attaches liability for publishing seditious material to the office bearers, the person referred to as editor or author in the published work or one proved to be such, or one proved to have published the work.

In a liberal democracy disaffection will habitually be created since opposition parties thrive on critiquing incumbents and selling themselves as better candidates in the hope of being voted for (Ng'ambi 2012, 207). This then begs the question of compatibility of the laws with democracy. Justice Olatawura in the case of *Chief Athur Nwako v the State (1985)* answered this question when he stated as follows:

> We are no longer the illiterates or mob society our colonial masters had in mind when the law was promulgated … To retain Section 51 of the Criminal Code in its present form, that is even if not inconsistent with the freedom of expression guaranteed by our constitution, will be a deadly weapon to be used at will by a corrupt government or a tyrant ….

Apart from defamation law under the Defamation Act, Chapter 68 of the Laws of Zambia allowing for remedies under the civil jurisdiction of the Courts, the Penal Code also provides for defamation.

Section 169 of the Penal code defines defamatory matter as matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade by an injury to his reputation. Section 191 criminalises libel, which is publication of defamatory matter by print, writing, painting, effigy or by means otherwise than solely by gestures, spoken words or other sounds.

Section 69 provides for the offence of defamation of the President. Therefore, publishing material bringing the President into hatred, ridicule or contempt is an offence. This is criticised for being averse to free speech. The Commission has in its jurisprudence also criticised defamation laws such as this provision. argues that defamation is adequately dealt with under private law and it need not be criminalised. Instead, defamation must be limited to instances where defamatory matter is published with intent to extort or commit other crimes. And criminality based on that fact (Ng'ambi 2021, 206).

4.2. Data Protection Act No. 3 of 2021

Section 3 of the DPA provides that it applies to processing of personal data, whether wholly or partly performed by automated means and to any processing otherwise than by electronic means The Act is analysed given that it covers personal information relating to citizens. The right to privacy and to freedom from interference with one's correspondence are pertinent to freedom of expression because they ensure that persons can freely express their opinions without fear of reprisal or surveillance.

Data processing is centred around the people in respect of whom data is processed (data subject). The aim, as provided in section 12, of the DPA is to ensure data is collected for an explicit, specified and legitimate purpose and processed lawfully, fairly and transparently; thereby preventing arbitrariness. Thus, even the powers of inspectors in section 8 to enter premises and access information from data processors and controllers and to take copies of extracts of data must be exercised in accordance with these principles. That is why inspections can only take place during the day and a warrant is required. Even the exceptions to the requirement for a warrant before an arrest must be exercised in accordance with the principles in section 12 (section 9).

However, the fact that an inspector can arrest without a warrant, where the inspector has reasonable grounds to believe that a crime is about to be committed, is averse to right to freedom of expression. There is no provision guiding on what is to be considered as reasonable grounds; leaving the provision vulnerable to arbitrary use. Where laws give power to an officer to potentially

infringe on citizens' freedom to express themselves freely, there can be no room left for arbitrariness.

The DPA allows for processing of data in the absence of the consent of a data subject in, among others, public interest (section 13). The term such 'public interest' is not defined and its meaning is more often than not an issue left to the judgment of the authority responsible. This presents an issue because it means there are no safe guards against arbitrariness. Moreover, data controllers are exempt from the provisions of all but four principles of data processing when processing data in the interests of national security, defence and public order (section 39). Again, the determination of what amounts to national security is left to interpretation. It must be understood that the application of this Act and other measures to protect the right to privacy can have a disproportionate impact on the legitimate exercise of freedom of expression. That is why clarity of provisions embodying limitations is very important; otherwise, such limitations should not be entertained as they fall below the international normative standard.

4.3. Cyber Security Act No. 3 of 2025 (CS Act) and the Cyber Crimes Act No. 4 of 2025 (CC Act)

The predecessor to these Acts, the Cyber Security and Cyber Crimes Act No. 2 of 2021, was in effect in Zambia until April 2025. The Acts have been criticised as more regressive than their predecessor in law. The definition sections of the Acts and contain vague and broad definitions attached to terms that have a potential to impact use of the internet by persons to freely express themselves and to be used to target political dissenters. The vague definitions also make it a challenge for internet users to regulate their behaviour in compliance with the law because there is uncertainty as to what type of expression is prohibited and what is allowed. Further, the Acts are highly punitive; making no distinctions between minor infractions and significant actions relating to cyber security.

The Cyber Security Act (CS Act)

The CS Act aims to provide for cyber security in Zambia. It aims to regulate cyber security service providers and provide for the designation, protection and registration of critical information and critical information infrastructure.

Under section 3, the CS Act centralises control over the Cyber Security Agency (Agency) by placing it under the Office of the President; suggesting potential for excessive executive over reach and interference. This is compounded by the fact that the President is the appointing authority of the Chief Executive Officer of the Agency and deputies (Section 5). The Agency is responsible for

designating information or information infrastructure as critical information or critical information infrastructure (section 9). The criteria for such designation is provided for under section 10 in broad words. Given the given the obligations and liability on a controller (a person who controls or possesses critical information), the criteria need to be clear.

Inspectors under the CS Act have broad powers to access, search and seize a computer or computer system; increasing the risk of arbitrary use (sections 18, 56 and 59). In addition, a computer system is very broadly defined under section 2 to include a phone or any device which inputs, outputs processes and stores data including the internet. Reading this definition and section 56 together raises serious concerns about freedom of expression by use of the internet.

Section 21 of the CS Act designates the Central Monitoring and Coordination Centre (Centre) as the entity through which lawful interceptions are to be effected and interceptions forwarded. An electronic communications service provider, the Agency, the Zambia Information and Communications Technology Authority and any other authorised person are allowed to possess an interception device, intercept communication and forward it to the Centre. A lawful interception can be effected where a law enforcement officer, upon reasonable suspicion of a crime having been, being or likely to be committed applies to a judge to permit interception and the application is granted. However, interceptions can also be effected following an oral request by a law enforcement officer where it is not reasonably practical to apply to a judge for an order (sections 29 and 30).

In this case, the officer must furnish the electronic communications service provider with a written notice of the request within 24 hours of the oral request and submit specified documents to a judge within two days after interception. The judge to whom the documents are submitted may then make an order that they consider necessary. By implication, this includes denying the order. The issue with this exception is that the order comes after the communication has been intercepted. It then begs the question of how the judge can tell that the intercepted information has been used for an intention contrary to the provisions of the Act. With the broad powers and lack of an independent oversight mechanism to monitor the interceptions, accountability is seriously undermined.

The Cyber Crimes Act (CC Act)

The CC Act aims to provide for offences relating to computers and computer systems by providing for the protection of persons against cyber crimes and children online. Disclosure of data relating to 'critical information' or 'critical information infrastructure' (both of which are vaguely defined);

is prohibited (sections 3,5 and 7). It therefore fails to make safeguards for whistle blowers or even journalists who may come into possession of information on, for example, corrupt dealings merely because it is designated as critical information. Critical information is so broadly defined, it could essentially be anything the Agency designates as such as long as it is computer data that relates to public safety, public health, economic stability, national security, international stability and the sustainability and restoration of critical cyberspace (section 6).

Recording a conversation even when one is part of it is a crime unless prior consent of all parties is acquired or unless the recording was unintentionally recorded (section 10). This makes whistleblowing practically impossible because the Act is silent on how to it establish that a recording was made 'accidentally' in order to escape liability. In providing for identity related crimes, the Act fails to provide for legitimate anonymous or pseudonymous activities vital to expression especially over highly contentious issues of governance (section 14). The CC Act criminalises use of a computer to cause damage to the reputation of another person or to subject another person to public ridicule, contempt, hatred or embarrassment, thereby adding on to criminal defamation provisions (section 22(2)).

5. Case law on freedom of expression

5.1. Chapter One Foundation Limited v. Zambian Information and Communications Technology Authority (ZICTA) 2021/HP/955

In this case, Chapter One Foundation, a non-governmental organisation, challenged through judicial review, the decision by ZICTA to interrupt internet access and shut down access to social media during voting. It was reported that the incumbent, Edgar Lungu had sought to 'maintain peace and order during the voting period'. However, before a judgment was rendered, Chapter One Foundation and ZICTA entered into a consent judgment. ZICTA undertook not to act or make any omission outside of its legal regulatory powers and authority which may inhibit or interrupt the flow of and access to information. This was in relation to all available telecommunication platforms under its control and regulation where the interest of consumers and their consumer and constitutional rights are threatened.

The internet shutdown was a blow to the right to freedom of expression because the youth were very crucial to the 2021 general elections in Zambia with some describing the election as a social media election. The youth were very instrumental to Zambia's 2021 general elections. They engaged in discussions and engaged with election contestants mostly though social media platform such as Facebook, WhatsApp and X (then Twitter). 2021 also saw the highest youth voter turnout since 1991 with young people making up more than half the electorate (Restless

Development 2021). Although the case was not heard on its merits, it is significant as it is a clear demonstration of the importance of the internet to freedom of expression as a vital component of democracy.

5.2. Fred Mmembe, Bright Mwape v The People and Fred Mmembe Masautso Phiri Goliath Mungonge v The People (1996) S.J. No. 4 of 1996.

The appellants had been charged for defamation of the President pursuant to the provisions of section 69 of the penal Code. They challenged the constitutionality of the provision; anchoring their challenge on articles 20 and 23 providing for freedom of expression and right to non-discrimination respectively.

The court opined that it was not right to consign the President into the general rank and file of the general citizenry. The court also stated that the President is above all other citizens and that creates a public interest consideration aimed at maintaining the public character of persons such as the President from destructive attacks upon their honour and character. This was held equally important as the right to freedom of expression. Therefore, section 69 was reasonably required, in effect, to forestall a possible unpeaceful reaction from the citizens and supporters and to protect the reputation of the President. In a functional democratic society, the holder of the office of President is a servant of the people; not their master (Ng'ambi 2021, 207). Whether the President has a good reputation is dependent on their conduct while in office (Chanda 1998, 144). If the President is to be held accountable, the citizenry must be free to express themselves and speak to their suitability for the office without fear of criminal sanctions.

Ng'ambi (2021, 207) further argues that defamation of the President creates a double standard because Presidents defame their opponents while immunising themselves from legal suits and making it criminal for their opponents to do the same. The Commission has, in accordance with international jurisprudence, called for the repeal of criminal defamation laws, concluding that these laws are an affront to freedom of expression and violate Article 9 of the African Charter. It has stated that these laws reflect the policy of governments to stifle opposition and limit public debate.

6. Conclusion

This chapter has endeavoured to show the state of citizens' right to freely express themselves on issues of democracy in Zambia. It has shown how Zambia is struggling to maintain a proper balance between allowing citizens to freely express themselves and restricting the right within the law in a way that pursues a legitimate aim and is necessary in a democratic society. Thus, much

more needs to be done to enhance enjoyment and fulfilment of this right. This chapter has shown that some of the legal provisions seeking to restrict the right have a colonial legacy and questions are still being raised about their relevance in the statute book. On the other hand, it has more modern laws aimed at curbing hate speech, and commission of other crimes using the internet whose criticism is mainly based on the state's overreach in communication of citizens consequently violating freedom of expression. It has also shown how much of the jurisprudential developments in terms of case law were based on laws enacted before the dawn of the internet age with only one recent major case. It is hoped that a proper balance in accordance with the international normative standard will be struck in order to enhance freedom of expression and ultimately, democracy.

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From Reform to Regression: How Executive Control over the Judiciary Threatens Democracy in Zimbabwe

Nqobani Nyathi

1. Introduction

This chapter examines how executive interference in Zimbabwe's judiciary has contributed to democratic regression. An independent judiciary is key to a functioning democracy as it guarantees accountability, upholds constitutionalism and provides checks on executive power (Fowkes 2016, 219; Manyatera 2022, 8-9). Judicial officers are key in enforcing the rule of law and protecting fundamental rights (Bazezew 2009, 365). When judicial independence is compromised, democratic governance is weakened (International IDEA 2023). In Zimbabwe, the judiciary has increasingly been manipulated to serve executive interests, undermining democratic accountability, eroding public confidence and entrenching authoritarianism (Sajó 1999, 225-244).

Historically, Zimbabwe's judiciary has endured politically charged turbulence that has at times severely impaired its institutional integrity and ability to protect human rights (Saller 2004, 95). The 2013 Constitution initially raised hope, as it introduced significant reforms promoting transparency and public participation in judicial appointments. However, the constitutional amendments have curtailed these gains.

This chapter argues that the post-2013 regression in judicial independence, facilitated by executive entrenchment through constitutional amendments, politicised appointments, and weaponised accountability mechanisms has undermined the judiciary's role as a democratic safeguard and accelerated the erosion of democratic governance in Zimbabwe.

2. Zimbabwe's judiciary and democratisation in context

2.1. The Judiciary under the Lancaster House Constitution

The judiciary in Zimbabwe has historically been a site of struggle in the country's democratisation process. Before the adoption of the 2013 Constitution, there was considerable political influence in appointments of judges (Saller 2004, 20). There was limited public participation and oversight. Under the Lancaster House Constitution (1980-2013), the President had near total control over the appointment of judges, with only a requirement to consult the Judicial Service Commission (JSC), with the President having the power to override the advice of the JSC (DGRU 2006, 246). This process created an impression that appointments were often based on political loyalty rather than merit (Van de Vijver & DRU 2006, 246). Ultimately, this undermined judicial independence,

a central feature of democracy. At the peak of the decline of Zimbabwe's judicial institution, judges seen as independent faced reprisals, including forced resignations and threats of violence (Fowkes 2016, 209). The then Chief Justice, Gubbay CJ, was hounded out of the bench and replaced by Chidyausiku CJ, with the latter being seen as epitomising a lack of independence and pliable (Fowkes 2016, 209; Magaisa 2019; 154; Mapfumo 2005, 41). As a result, Zimbabwe's judiciary became a key instrument of state control, failing to protect rights and leading to the erosion of the rule of law and democracy (Mapfumo 2005, 41).

2.2. The 2013 Constitutional Reforms and Promises for Democracy

The 2013 Constitution of Zimbabwe introduced far-reaching reforms aimed at enhancing judicial independence (Manyatera 2022, 8). In doing so, Zimbabwe emerged as one of the countries that have constitutional provisions that firmly provide for judicial independence as per sections 164-165 of the Constitution (Fombad 2016, 50). Inspired by democratic models from South Africa and Kenya, the reforms introduced public participation in judicial appointments, requiring that judges be nominated through an open process, publicly interviewed and assessed based on merit (Nyathi 2024).

The new framework required the JSC to advertise judicial vacancies, invite nominations from both the public and the President and conduct public interviews to assess candidates' qualifications and suitability for office (Tembo & Signh 2023, 553). This was a move to ensure that the selection process was based on competence, integrity and independence, rather than political allegiance. While this marked a departure from the past, the country continued to operate under an autocratic regime (Mavedzenge 2020, 184). Despite a fairly progressive Constitution whose preamble explicitly mentions the need to entrench democracy and explicit guarantees of judicial independence (Fombad 2016, 50), the constitution was bound to suffer from a lack of progressive implementation owing to the absence of a conducive political climate. It is therefore not a surprise that just before the provisions of 2013 came into effect, there was an upsurge in judicial appointments, essentially packing the bench (Veritas 2013; Judicial Service Commission 2013).

2.3. Constitutional Amendments and Authoritarian Regression

A major challenge of pursuing constitutional reforms in the absence of corresponding political reforms lies in the heightened risk of ineffective implementation, as structural changes may lack the necessary political will and institutional support to be operationalised. In the Zimbabwean context, the initial optimism surrounding the 2013 constitution was undermined in a similar manner. Instead of fostering judicial independence, the Zimbabwe African National Union-Patriotic Front (ZANU (PF)) led government soon undermined the Constitution in order to

maintain control over judicial appointments. The first rollback came with the first Constitutional amendment in 2017, which removed the requirement for public interviews for the Chief Justice, Deputy Chief Justice and Judge President of the High Court, returning to a system of executive-dominated selections (Tembo & Signh 2023, 556-558; Matanda 2022, 81-82).

The second constitutional amendment of 2021 further eroded judicial independence. In terms of section 13 of the Constitution of Zimbabwe Amendment Act 2 of 2021, the amendment allows the President to extend the tenure of the Chief Justice, Deputy Chief Justice and other senior judges beyond the constitutionally prescribed retirement age, if they elect to do so provided they pass a medical fitness test accepted by the President after consultation with the JSC.

In addition to this, the amendment also enabled the promotion of sitting judges to higher courts without public interviews, further consolidating executive influence over the judiciary. In terms of section 12 of the Constitution of Zimbabwe Amendment Act 2 of 2021, the President, acting on the recommendation of the JSC may appoint a sitting Judge of the Supreme Court, High Court, Labour Court or Administrative Court to the 'next higher court' without going through the public interviews as per the initial provisions of the 2013 Constitution.

To a great extent, these constitutional amendments reversed the gains of the 2013 reforms, ensuring that judicial appointments and tenure decisions remained heavily politicised to ensure that the judges remained pliant reinforcing the state's ability to evade accountability through legal means.

3. Mechanisms of Judicial Subversion in Zimbabwe

Judicial independence is a fundamental pillar of democratic governance (Tembo & Signh 2023, 546), ensuring that the judiciary functions as an arbiter in legal and constitutional matters and therefore ensuring that the executive exercises power in an accountable manner. However, in Zimbabwe, judicial subversion has become a key mechanism through which the executive consolidates power while maintaining a façade of constitutionalism. This section explores some mechanisms through which the judiciary has been weakened in a manner that undermines democracy.

3.1. Politicised Judicial Appointments

As pointed out by Fombad (2016, 50), Zimbabwe is one of the countries that provides for a firm foundation of judicial independence and judicial function. Section 164 of the Zimbabwean Constitution affirms that the judiciary is independent and must apply the Constitution and the law fairly, promptly and without bias or external influence. It further provides that judicial

independence, impartiality and effectiveness are fundamental to the rule of law and democracy. As such, no individual or government entity may interfere with the courts, and the State has a duty to take legislative and other measures to protect and uphold the independence, dignity, accessibility and efficiency of the judiciary. To achieve what the Constitution envisages, the selection process of judges must be transparent and ensure the appointment of people who respect the constitutional values that include fundamental rights, the rule of law and democracy. Judges must therefore be appointed based on their commitment to these values and justice and most importantly, their ability to interpret the law in a principled and consistent manner.

Because the judiciary serves as a safeguard against a state's failure, section 165 of the Constitution highlights the paramountcy of the role of the courts in 'safeguarding human rights and freedoms and the rule of law'. To safeguard this, the appointment process of judges must be at least subjected to scrutiny in order to safeguard judicial integrity. One of the ways of undermining judicial independence has, therefore, been the undermining of the transparent appointment procedures that the 2013 Constitution envisaged as highlighted above (Tembo & Signh 2023, 556-560). These changes have largely created an environment where Judges loyal to the executive may be appointed, or where pliable judges who are deferential to the executive, may be promoted or have their tenure extended, weakening the likelihood of holding those who exercise power accountable. This seems to have been quite intentional. Post-2013, Zimbabwe has amended the Constitution twice, and both amendments have significantly affected the judiciary, especially in terms of consolidating executive control or weakening the mechanisms that ensure transparency.

3.2. Weaponised Accountability Mechanisms

The Zimbabwean context illustrates that judicial accountability mechanisms may be weaponised to target specific judges (Mavedzenge 2024). The case of High Court Judge Justice Erica Ndewere, who was subjected to disciplinary proceedings and ultimately dismissed in 2021 is an example (Rickard 2020; *Ndewere v The President of Zimbabwe* (2022)).[1] Among the allegations levelled against her was the persistent failure to deliver review judgments within the prescribed timeframes, with delays ranging from nine months to two years. While such delays may reasonably give rise to concerns around judicial efficiency or possible misconduct, it is important to note that these shortcomings were not isolated to her conduct alone. Indeed, systemic delays in the

[1] Former judge Erica Ndewere was removed from office following a tribunal inquiry prompted by concerns over "gross incompetence," based on her failure to deliver reserved judgments within the required 90 days and her improper setting aside of a jail sentence for a repeat offender, where custodial punishment was deemed necessary. Although Ndewere argued that the charges were politically motivated, her defence was dismissed, and the tribunal's recommendation led to her removal under section 187(8) of Zimbabwe's Constitution. In this case, she unsuccessfully sought to have her removal set aside on the basis of alleged procedural irregularities.

adjudication process are evident even at the Constitutional Court level. For example, in *S v Chokuramba* (2019), a case concerning the constitutionality of corporal punishment for male children, the apex Court took over three years to hand down its judgment, notwithstanding the relative simplicity of the legal issues involved.

Similarly, in 2016, it was revealed that Judge President George Chiweshe had authored only five judgments over a four-year period, between 2013 and 2016 (The Herald 13 December 2016). Chiweshe was subsequently elevated to the Supreme Court in 2021 (Veritas 2021). These examples create an impression that there is selective enforcement of accountability mechanisms, where disciplinary measures appear to be applied inconsistently and possibly with political motivation.

Judicial independence is best safeguarded when judges, once appointed, are assured that their decisions will not jeopardise their tenure, as the effectiveness of any appointment system is undermined if political actors can easily orchestrate their removal (Manyatera 2022, 18-19). The case of Justice Ndewere thus highlights concerns about the impartiality of judicial oversight mechanisms, suggesting that disciplinary proceedings may be employed not as a tool to uphold judicial standards, but as a strategy to punish judges who are perceived to be independent. In this regard, and in order to safeguard judicial independence, it is essential that the removal of judges from office be subject to strict procedural safeguards and not triggered lightly by performance concerns that may reflect broader institutional constraints.

3.3. Tenure Extensions as a Loyalty Tool

Fixed judicial tenure is widely regarded as a cornerstone of judicial independence, insulating the judiciary from undue political influence (Manyatera 2022, 18). In this context, tenure security becomes essential not only for impartial adjudication but also for upholding the broader principles of democratic governance. It is therefore unsurprising that one of the more subtle, yet potent, methods of undermining judicial independence in Zimbabwe has been the constitutional amendment enabling selective extension of judicial tenure.

The Second Constitutional Amendment of 2021 introduced provisions allowing judges to continue serving beyond the previously mandatory retirement age of 70. Notably, as section 13 of the Constitution of Zimbabwe Amendment Act 2 of 2021 provides, this extension is granted at the discretion of the President, contingent on the judge passing a medical fitness test and after the President's consultation with the JSC. The amendment effectively vested the executive with significant influence over the post-retirement tenure of the Chief Justice, Deputy Chief Justice and other senior judges. This arrangement created a clear incentive for judicial conformity, as judges

seeking tenure extensions may be compelled to align their conduct with executive preferences in order to secure continued service.

The first, and most conspicuous, beneficiary of this provision was Chief Justice Luke Malaba, whose tenure was extended just days before his scheduled retirement (*Kika v Minister of Justice, Legal and Parliamentary Affairs and Others* (2021)). For context, the amendment constitutional amendment took effect on 7 May 2021 and Malaba CJ was supposed to retire on 15 May 2021.

The controversy surrounding Malaba CJ's extension was not merely symbolic. As the head of the judiciary and someone who presides over the meetings of the JSC in terms of section 189(2) of the Constitution, he was expected to uphold the highest standards of impartiality to model institutional integrity and act in a "just, fair and transparent manner" as section 191 of the Constitution requires. Instead, his willingness to benefit from a divisive and contested constitutional amendment, an amendment that was itself challenged through litigation that pitted judges against one another, significantly eroded public trust in the judiciary (*Kika v Minister of Justice, Legal and Parliamentary Affairs and Others* (2021); *Mupungu v Minister of Justice, Legal and Parliamentary Affairs and Others* (2021)). It also illustrated how tenure extensions can be used as a patronage tool to co-opt senior judges and secure a judiciary perceived as sympathetic to the executive.

Such developments strike at the heart of democratic governance. An independent judiciary is a fundamental check on executive power (Bazezew 2009, 365; Fowkes 2016, 219). The manipulation of tenure rules to retain loyal judicial officers not only undermines the separation of powers but also weakens the public's confidence in the courts as arbiters of justice. In this regard, the Zimbabwean case exemplifies how tenure extension mechanisms, when subject to executive discretion, may serve as instruments for consolidating authoritarian control under the guise of legal reform.

4. Restoring Judicial Independence: Pathways towards Democratic Renewal

The judiciary in Zimbabwe has long been subject to sustained political interference, undermining both its institutional integrity and the broader democratic project. Despite early signs of reform, prospects for genuine transformation have been severely constrained under Zimbabwe's 'competitive authoritarian' regime, a political system where democratic institutions exist in form, but are hollowed out by authoritarian practices that subvert meaningful political contestation (Magaisa 2019, 147–148). Although several aspects of judicial independence have suffered

significant regression, it remains important to leverage the remaining constitutional and institutional mechanisms to rebuild accountability and trust in the justice system.

4.1. Enhancing Civic Oversight and Legal Profession Engagement

Historically, civil society organisations (CSOs) and the legal profession have played an instrumental role in advocating for judicial independence and resisting executive overreach (Saller 2004). Strengthening their role within the current context requires deliberate efforts to foster transparency and public participation in judicial appointments and promotions. The Law Society of Zimbabwe (LSZ) must take proactive steps to ensure democratic oversight by nominating independent, competent legal practitioners to serve on the JSC, in accordance with section 189 of the Constitution. However, the current nomination processes remain opaque. Reforming these procedures through the institution of open and transparent nomination mechanisms would be of vital importance in order to second independent lawyers to the JSC.

There should also be a demand for clear, objective criteria for judicial appointments and promotions, drawing lessons from jurisdictions such as Kenya where transparent frameworks for selection have been institutionalised (Deche 2023, 6). As a last resort, there should be strategic litigation against appointments that fail to meet constitutional standards, reinforcing a culture of legality and democratic accountability.

4.2. Reclaiming the Appointment Process: Towards Depoliticisation

The politicisation of judicial appointments and promotions remains one of the main threats to judicial independence and democratisation in Zimbabwe. Despite constitutional amendments that have bolstered executive dominance, there still exist normative safeguards that, if properly implemented, can restore a measure of accountability. For example, when the President is required to consult the JSC, such consultation, under section 339 of the Constitution must be meaningful, entailing written communication of the proposed action, adequate information to assess its impact, and genuine consideration of feedback provided. The controversial extension of the Chief Justice's tenure illustrates a disregard for this requirement, an area that needs oversight under the current circumstances.

Restoring democratic oversight in such contexts demands vigilant monitoring of executive conduct, insistence on procedural compliance and advocacy for transparent decision-making. Although it may be unrealistic to anticipate the immediate reversal of regressive amendments, such as the removal of public interviews for judicial promotions, efforts should now focus on

ensuring that the process at least follows the law to serve as a bulwark against executive encroachment and foster public trust in judicial processes.

5. Conclusion

Judicial independence is a cornerstone of a democratic state (Manyatera 2022, 8) ensuring that the judiciary serves as a check on executive power and a guardian of constitutionalism. The trajectory of judicial reform and regression in Zimbabwe is an example of the fragility of constitutional gains in the absence of genuine political will. While the 2013 Constitution introduced progressive reforms to enhance judicial independence, these gains were undermined by executive actions, particularly through constitutional amendments that reversed transparency requirements and entrenched executive discretion in appointments and tenure extensions. The selective application of accountability mechanisms further intimidates independent judicial voices, eroding public trust.

These developments have subverted the judiciary and weakened the checks and balances essential to democracy, facilitating the entrenchment of authoritarian rule. For Zimbabwe to realise the democratic promise of its Constitution, meaningful reform must go beyond legal texts. It requires structural and political change to restore the judiciary's autonomy, bolster its integrity and reaffirm its critical role in upholding constitutional democracy.

As this chapter has shown, the path toward restoring judicial independence does not lie in the wholesale repeal of regressive reforms, a politically unlikely prospect under the current circumstances (Magaisa 2019, 155-156). It rather lies in maximising the use of existing normative safeguards and institutional mechanisms.

Efforts to rebuild trust in the judiciary must focus on enhancing civic oversight and ensuring that the public actively participates in promoting transparency and accountability. This includes participation in the nomination procedures, advocating for objective appointment criteria and where necessary, pursuing strategic litigation to enforce constitutional standards. There must also be monitoring of the consultation requirements and procedural safeguards so that they are properly implemented.

Ultimately, restoring judicial independence requires sustained vigilance by civil society, the legal profession and other relevant stakeholders. Through collective action and principled engagement with the Constitution's existing guarantees, it is possible to reassert the judiciary's role as a guardian of rights and the rule of law. Doing so is essential not only for the credibility of the justice system but for the broader project of democratising Zimbabwe.

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Democratic Sustainability: A Comparative Analysis of Democratic Consolidation of the Experiences of Seychelles and Cape Verde

Jolicoeur Marie Rebecca

1. Introduction

Democratic consolidation according to Schedler 'was meant to describe the challenge of making new democracies secure, of extending their life expectancy beyond the short term, of making them immune against the threat of authoritarian regression, of building dams against eventual "reverse waves"' (Schedler 1998). This chapter analyses the trajectories of democratic consolidation in two island nations in Africa notably Cape Verde and Seychelles which have achieved remarkable democratic milestones since gaining independence. Both states provide compelling case studies due to their distinct political histories, socio-economic contexts, and governance structures which offer valuable insights into the varying challenges and successes encountered during democratic consolidation.

Seychelles is often celebrated for its high, consistent and continuously growing economy, high development index and its resilience and ability to combat and overcome authoritarian actors and threats to embrace democratic principles and practices and increasing pluralism (World bank Seychelles 2025; Freedom House Report 2025). Similarly, Cape Verde has become a model of progressive democracy on the continent despite economic challenges (Hudson 2023). Their unique paths as small island developing states in Africa have forced both states to develop several strategies, policies and legislations to safeguard their democracy and enhance political and human rights culture. This chapter analyses how the challenges, achievements and learnings from both island nations have shaped the depth and resilience of their democratic consolidation processes. It also compares the key factors that have facilitated their progress and discuss any remaining obstacles to their continued democratic stability.

2. Country Profile

Seychelles and Cape Verde are both small islands developing states with distinct democratic journeys shaped by their unique histories and contexts. Seychelles is located on the eastern coast of Africa in the Indian Ocean and is home to some 130,000 people (Worldometer 2025) spread on eight out of the Seychelles' 115 islands (Original Travel 2025). Cape Verde is found on the opposite side of the continent on its northwestern coast, in the Atlantic Ocean with a population of 526,000 (Worldometer 2025) living on nine volcanic islands. Both island nations are classified as upper

middle-income countries. Both countries are members of key regional institutions and have signed international human rights treaties. They are both part of the African Union and of their regional economic communities notably the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC). However, both countries have not made the declaration under article 34(6) of the Protocol for application of the jurisdiction of the African Court on Human and Peoples' Rights which enable individuals and non-governmental organisations (NGOs) with observer status before the African Commission on Human and Peoples' Rights to directly lodge cases with the African Court. Furthermore, both states have ratified the international bill of human rights and key human rights treaties related to the rights of women, children, and persons with disabilities. However, neither of them has signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of Persons with Disabilities. This prevents civil society, including NGOs and individuals, from bringing individual communications in cases of human rights violations and from seeking justice and redress for violations of their rights and dignity before the treaty bodies.

3. Colonial History, Independence and Democratic Transitions

Seychelles democratic transition occurred in two phases with firstly the emergence of political parties and a first contested elections in 1963, until the creation of two new parties in 1964 notably the Seychelles Democratic Party (SDP) led by James Mancham, and the Seychelles People's Unity Party (SPUP) led by France Albert Rene. Following the adoption of a constitution in 1970, two other elections were held in 1970 and 1974. They focused on rigorous campaigns for independence which culminated in the recognition of the country as the sovereign Republic of Seychelles on June 29, 1976, as a multiparty presidential state led by the coalition between SDP and SPUD. The leaders of the two parties, Rene and Macham became Prime Minister and President respectively (U.S. Department of State 2008). Seychelles' post-independence was marked by great instabilities including invasion and mutiny by armed forces and several coup d'états between 1977 to 1986 of which a successful one in 1977 where Rene ousted Mancham marking the 2nd phase of the transition. In 1991, the multiparty system was restored by President Rene (BBC News 2023).

Cape Verde was discovered by the Portuguese in 1462 and immediately started prospering from transatlantic slave trade and later became the commercial centre of the region. The first phase of the transition started with the creation of a common liberation movement formed by Cape Verdeans and Guinea-Bissauans known as the African Party for the Independence of Guinea-Bissau and Cape Verde (PAIGC) fuelled by growing nationalism in the region. The PAIGC then

formed an armed force and opposed the Portuguese troops in Guinea Bissau and took control of a major part of the colony and declared independence in 1973. In 1975, Cape Verde gained independence as a one-party state following continuous efforts by the PAIGC's. The year 1980 marked the second phase of the country's transition with a coup that strained the relations between Cape Verde and Guinea-Bissau giving rise to some liberalisation movement ignited by the newly created African Party for the Independence of Cape Verde (PAICV). In 1990, the country transitioned to a multiparty state (U.S. Department of State 2008).

4. Democratic Consolidation conceptualisation

Gorokhovskaia and Diamond maintained that there exists different pathways to democratic consolidation (Gorokhovskaia 2017; Diamond 1999). Scholars provided various narratives to define democratic consolidation with on one side those describing it as a continuous process such as Berg-Schlosser, Badie, and Morlino (Berg-Schlosser and others 2020) emphasising the need for institutionalisation, stabilisation and legitimisation while on the other side others such as Linz and Stepan view it as an endpoint where democracy become 'the only game in town' (Linz and Stepan 1996). The latter, together with scholars such as Schmitter and Karl, and Schedler are also part of those supporting the idea that democratic consolidation is influenced by characteristics of the previous authoritarian regime (Schmitter and Karl 1991; Schedler 1998). Scholars have identified several factors required for sustainable and successful democratic consolidation. Schedler and Beetham identify some conditions for democratic sustainability including free, fair and competitive elections, judicial and constitutional reforms, poverty alleviation and economic stability. Linz and Stepan identifies five reinforcing areas including political institutions, the economy, rule of law, a usable bureaucracy and civil society while Schmitter and Karl argue that sustainability must be rooted in rule of law and mechanisms of accountability. Huntington also supports economic prosperity as one of the sustainability factors as well as peaceful transition. The analysis of this chapter discusses the three political processes enshrined in democratisation, that is, authoritarian breakdown, democratic transition and democratic consolidation. Furthermore, the analysis is based on the below factors:

- Free, fair and competitive elections
- Rule of Law and legal reforms
- Economic growth and prosperity
- Civil society participation

5. Democratic Consolidation Processes Overview and Analysis

5.1. Free, fair and competitive elections

In 1992, Huntington explained that democracy becomes more stable when a country passes the two-turnover test. This includes holding of the first multiparty elections followed by peaceful transition of power from ruling party to newly elected one. This proves democracy is working as democratic rules are accepted and followed, and elections are part of a regular process rather than being a one-time event. While Cape Verde passed the test 26 years after independence in 2001 after peaceful transition of power between Movement for Democracy (MD) and PAICV, it took 40 years for Seychelles to successfully complete the test with the defeat of a longstanding ruling party and peaceful transfer of power to the winning opposition coalition in 2016 and 2020. Since independence, both countries have conducted 10 elections including 3 single party elections and 7 multiparty elections from 1991 onwards for Cape Verde and from 1989 onwards for Seychelles (University of Central Arkansas 2025). Even though both countries have conducted free, fair and competitive elections, both countries have some institutional and legal flaws which threaten pluralism and access to power. Cape Verde's electoral system, mostly two-member-district proportional representation, favours a by-partisan system with two major institutionalised parties dominating the political arena, notably the MD and the PAICV leaving little space for small parties. Despite being relatively inactive in between elections, political parties are well-organised with distinct ideologies and strong and stable support. This has fostered belief that elections are a cyclical process rather than dramatic political power shifts and make political leaders more inclined towards power concession in case of defeat instead of holding onto power unfairly (Lodge 2014). On the contrary, Seychelles struggled with electoral autocracy with the dominance of a single ruling party for years without significant opposition until recently in 2016 and onwards. Indeed, the country has recorded increased pluralism and is back to the top and classified as a free and democratic country as per the 2024 Freedom House report (Mosmi 2019).

5.2. Rule of Law and legal reforms

Both constitutions provide for balance of power between the three government organs, the legislature, the executive, and the judiciary, even though the latter often faces political intervention (U.S. Department of State *1999).* For instance, the Constitution of the Republic of Cape Verde in its article 2(2) explicitly provides for the separation and interdependence of powers. Article 2 also provides for key features like pluralism of expression, democratic political organization, pluralistic democracy, respect for fundamental rights and liberties, independence of courts and local authorities. The country adopted its first constitution in 1980, and the latter was first amended in 1992 to declare a monist approach providing for direct application of ratified international treaties in domestic law. The constitution was amended to create key institutions to safeguard and promote human rights and democracy, notably the Constitutional Court and an ombuds

institution. In the 1992 amendments, the country focused on establishing principles for promoting political stability, good governance by further limiting powers of government to attract foreign monetary aid (European Commission 2025; Hudson 2023). The constitution of Seychelles dated back to 1993 and has been amended five times thereafter. However, compared to Cape Verde, the amendments have not necessarily served democratic advancement and consolidation. For instance, the Constitution of Seychelles provides a well-structured process to limit the president's powers to dismiss the government including former presidents and five private citizens, but the latter are appointed by the president himself. The 2000 amendments mainly provide pathways for the President to serve beyond two mandates upon electorate's approval. This favours concentration of power, and hinders electoral integrity and party building especially the emergence of new parties as well as poor checks and balances. Indeed, the absence of constitutional safeguards against extended rule and the sole reliance on electoral mechanisms incumbent entrenchment, given that the latter can be vulnerable to manipulation or imbalance if other democratic institutions are weak (CRS 1996 5th amendment). However, term limitation was reduced to a maximum of three terms in the 2016 amendment (CRS 1996 7th amendment). The 2011,2017, 2018 and 2020 amendments highly address the problem of weak checks and balances (CRS 1996 6th-10th amendment) amendments. In 2022, the national assembly amended the constitution to give the Seychelles Defence Forces (SDF) the right to enforce domestic law, which impedes democratic safeguards against misuse of power as it implies removing separation between the police and the military (Freedom House 2023).

5.3. Economic growth and prosperity

In a study published by the MIT Economics, it is maintained that democracy highly impacts a country's development (Acemoglu and others 2019). Indeed, both Cape Verde and Seychelles are experiencing economic growth although poverty and access to essential services remain a major challenge in Cape Verde. Seychelles has Africa's highest GDP per capita amounting to $17,879.24 in 2023 (Data Commons Seychelles 2025) with good health care and education system (Ferdi 2020) and an economy sustained by tourism and fisheries (World Bank Seychelles 2025; Ferdi 2020). Cape Verde is performing less well but has been able to sustain its economic and social status (Freedom House 2023) over the years with a GDP per capita of 4,850.98 USD in 2023 (Data Commons Cape Verde 2025). Cape Verde has little economic diversification prospects due to environmental challenges which highly affect access to essential services such as energy, water, education, and health (World Bank Cape Verde 2025).

The two countries have disparity in both their human and economic development with Seychelles ranked 67th out of 193 countries with a Human Development Index (HDI) value of 0.802 while Cape Verde is ranked 131st with 0.661 HDI value as per UN Human Development 2023/2024 (UNDP 2025). According to the African Development Bank Group (ADBD), poverty increased from 26% to 31.1% between 2019 and 2022 with an unemployment rate of 14.5% in Cape Verde. These figures were highly exacerbated by the Covid-19 pandemic, but the report projected economic growth by 5.2% in 2024 and 5.4% in 2025 supported by increasing tourism receipts (ADBD Cape Verde 2025).

In Seychelles, social indicators are very high with a small decline in poverty rate moving from 0.7% to 0.5% in 2022/23 and consistent economic growth (ADBD Seychelles 2025). Despite challenges with unemployment and lack of access to essential services in some areas, the two island nations have managed to sustain economic growth and overcome geographical challenges through their commitment to democracy and good governance which have helped them attract foreign investment and fostered economic growth. Seychelles' foreign direct investment in early years (1970s-1990s), following authoritarian breakdown and coups, was relatively low, but gradually increased as the country completed its democratisation process, thereby building a democratic state through the adoption of democratic principles (2000s and 2010s). Cape Verde had a similar ascension with a low level of investment in the early years(1990s), a gradual growth in the 2000s followed by a surge in FDI in the 2010s and after a decline due to the pandemic, the year 2023 marked a 29.82% increase from 2022.

5.4. Civil society participation

Civil society plays a crucial role in promoting democracy by acting as watchdogs and mobilising citizens against repressive laws and regimes and educating the population on fundamental democratic values. Both Seychelles and Cape Verde's constitution provide for fundamental freedoms. Throughout the years, Seychelles has managed to build a robust civil society which is actively engaged in democratic processes. The country's civil society has effectively come together through national platforms and coalitions to promote civic engagement, transparency, and accountability. For instance, organisations such as the Citizens Engagement Platform Seychelles (CEPS) and the National Integrity Coalition have been actively engaged in democratic processes through election reports, civic engagement and awareness campaigns, voter education and making government accountable (EEAS 2017). The country is also part of the Open Government Partnership (OGP), a multi-country initiative, aiming at ensuring good governance through the

Multi-Stakeholder Forum (MSF) and by developing action plans with a recent one with ambitious reforms to strengthen public participation in constitutional discussions. Civil society is also involved in decision-making processes through initiatives like the four-year National Development Strategy (NDS) (OGP 2024).

In Cape Verde, while the country has developed an active civil society, as per EU-Cape Verde's civil society mapping and its membership in the OGPcivil society's main area of intervention is focused on social inclusion of vulnerable groups, education, gender equality, local/rural development, and awareness-raising activities (Topliyski and others 2020). In comparison to Seychelles, where civil society organisations (CSOs) are gaining more grounds in the political space and legitimacy within the population, in Cape Verde, despite growing assertion of civil society, CSOs are still quite absent from the political processes.

Regarding media freedom, Seychelles' Constitution guarantees media freedom and the legislative framework to access state-held information, protect confidentiality of sources and decriminalisation of defamation. The country has both public and private owned TV channels and radio which despite decreasing self-censorship, reports of non-democratic practices like nepotism and corruption, a lot of these media companies still side with political parties. Printed editions of newspapers are very limited due to the high cost of production and circulation which might limit access to information to digitally illiterate people. While safety of journalists is well-guarded by the Association of Seychelles Media Professionals, media still faces stringent penalties. Despite few attacks and censorship of media, only half of the Seychellois believe that the country's media is free (Reporters Without Borders (RSF) Seychelles 2025; AfroBarometer 2024).

Similar to Seychelles, Cape Verde provides for constitutional protection of media freedom and laws to protect sources' confidentiality. Despite media pluralism and no journalists' detention, abduction or surveillance was registered, online harassment and threats were reported by journalists after publications denouncing non-democratic practices and government abuses. In addition, information of public interest is often restricted by the government, the economic environment is not conducive for development of private-owned media outlets and government pressure usually results in self-censorship. Furthermore, a once-uncontroversial 2005 legal provision was used in January 2022 to charge three journalists and their media outlet with violating judicial secrecy. This marks a shift in the law enforcement restricting reporting on

sensitive judicial issues and further limiting investigative journalism which is often restricted by the country's small population (RSF Cape Verde 2025).

6. Conclusion

The conclusion of this chapter is drawn from the principles outlined above, as well as an analysis of Freedom House reports spanning from 2018 to 2024. Upon transitioning to democracy, Cape Verde has remarkably paved its democratic path by building a robust and stable democracy. The state's main strength is in its commitment to maintain good governance and democratic principles. This has been proved through the creation of key institutions like Corruption Prevention Council and legislations, the resolution for gender parity and the one for gender quotas for representation in elections. Constitutional amendments have helped the country build and strengthen a progressive democracy. However, poverty, gender inequalities, increasing crime rate as well as limited access to essential services and justice remain a major challenge for the country and impede its development which is further impacted by challenges for the country to diversify its economy and dependence on foreign aid.

These factors hindering both economic and human development pause serious threats for the country's democracy (Freedom House Report 2018-2024). On the other hand, Seychelles transition has faced many setbacks over the years but the country has progressively built a democratic state. Constitutional amendments have mainly favoured democratisation of electoral processes, but no other major incentive has been adopted to reinforce its democracy compared to Cape Verde. However, the country's economic growth and wealth as well as low poverty level has helped it prevent potential authoritarian movements, while human rights institutions such as the Seychelles Human Rights Commission together with the Ombudsman have played major roles in safeguarding democracy in the country. Despite incentive to combat corruption like surveys, anticorruption laws and commission, corruption remains prevalent in the country and a major threat to its democracy (Freedom House Report 2018-2024). Further, both countries need improvements in access to justice, independent judiciary, and a more active civil society. Both countries must encourage civil society participation in democratic life, training and creating new organisations. Civil society can act as a watchdog, contributing to monitoring policies, human rights education, social justice, and equality through advocacy and project proposals.

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