

**TITLE: RWANDAN ELECTORAL LAW ON LEGISLATURE'S
COMPOSITION: AN INSTANCE OF STEALTH
AUTHORITARIANISM**

**Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,
Strathmore University Law School**

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Date of Submission: 5 January 2021

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Acknowledgement

I thank the almighty God who granted me life and courage to complete this project. My supervisor, Mr. Cecil Yongo Abungu who provided helpful and insightful guidance throughout. Heavily indebted for his critical observation and examination of my arguments that this work in a good place. My Parents *nawashukuru sana kwa kunisomesha, kujitolea, kuniwezesha na kuniombea. Ninalo deni kubwa kwenu.* I also thank my friends who helped shape the blurred and weak arguments/ideas that seemed to have no life to be inked down.

Declaration

I, BUTERA MICHAEL, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:

Cecil Yongo Abungu

List of Cases

1. *YumakandSadak v. Turkey*, ECtHR, 2008.

List of Abbreviations

DGP	Democratic Green Party
IDEA	International Institute for Democracy and Electoral Assistance
NEC	Rwanda Electoral Commission
PL	Parti Libéral
PR	Proportional Representative
PSD	Parti Social Democrate
RGB	Rwanda Governance Board
RPF	Rwanda Patriotic Front

Abstract

In Rwanda, a multiparty system and pluralistic democracy are Constitutionally recognised. In fact, since the Genocide against the Tutsi in 1994, the country has held four multiparty legislative elections. Yet, all the four elections have resulted in overwhelming victories for the ruling and dominant party, Rwanda Patriotic Front. Curious of such phenomenon, this research critically examines the Organic Law Governing Elections of 2019 (as a suspicious ground for electoral authoritarianism) with a focus on three sections of the law: Section 89, 90, and 79 which provide for the electoral threshold of five percent and single nationwide constituency with a closed-list PR, respectively. The aim of the analysis is to establish whether the three sections embody subtle forms of electoral authoritarian controls and whether they deprive the legislative elections of their democratic substance. The study finds that the electoral law through specified sections of the organic law encompasses and advances some form of electoral authoritarianism. Therefore, concluding that the admittance of opposition parties and independent candidates to the electoral arena is simply meant to serve as a democratic façade for legitimacy purposes and a formality to fulfill the principle of political opposition while at the same time favouring and giving a decisive edge to the ruling political party hence entrenching its power monopoly. The study adopts a well explored theory of electoral authoritarianism as its framework to understanding the Rwandan PR. It concludes by recommending some electoral reforms that might help in democratising and liberalising elections in Rwanda and to also have a proportional representative chamber of deputies.

Dedication

I would like to dedicate this work to the most loved and my best friend, Grandfather, Rwakigarama Augustin. I pray that this work meets your expectations of me. Gifting you is a hard task to commit to. Long live comrade!

RWANDAN ELECTORAL LAW ON LEGISLATURE'S COMPOSITION: AN INSTANCE OF STEALTH AUTHORITARIANISM

CHAPTER 1: INTRODUCTION

1.1. Background

Robert Dahl in his book *On Democracy* discusses six political arrangements that a well-democratically governed country must have. One of them is that such a country should carry out *free, fair, and independent elections in a multiparty state*.¹ For these elections, he observes that they should not merely be ceremonial and procedural but should be competitive and inclusive of the whole citizenry.² They should be competitive in the sense that they generate a broad electoral base of candidates³ and inclusive in a manner that every adult permanently residing in the country be granted a right to run for an official office and stand an equal chance to win.⁴

In Rwanda, a multiparty system and pluralistic democracy are Constitutionally recognised.⁵ In fact, since the Genocide against the Tutsi in 1994, the country has held four multiparty legislative elections. Yet, all the four elections have resulted in overwhelming victories for the ruling and dominant party, Rwanda Patriotic Front (hereafter RPF). For the reasons I will discuss in this study, the admittance of opposition parties and independent candidates to the electoral arena seems to serve as a democratic façade for legitimacy purposes and a formality to fulfill the principle of political opposition. This explains why despite having eleven political parties legally registered and operating in Rwanda,⁶ the country's political opposition is all but eliminated and non-existing, at least in reality.

¹ Dahl R, *On Democracy*, Yale University Press, New Haven, 1998, 85.

² Dahl, *On Democracy*, 104.

³ Dahl, *On Democracy*, 104.

⁴ Dahl, *On Democracy*, 104.

⁵ Preamble and Article 54, *Constitution of Rwanda* (2003).

⁶ Rwanda Government Board, 'List of Accredited Political Organisations in Rwanda', Accessed at - <https://www.rgb.rw/index.php?id=240> on 25th October 2020.

The democratic façade referred to above is well crafted and hidden with the aid of Rwandan electoral law, *the Organic Law Governing Elections of 2019* (hereafter the electoral law). The law, when critically studied with a focus on the *legal electoral threshold of five percent and a combination of Closed-List and Single Nationwide electoral Constituency*⁷ (the features of Proportional Representation system) (Hereafter PR), one finds that the electoral law encompasses and advances some form of electoral authoritarianism. The specified three features of Rwandan PR are designed to repress and restrict the opposition and independent candidates so as to engineer and manufacture biased electoral outcomes in favour of the dominant ruling party, RPF. However, they are not easily discernible as such, because they are masked under the law.

To expound on my basic claim, this study does not advance a demand that opposition parties in Rwanda should simply win legislative electoral seats. Instead, I argue that, as Schedler has already argued generally on what he calls “electoral authoritarianism regimes,”⁸ Rwanda allows regular elections like democratic regimes, but the regime has adopted a legal technic of enacting an electoral law with a purpose to cloak repressive practices under the mask of the law to conceal anti-democratic practices and thus be hard and difficult to detect. This so has entrenched and perpetuated the dominance of one political party without needing to adopt a direct and transparent form of repression.⁹ It does this by creating systematic advantages for the dominant party while raising costs for opposition parties and independent candidates to compete in legislative elections.¹⁰

Analysing the whole electoral law would be so much a task to commit to, instead, and as I have already alluded to, I will confine my work to studying and analysing only three sections of the law: *Section 89, 90, and 79* which provide for the *electoral threshold of five percent and single nationwide constituency with a closed-list PR, respectively. The aim of the analysis is to establish whether the three sections embody subtle forms of electoral authoritarian controls and whether they deprive the legislative elections of their democratic substance.* To note, *Section 89* imposes the electoral threshold on Independent candidates while *section 90* is about political party candidates. The choice of the said sections is not arbitrary, it has been noted that

⁷ Section 79, 89 and 90, *Organic Law governing elections* (Act No. 001 of 2019).

⁸ See generally Schedler A, ‘Electoral authoritarianism’ in Todd L and Neil R (eds.), *The SAGE handbook of comparative politics*, Sage Publications Ltd, California, 2009. (all the essays contained in this SAGE handbook discusses the nature of electoral authoritarianism).

⁹ Ozan V, ‘Stealth Authoritarianism’ 100(1673) *Iowa Law Review*, 2015,1678-1679.

¹⁰ Ozan V, ‘Stealth Authoritarianism’ 1684.

the selected few electoral rules are so fertile grounds for electoral authoritarianism and they are the elements that most set the rules of the democratic game and its results, therefore.¹¹

Although there are limited observations and commentaries on the selected specific sections, scholars, generally, have commented on legal provisions that provide for electoral thresholds, closed-list party systems, and electoral constituencies. For example, Stroh has argued that the single nationwide constituency closed-list PR of Rwanda enshrined in section 79 of the organic law, has conferred far too much power to RPF while weakening small opposition parties hence gradually facilitating electoral manipulation and serving as a tool to keep RPF in power.¹² And Charvat, relatedly, points out that a single nationwide constituency tends to over-represent the majority party and under-represent other parties and therefore it cannot produce proportional representation for political parties.¹³ Such PR also lacks a link between the elected representative and the electorate,¹⁴ I will explain this in more detail in chapter two of this work.

For electoral thresholds too, a lot has been inked. Stroh again, on the Rwandan threshold of five percent, finds that it reduces the chances of opposition parties with scarce resources to entering the parliament.¹⁵ The Democratic Green Party (hereafter DGP), Rwanda's main opposition, lodged acclaim with the Rwandan Prime Minister, National Electoral Commission (hereafter NEC) and Rwandan Governance Board (RGB) calling for electoral laws' reforms, especially the electoral threshold of five percent. The main issue was that the electoral threshold is unfair and should therefore be reduced to the two percent threshold for independent candidates and four percent for the parties.¹⁶ Also, Kayumba has observed the same. That the five percent threshold is high and therefore should be reconsidered to allow participatory democracy.¹⁷

¹¹ Ozan V, 'Stealth Authoritarianism' 1700.

¹² Stroh A, 'Electoral rules of the authoritarian game: Undemocratic effects of proportional representation in Rwanda', 4(1) *Journal of Eastern African Studies*, 2010, 9.

¹³ Charvat J, 'Single Nationwide Electoral District, Proportionality, and Territorial Representation: A Case Study of the Slovak Parliamentary Elections', 55 *Revista de Stiinte Politice*, 2017, 59.

¹⁴ Kadima D, 'Choosing an Electoral System Alternatives for the Post-War Democratic Republic of Congo', 2(1) *Journal of African Elections*, 2006, 45.

¹⁵ Stroh A, 'Electoral rules of the authoritarian game', 9.

¹⁶ Democratic Green Party of Rwanda, 'Rwanda Government refuses to make political and electoral reforms demanded by the opposition', on 20th September 2020 -<https://www.rwandagreendemocrats.org/news/rwanda-government-refuses-make-political-and-electoral-reforms-demanded-opposition>- 21st September 2016.

¹⁷ Kayumba C, 'Why opposition's call to change the Rwanda electoral system is unwise', 23th July 2003, -< [Why opposition's call to change the Rwanda electoral system is unwise - The East African](#)>- on 5th December 2020.

1.2. Statement of Problem

In a democratic country, Dahl asserts, that anything that prevent or restrict political competition, presumably, tend to degrade the value of the vote.¹⁸ And that instead of stifling political competition, effective participation along with more effective enforcement of political liberties and civil rights is encouraged.¹⁹ Dahl's idea seem to have been realised by the Rwandan Constitution by granting all citizens the right to participate in the political life of the country through elections.²⁰ The Constitution also acknowledges and recognises the important fundamental principles of pluralistic democratic government through multiparty elections, equitable power sharing and equality before the law.²¹

Despite the above constitutional rhetoric, the reality reflects the opposite. The opposition parties and independent candidates have reported a disproportionate electoral outcome under the current electoral law dispensation which seems to encompass neutral legal rules (the electoral threshold and electoral system rule of single nationwide constituency and close list). The question thus remains whether *Section 89 and 90* of the Organic Law that provide for electoral threshold and *section 79* that provides for a closed list and single nationwide electoral constituency are simply autocratic controls hidden in the law to maintain the ruling party's power and thus a de facto one-party system.

1.3. Justification of the Study

The purpose of this study is to examine the electoral rules that govern legislative elections in Rwanda, namely, the electoral thresholds, electoral district size and party-list system in order to underscore the electoral authoritarian nature of some of the electoral controls that are hidden in the law. This will lead to overt display of the purpose and intention of the electoral law in first place: a maintenance of power by the ruling party and creation of a single party state while at the same time holding on democratic legitimacy by allowing some degree of multiparty system and regular 'competitive' elections as a frontage of representative democracy. This consequently would lead to clear understanding of current regime type of Rwanda and accordingly what is needed to set the country to the right and constitutionally aspired path.

¹⁸ Polsby N, 'Moving Toward Equality in Campaign Finance? Another Equivocal Encounter Between Theory and Practice' in Shapiro and Reeher I (eds.), *Power, Inequality, and Democratic Politics*, Westview Press, Boulder & London, 1988, 266.

¹⁹ Dahl, R, *Polyarchy: Participation and Opposition*, Yale University Press, New Haven, 1971.

²⁰ Article 2, *Constitution of Rwanda* (2003).

²¹ Article 10, *Constitution of Rwanda* (2003).

1.4. Statement of Aim and Objectives

1. To assess the functioning and impact of the Rwandan electoral system of single constituency and closed list PR against opposition and independent candidates.
2. To examine the impact of the legal electoral threshold on electoral competitors in Rwanda (Ruling party, opposition party and independent candidates).
3. To establish a nexus between the electoral threshold and single nationwide electoral constituency closed list PR and their overall impact on democratization process in Rwanda.
4. To propose electoral law reforms to enhance representative democracy in Rwandan legislature.

1.5. Research Questions

1. Whether the Rwandan electoral system of PR Closed List and Single Constituency produces undemocratic effects?
2. Whether the electoral threshold is unreasonably high against opposition party and independent candidates?
3. If the combination of the above two electoral restrictions are meant to bar electoral competitiveness and therefore control electoral outcomes?
4. Does the combination of the electoral rules confirm a case of electoral authoritarianism of the Rwandan electoral law regime?
5. How do the electoral rules affect democratization by elections in Rwanda?
6. Whether democratization by elections can be possible in Rwanda with the existing electoral controls planted in law?

1.6. Hypothesis

1. The identified electoral rules, notably: Electoral threshold, single constituency and closed list party system found in the Rwandan electoral law are subtle authoritarian controls that render legislative elections instruments of authoritarianism rather than instruments of democracy.
2. The said electoral controls are put in place under the guise of the law only to contain uncertainty of electoral outcomes that might ensue from allowing some degree of political competition and thus empty them of their meaningful substance.

3. The systematic tilting of the electoral arena towards the ruling party using the law has drained the masterpiece of democracy, competitive elections, of their meaningful substance of democratic representation of the people.

1.7. Literature Review

There is a burgeoning literature on “Democratisation by elections” in Africa,²² at the same time there is equally a growing amount of scepticism as to the role of elections in democratisation process in Africa and other parts of the world, generally.²³ Lindberg, in his seminal contribution, *Democracy and Elections in Africa*, creates and studies a comprehensive empirical data set of all elections in Africa from 1989 to 2003 and manages to locate their significant role in democratisation process in Africa. He finds that elections in Africa foster liberalization and have self-reinforcing power that facilitates the institutionalisation and deepening of civil liberties and democratisation in Africa’s political regimes.²⁴

Although the above findings might hold truth, the sceptic block of literature as to what the role of elections in democratisation process really is, points in a different direction. The sceptic block of literature is the one that I purpose to delve into. More of the scepticism is cast on the formulation of electoral laws. For example, Ozan in his journal article, points out that it is during the structuring of electoral laws that the meaningful substance of elections is diluted.²⁵ He identifies and discusses how the adoption of electoral laws such as voter registration laws, electoral barriers to entry, electoral thresholds, design of an electoral system and campaign finance restrictions are fertile grounds for stealth authoritarianism.²⁶

Writing more generally on both presidential and legislative elections, Ozan shows how incumbents use the electoral law or rules like thresholds to unreasonably tilt the electoral arena towards one dominant party, mostly the ruling party, by creating systematic disadvantages against the opposition parties.²⁷ He further observes that this “*stealth authoritarianism*” ends up eroding off the partisan alternation and circulation of power among many parties and instead concentrates it in one dominant party. The turnover of government which is a core component

²² Lindberg S, *Democracy and Elections in Africa*, The Johns Hopkins University Press, Baltimore, 2006, 119-141.

²³ Lindberg S, *Democracy and Elections in Africa*, 3.

²⁴ Lindberg S, *Democracy and Elections in Africa*, 2-3.

²⁵ Ozan V, ‘Stealth Authoritarianism’ 1700.

²⁶ Stealth authoritarianism refers to the use of legal mechanisms that exist in regimes with favourable democratic credentials for anti-democratic ends. See, Ozan V, ‘Stealth Authoritarianism’ 1684.

²⁷ Ozan V, ‘Stealth Authoritarianism’ 1678-1700.

of democracy is thus impossible to be achieved in this uneven electoral field arrangement, he concludes.²⁸

Although Ozan is generally dealing with stealth authoritarianism techniques deployed mostly by presidential incumbents, the same is true to legislative elections. He argues that sometimes electoral thresholds are structured so high to skew parliamentary representation by forcing small parties and other candidates to disproportionately record low votes even when they manage to clear the threshold.²⁹ Aware of the justification advanced for why thresholds are imposed, namely, to prevent voter confusion and protect political stability, he consciously notes that the same electoral thresholds can and have been used to exclude and bar new and emerging political parties and candidates in order to entrench and maintain the political status quo.³⁰ Moreover, unfair and biased rules of representation can dissuade voters from voting for small and emerging parties on the basis that their votes will not count. This will eventually lead to a vicious cycle that will see some opposition parties excluded from political marketplace eternally.³¹

On the same line of thinking, Barber'a, in her seminal contribution on electoral systems³² acknowledges the potential effect of electoral rules on the number of opposition parties and voter behaviour. He documents that it is more difficult for smaller opposition parties to obtain seats under restrictive electoral rules.³³ They reduce, significantly, the number of parliamentary opposition parties, and because both parties and voters are aware of this effect, the small parties will coalesce with larger parties or withdraw from elections and at the same time voters will have no incentive to vote for non-viable parties in order not to waste their votes.³⁴

Schedler, who has done some foundational and comprehensive work on electoral authoritarianism, comprehensively discusses how electoral authoritarian regime uses law to institute *a de facto* single party system. He launches a term called "Manu of Manipulation" where he points out what ruling parties will do once confronted with pressure of regime change.

²⁸ Ozan V, 'Stealth Authoritarianism' 1684.

²⁹ Ozan V, 'Stealth Authoritarianism' 1703.

³⁰ Ozan V, 'Stealth Authoritarianism' 1702.

³¹ Ozan V, 'Stealth Authoritarianism' 1704.

³² Electoral systems are defined as "the set of rules that structure how votes are cast at elections for a representative assembly and how these votes are then converted into seats in that assembly." See: Gallagher, M and Mitchell P, *The politics of electoral systems*, Oxford University Press, Oxford, 2005, 3.

³³ In Rwanda, opposition parties and smaller parties can be used interchangeably as a term. All the political opposition parties are small in both electoral competitive capacity and size.

³⁴ Barber'a P, 'When Duverger Becomes Autocratic: Electoral Systems and Opposition Fragmentation in Non-Democratic Regimes', New York University, 2013, 4.

It is nothing other than allowing some degree of liberalization by holding elections. However, he notes, as one might expect, the intentions are not really democratising but simply a survival strategy.³⁵ Rwanda might not have adopted competitive elections because of any form of confrontation of regime change but for legitimacy purposes in the eyes of the international community and maintenance of its continued monopoly of power. Being more specific, Schedler notes that on the “Menu of Manipulation” (manipulation of elections) among others, the ruling party will use milder techniques such as hand tailing self-serving electoral laws that permit them to exclude unfriendly competitors.³⁶ They will also adopt an electoral system that will give them a decisive edge at the moment of translating votes into seats.³⁷ Regarding this last point, Schedler is right as an objective examination of the electoral system behaviour of Rwandan PR, especially the electoral threshold of five percent, electoral district size and closed-list party system, reveal an intentional exclusion mission of other electoral contenders other than RPF.

Also, Diamond framing an ideal nature of democratic elections, he asserts that for elections to be called democratic and free, legal barriers to entry into the electoral arena should be low, there should be substantial freedoms for candidates and supporters of different political parties to campaign and solicit votes and competing candidates should be treated impartially throughout the process by affording them equal access to the public media, funds and other facilities. Above all, electoral rules should not systematically disadvantage the opposition.³⁸ This is a good outline of the opposite of what happens in electoral authoritarian regimes or what Diamond calls “hybrid regimes”.

Lastly, and perhaps the most direct literature addressing Rwandan PR is Stroh. His contribution examines undemocratic effects of Rwandan electoral system. Studying the results of the legislative elections of 2003 and 2008, he finds out that the electoral system has been used in obscurely manner to manipulate the will of the people through adopting National List PR within one national constituency and on top of that setting a five percent threshold which have reduced the chances of both the opposition party and independent candidates to enter the parliament.³⁹

³⁵ Schedler A, ‘The Nested Game of Democratization by Elections’ 23(1) *International Political Science Review*, 2002, 104.

³⁶ Schedler A, ‘The Nested Game of Democratization by Elections’, 105-109.

³⁷ Schedler A, ‘The Nested Game of Democratization by Elections’ 108.

³⁸ Diamon L, ‘Thinking About Hybrid Regimes’ 13(2), *Journal of Democracy*, 2002, 29.

³⁹ Stroh A, ‘Electoral rules of the authoritarian game’ 6.

A closer look to the literature on electoral laws as authoritarian controls, however, reveals several gaps and shortcomings. First, one notices that the voluminous literature on electoral authoritarianism has concentrated on discussing it as a blanket methodological descriptive tool and theoretical framework in understanding and examining how such regimes work in the world, generally. Little scholarly attention has pinned its eye to discussing and examining individual country electoral laws as instance of electoral authoritarianism. For example, only Stroh has examined whether the Rwandan electoral system produces undemocratic effects. Even him, he falls short in situating the problem in the electoral law. Stroh instead discusses the Rwandan PR independent of the legal mechanism that has been used to conceal the electoral authoritarian controls. He does not go a further point, which is the most important, to show how the law has been intentionally used to mask the manipulative electoral controls. He actually studies the electoral system as a design and not part of the legal menu of manipulation.⁴⁰ Furthermore, Stroh had studied only two elections, this study will analyse other elections came after Stroh's study.⁴¹ On this particular gap, Schedler himself notices the problem and recommend that future research should strive to observe systematically subnational elections and electoral histories in single countries.⁴²

Second, in Ozan's words, "The existing scholarship has been preoccupied with fairly transparent mechanisms of authoritarian controls detected relatively easily by both domestic and international actors. But there exists comparatively little scholarship on the new, more subtle, mechanisms of authoritarian control that rely on the same legal rules that exist in regimes with favourable democratic credentials".⁴³

Third, one need to be aware that electoral thresholds exist all around democratic nations that have adopted proportional representation.⁴⁴ Therefore, having electoral thresholds is not authoritarian per se, but intentional high thresholds are. And because of this, the question to further investigate rather is what makes the five percent threshold in Rwanda (for legislative elections) unreasonably high to the extent of qualifying as an electoral authoritarian control. In answering this question, this work will contribute to scholarship by suggesting that in case of Rwanda, three metrics should be used to measure the highness or lowness of an electoral threshold. First, by studying electoral results that the threshold has produced in past legislative

⁴⁰ Stroh A, 'Electoral rules of the authoritarian game', generally.

⁴¹ Stroh A, 'Electoral rules of the authoritarian game', generally.

⁴² Schedler A, 'Electoral Authoritarianism', *Emerging Trends in the Social and Behavioral Sciences*, 2015, 9.

⁴³ Ozan V, 'Stealth Authoritarianism' 1678.

⁴⁴ Ozan V, 'Stealth Authoritarianism' 1703.

elections (foundational basis). Second, time: At what point in country's democratisation process (considering the young history of multiparty system in Rwanda) should electoral thresholds be invoked and be used as a tool to balance the democratic representation of the people. Third, which is an extension of the second metric, is the capacity of the party or independent candidate to compete in elections.

Lastly, my study, as Schedler's "Menu of Manipulation", I will also examine three electoral rules as part of the items on the Menu of Manipulation tabled by the Rwandan electoral law. A combination of the three elements, i.e., electoral thresholds and PR single constituency design will be examined to establish whether they are truly electoral authoritarian controls.

1.8. Theoretical Framework

1.8.1. Electoral Authoritarianism

Electoral Authoritarianism is a theory that attempts to explain the post-Cold War transition paradigm where many countries including sub-Saharan African countries were trying to move from authoritarian regimes to democratic governments (third wave of democracy).⁴⁵ In this transition, Schedler notes that, instead of democratising fully, many countries formed new forms of authoritarianism – electoral authoritarianism.⁴⁶ Other scholars have described these regimes (phenomenon) as the 'the trappings but not the substance of effective democratic participation', others "democracy as deception",⁴⁷ stealth authoritarianism,⁴⁸ "hybrid regimes"⁴⁹ "semi-authoritarianism",⁵⁰ "competitive authoritarianism",⁵¹ or "Frankenstates."⁵²

Under these regimes, democratic façade made of democratic labels such as conducting regular elections, multipartyism, political competition etc is adopted. Concentrating on the label of

⁴⁵ Schedler, A, 'The Nested Game of Democratization by Elections', 103.

⁴⁶ Schedler, A, 'The Nested Game of Democratization by Elections' 103-04.

⁴⁷ Monty M and Jagers K, 'Polity IV Project: Political Regime Characteristics and Transition, 1800-2002: Dataset Users' Manual' College Park, MD: Integrated Network for Societal Conflict Research Center for International Development and Conflict Management, University of Maryland, 2002, 12.

⁴⁸ See generally Ozan V, 'Stealth Authoritarianism'.

⁴⁹ The term "hybrid regime" was first introduced by Terry Lynn Karl, who describes it as a regime that mixes both democratic and authoritarian practices. See Terry K, 'The Hybrid Regimes of Central America' 6(3) *Journal of Democracy*, 1995, 72,73; Also see generally Diamon L, 'Thinking About Hybrid Regimes' 13(2), *Journal of Democracy*, 2002.

⁵⁰ See generally Ottaway M, *Democracy Challenged: The Rise of Semi authoritarianism*, Carnegie Endowment for International Peace, Washington DC, 2003. (in this book, Ottaway describes the rise of regimes that have both democratic and authoritarian characteristics).

⁵¹ See generally Levitsky S and Lucan A, *Competitive Authoritarianism: Hybrid Regimes After the Cold W*, Cambridge University Press, Cambridge, 2010. (In this work the authors discuss how competitive authoritarian regimes rose to attention and prevailed after the Cold war).

⁵² Scheppele K, 'Not your father's authoritarianism: The Creation of the "Frankenstate"', *European Politics and Society Newsletter*, Winter, 2013, 5. (Scheppele coins the term Frankenstate in reference to Viktor Orbán regime nature).

regular election, he reports that these elections are usually broadly inclusive, minimally pluralistic (electoral candidates are allowed to contest), minimal competition (denied victory but allowed to compete) and minimal repressions against opposition and independent candidates although repression is always indirect and subtle.⁵³ In these regimes, the ruling or dominant party wins almost all the seats.⁵⁴

Authoritarianism, like a virus, mutates. Electoral authoritarian regimes have learned how to use the law to perpetuate their power through legal instruments. They enact electoral laws, for example, to place elections under tight authoritarian controls in order to influence the electoral outcomes accordingly.⁵⁵ Some of these electoral authoritarian controls include divisive discriminatory electoral rules.⁵⁶ Ozan expounding on this phenomenon, he points out that stealth authoritarian regimes use law to adopt milder techniques in order to act differently from the transparent and traditional authoritarian regimes.⁵⁷ Their distinctive nature, Schedler has added, is that they allow a degree of pluralism in political competition and society yet they will systematically manipulate it to empty its meaningful content.⁵⁸

As stated above, electoral authoritarian regimes adopt a superfluous democracy as a technique to manipulate elections and control electoral outcomes, manufacture a pre-election opposition defeat and architect indirect exclusion well hidden in law.⁵⁹ This seem to be the case for Rwanda. The Rwandan constitution recognises rule of law, democracy and equitable power⁶⁰ sharing through multiparty competitive elections⁶¹ as its leading fundamental principles.⁶² However, the reality of political competitiveness in Rwanda tells a different story as it will be discussed in respective chapters of this work. The electoral threshold and electoral system of PR-Single constituency and closed-list have rendered the above constitutional fundamental principles useless and meaningless. They only seem to favour the ruling party, the RPF so that they legitimize their political power monopoly yet at the same time strive not to be classified

⁵³ Schedler A, 'The Logic of electoral Authoritarianism' in Schedler A (ed) *Electoral Authoritarianism: The Dynamics of Unfree Competition*, Lynne Rienner Publishes Inc, Colorado, 2006, 3.

⁵⁴ Diamon L, 'Thinking About Hybrid Regimes' 28-29.

⁵⁵ Schedler A, 'Elections Without Democracy: The Menu of Manipulation', 13(2) *Journal of Democracy*, 2002, 36-37.

⁵⁶ Schedler A, 'The Logic of electoral Authoritarianism', 3.

⁵⁷ Ozan V, 'Stealth Authoritarianism', 1676.

⁵⁸ Schedler A, 'Elections Without Democracy: The Menu of Manipulation', 36-50.

⁵⁹ Schedler, A, 'The Nested Game of Democratization by Elections' 103-6.

⁶⁰ Article 10, *Constitution of Rwanda* (2003).

⁶¹ Article 2, *Constitution of Rwanda* (2003).

⁶² Article 10, *Constitution of Rwanda* (2003).

as traditional autocracy.⁶³ Indeed, Yonatan, while reassessing the thesis of “democratisation by elections”, he analogously describes what Rwanda’s political arena looks like. He opines that in electoral authoritarian regimes electoral competitiveness does not necessarily indicate democratisation but rather might signal more entrenched authoritarianism.⁶⁴

As I have already established, in my literature review, electoral authoritarianism plays the game of imitation. It puts up fake democratic institution and practices, yet profoundly and systematically violate the liberal democratic principles of freedom and fairness as to render elections instruments of authoritarian rule rather instruments of democracy.⁶⁵ For example, allowance of elections only helps such regimes “to entrench their power by reducing the risk of coups, ensuring co-optation of potential rivals or maintaining good relations with international allies and benefactors”.⁶⁶ True picture of the Rwanda’s current regime as it will be navigated.

Historically, these kind of hybrid regimes are not new. They have always existed since 1960s. Multiparty electoral but autocratic regimes masked by the law and other masks existed before.⁶⁷ They have been deliberately *pseudodemocratic*, “in that the existence of formally democratic political institutions, such as multiparty electoral competition, masks (often, in part, to legitimate) the reality of authoritarian domination.”⁶⁸ Schedler, concluding on a right foot, calls “a spade a spade”. He asserts that electoral authoritarian regimes should be understood as neither illiberal democracies nor hybrid but simply as new forms of authoritarianism.⁶⁹ Diamond also echoes in this by stating that “If we use a very demanding standard of democracy, encompassing not only democratic elections but solid protection of civil liberties under a strong rule of law, then the proportion of intermediate regimes truly swells because so many of the new “democracies” of the third wave are “illiberal.”⁷⁰

⁶³ Marina R, ‘A Perilous Path to Democracy Political Transition and Authoritarian Consolidation in Rwanda’, Institute of Development Policy and Management, Discussion Paper / 2008.03, 2007, 21.

⁶⁴ Morse, Y, ‘From Single-Party to Electoral Authoritarian Regimes: The Institutional Origins of Competitiveness in Post-Cold War Africa’, 48(1) *Comparative Politics*, 2015, 126-127.

⁶⁵ Powell B, *Elections as instruments of democracy: Majoritarian and Proportional Visions*, Yale University Press, New Haven, 2000.

⁶⁶ Shirah R, ‘Electoral authoritarianism and Political unrest’, 37(4) *International Political Science Review*, 2016, 473.

⁶⁷ Diamon L, ‘Thinking About Hybrid Regimes’ 23.

⁶⁸ Diamond L, Linz J, and Seymour M, *Democracy in development countries: Volume 4, Latin America*, Lynne Rienner Publishers, Boulder, 1989, xviii.

⁶⁹ Schedler, A, ‘The Nested Game of Democratization by Elections’ 103-04.

⁷⁰ Diamon L, ‘Thinking About Hybrid Regimes’ 26.

1.9. Scope of the work

More clarity to the scope of my research, I will concentrate on the electoral law by examining the specified above electoral rules and their impact on the core component of democracy, notably, the competitive multiparty elections. I will not discuss other potential repressive areas that might reveal yet other forms of authoritarianism in Rwanda such as political motivated repressions, criminal laws tailored to bar opponents, imprisonment of opponents, surveillance laws, judicial review etc. These lie under a different nature of inquiry and they have been a centre of scholarly interests.⁷¹ Even with the concentration on the electoral law, I elect only three electoral rules namely, electoral threshold of five percent, nationalist closed in a single nationwide constituency.

1.10. Research Methodology

This study uses both primary and secondary sources but of remote nature. It is a desktop research with few attempts to obtain first-hand information. The study methodologically deploys critical tool in examining the electoral law of Rwanda. A literature review and theoretical framework are adopted to analyse the results achieved in past four legislative elections and establish how they have been artificially generated by the so-called PR Nationalist Closed list in a single nationwide electoral constituency and the electoral threshold of five percent. In the broader discussion of electoral authoritarianism and its literature, I extract relevant elements of the theory/framework to examine characteristic and suspicious contents of Rwandan PR. A constant reflection of self-consciousness of Rwandan politics is also made.

1.11. Limitations

The research was and still limited in many ways. First, this project is one of the most sensitive and avoided topic in Rwanda. In fact, as it was pointed out by respondents to whom I discussed my research question with in its early stages, signalled that the work is one of those ‘very heroic risks to take’. This tight navigation of my research definitely affected my scope of research and confrontation of more serious and substantial evidence. Also, during the period of my research, it was hard and actually impossible to access some of the very important documents such as preparatory documents, parliamentary Hansards discussing the concerned sections, the Legal, Judicial and Constitutional Commission’s Report which could have helped me establish the legal motive behind the sections in questions etc. Given the tight travel restrictions due to

⁷¹ Ozan V, ‘Stealth Authoritarianism’ 1676.

COVID-19, it was also impossible to carry out the intended interviews with the members of opposition parties and independent candidates regarding the five percent threshold and the Rwandan PR. Lastly, the insufficiency and lack of accurate and certain interpretation of statistical findings because of inability of accessing authentic data. For example, verifying the party affiliation of the members of chamber of deputies indirectly voted in. Yet, it is one of the strategy by RPF to homogenise and dominate the chamber.

1.12. Chapter Breakdown

This study will have five chapters. The introduction. Chapter two will discuss the electoral system of PR with one nationwide electoral district and its effects against opposition parties and independent candidates at attaining legislative representation while proving how single-member districts, only the largest opposition party has a chance of winning a seat. Chapter three will then discuss how the five percent threshold has been used to keep off the opposition and independent candidates from the electoral arena and later from obtaining legislative representation. Therefore, as a mean to control electoral outcomes and consequently perpetuation and maintenance of power of the ruling party. I will discuss this chapter by contributing to the ongoing debate whether the five percent threshold is high by measuring it against its own results that it has yielded over previous legislative elections against the opposition party and independent candidates, a required time that a democratic system would ought to invoke electoral restrictions and the capacity of political candidates. Chapter four will be comprised of recommendations and observations. Chapter Five is the conclusion.

CHAPTER 2: THE UNDEMOCRATIC EFFECTS OF THE PROPORTIONAL REPRESENTATIVE-CLOSED LIST IN SINGLE CONSTITUENCY ELECTORAL SYSTEM

2.1. Introduction

In this chapter, I discuss the menu of manipulation of Closed-List PR with one nationwide electoral district and its effects against opposition parties and independent candidates in attaining legislative representation. This chapter purposes to answer the question of whether a single nationwide district and closed-list nature of ballot system preferred by Rwanda only favours and give a decisive edge to the ruling political party hence entrenching its power monopoly.

Under this chapter, my hypothesis is not very original: it is directly derived from Stroh's work. The innovation comes from the way I propose to test the hypothesis and from the data I use and the timeline of the situation.

First, unlike Stroh and other authors in the field, I propose to explore the impact of the Rwandan nationwide constituency and closed list element of PR as electoral rules provided in the specific law and not just an electoral system in general. Second, I explore the said elements of the electoral system with a back mind conscious of the historical, economic, and political background of the country where I argue that the elements of Rwandan PR are intentionally advanced as authoritarian controls in form of legal rules. Third, I am aware that there is a long-lasting normative dispute among theorists of electoral systems over what electoral rules are more democratic or less democratic. However, in this work, I will take a different stance: I will inquire into the nature of electoral rules of Rwandan election law with an end goal of establishing whether they yield into electoral authoritarianism regime.

2.2. Single Nationwide Constituency and Closed List PR Electoral Systems: A Brief Description

Rwanda subscribes to a PR electoral system where directly elected members of parliament are elected through a closed list of its candidates in a single nationwide constituency.⁷² This means that a party will submit a list of its candidates which on the ballot will only be bearing party names, symbols, and a photo of the party leader only. The voters, therefore, cannot express their preferences to a certain candidate instead they will vote for a party which in turn will receive seats in proportion to their overall share of the vote.⁷³

It has been argued that the Closed List PR confers far too much power to strong political parties who establish the order of the candidates in the case of closed-list voting systems than those with Open List PR.⁷⁴ Also, regarding district magnitude, scholars recognise that district size i.e. the number of seats distributed in the given district is a key variable of electoral systems in terms of their (direct) effect on the degree of seats votes proportionality and the composition of parliamentary representation.⁷⁵

For Rwanda, these two electoral rules i.e., electoral *district size and closed list* have produced adverse effects against opposition political parties (which are so small) and independent candidates compared to the ruling party. The adverse effects of these two electoral rules are properly understood when one studies the legislative election results that have been produced by the Rwandan PR system between 1994 and 2018. The time here is of the essence because it is the post-Tutsi Genocide epoch in which Rwanda as a nation had committed itself to promote politics of inclusion through democratic election and multipartyism.⁷⁶ The results, however, reveal that the country has led to a totally different path from its commitments. As it will be shown in the next chapter of this work, the parliamentary election results reveal that the ruling party, RPF has systematically used the two electoral rules to strengthen its continued monopoly power.

Although Stroh finds that PR in Rwanda is gradually facilitating electoral manipulation and serving as an instrument to maintain the ruling regime's power, he does not ground his findings in historical, political, and economic causes. The current ruling party, RPF, has been in power

⁷² Section 79, *Organic Law governing elections* (Act No. 001 of 2019).

⁷³ Reynolds B, Reilly B and Ellis A, 'Electoral System Design: The New International IDEA Handbook', International Institute for Democracy and Electoral Assistance 2005, 60.

⁷⁴ Stroh A, 'Electoral rules of the authoritarian game', 9.

⁷⁵ Charvat J, 'Single Nationwide Electoral District, Proportionality, and Territorial Representation', 58.

⁷⁶ Article 4 and 54, *Constitution of Rwanda* (2003).

since 1994 and it has dominated the parliament since then. This is partly because after the Genocide the political space in Rwanda shrunk, most of the opposition parties and other political players had been involved in the Genocide and therefore they were banned and dissolved. At all stages, the political arena was then monitored and dominated by RPF.⁷⁷ Economically speaking, only RPF had the economic strength to run electoral campaigns during the presidential and legislative elections of 2003. The situation has not changed yet. Also, socially, the post-genocide Rwandan society was filled with fear and distrust of pre-genocide political parties, the atrocious experience of the Genocide was still fresh among Rwandans. All these aspects necessitated a complete reshuffle of political life in Rwanda without contention and much thought process. It was a state of urgency and the mandate lied with the victorious RPF.

In the post-genocide era, however, Rwanda did not set a path to what the 2003 Constitution singled out as the new direction of the country i.e., to ‘building a State based on consensual and pluralistic democracy founded on power sharing, national unity and reconciliation, good governance, development, social justice, tolerance and resolution of problems through dialogue’.⁷⁸ Instead, the country opted for a PR system with closed list and nationwide district in form of electoral law provisions. I find these two features of the electoral system to be a well thought and intended strategic move to institute electoral authoritarianism and anti-democracy regime. Cincea referring to the importance of an electoral system cautions that ‘finding an electoral system both equitable and efficient represents a desideratum for every electoral democracy. The electoral system is at the cornerstone of democracy and has important consequences upon the constitutional and political system as a whole.’⁷⁹ Thus, in the following subsections, I will discuss the specific two PR features and their undemocratic effects.

2.3. Single Nationwide Constituency

The idea of the single nationwide constituency is disadvantageous to opposition parties and independent candidates in Rwanda because the electoral competitors compete for votes throughout the country and votes are translated at a national level vote. But that is not the problem per se, the constraint is that with a single nationwide district, what matters is the

⁷⁷ Laura M and Marie B, ‘Understanding the Political Motivations That Shape Rwanda’s Emergent Developmental State’, *New Political Economy*, 2015, 8-9.

⁷⁸ Preamble, *Constitution of Rwanda* (2003).

⁷⁹ Cincea, E, ‘Proportionality or majoritarianism? In search of electoral equity’, *Bajo Palabra. Revista de Filosofía II Época*, N° 8, 2013, 175.

capacity of a party to organise and campaign though out the country and be able to establish its presence at grassroot levels (locally).

Rwandan legislators knowing well that the condition of multipartyism and democracy in Rwanda is still young and developing, with the opposition being made by small parties, opted for a nationwide electoral district which makes it hard and almost impossible for the struggling opposition and independents candidates to gain representation in the parliament. I will call few recorded instances of constraints presented by a single nationwide constituency to opposition parties and independents to prove the hypothesis. For example, there is a remarkable difference in financial resources between opposition parties, independent candidates, and the ruling party, RPF. During the 2003 elections, the Norwegian Institute of Human Rights reported that opposition and independent candidates had far fewer financial resources compared to the ruling party. There was no state support to electoral contestants.⁸⁰

The *Organic Law Governing Political Organisations and Politicians* prohibits political parties and independent candidates from receiving donations and bequests granted by *‘foreigners; foreign States; non-governmental organisations; faith-based organisations; foreign business companies or industries, and organisations owned by foreigners or in which foreigners are shareholders.’*⁸¹ Furthermore, the election law of Rwanda does not establish a cap to limit party expenditures during campaigns. This means that the small parties and independent candidates operating on their lower budgets are exposed to compete against RPF’s huge campaigning budget. This is besides the fact that the state advances no grants to both political organisations or independent candidates, but it does so only after the political party or individual candidate scorers at least five percent of the votes cast.⁸² This is unreasonable because the state funds the winners of elections and not the candidates. Therefore, the funds’ purpose is not to enable small and poor independents to compete fairly but instead to reward the parliamentary contenders who emerge victorious. For the ruling party, this is a breakthrough point because as Booth and Golooba-Mutebi argue, the ruling party has deployed its party-statal to centralise investment and participate in the private sector and therefore has amassed resources which enables it to mobilise the the electorate throughout the country.⁸³ The adoption of a single nationwide

⁸⁰ The Norwegian Institute of Human Rights/NORDEM, *Rwanda: Presidential and Parliamentary Elections 2003*, December 2003, 27.

⁸¹ Section 7, *Organic Law Governing Political Organisations and Politicians* (Act No.005 of 2018).

⁸² Section 8, *Organic Law Governing Political Organisations and Politicians* (Act No.005 of 2018).

⁸³ Booth D and Golooba-Mutebi F, ‘Developmental Patrimonialism? The Case of Rwanda’, 111 (444), *African Affairs*, 2012, 379–403.

constituency is definitely RPF's strategy to monopolise the access to the electorate, garner votes nationwide and score high in the parliamentary composition while the opposition and independents are closed out. The legislators should understand the context of multipartyism in Rwanda as composed of young, poor, small, developing, and restricted parties and candidates and therefore reform the electoral system to a multi-small district system.

Apart from campaigning funds constraint, the media coverage of electoral candidates has also been in favour of the ruling party. Again, as reported by European Union Election Observation Mission observing 2008 elections, the ruling party, RPF largely outspent other contenders by far.⁸⁴ It would have been achievable for the opposition party and independent candidates to attract affordable media coverage on a small local district level than in a nationwide single electoral district where the competition is tough, the costs are high and the ruling party dominates and controls both public and domestic media houses.⁸⁵ Again, it is my argument that this is intentionally provided in the law to limit any chance of an opposition candidate or independent candidate in specialising, let us say, in one district which is a stronghold of his/her originating party hence defeating the ruling party. In fact, this move confirms what Schedler had anticipated earlier. That the ruling party will opt for strict authoritarian legal controls to avoid the uncertainty of the electoral outcomes. In this case, the ruling party is aware that the costs of media coverage in a multi-district (local small districts) are far less than the costs required by an election contender if the electoral district is one of the nationwide. Meaning that the small opposition party will need to cover the whole country unlike in one small district as proposed by a multiple electoral district system.

Also, another instance of adverse effects that comes with a single nationwide constituency is the disparity between organisational facilities between the ruling party RPF, the opposition, and independents candidates. For example, the ruling party in Rwanda has managed to decentralise and deploy its representatives, cadres, and all structures needed to the very smallest units at all local levels.⁸⁶ To be able to compete in legislative elections where there is a nationwide constituency, a party or a candidate should be able to establish its presence throughout the country otherwise the electorate will not be informed about their alternatives,

⁸⁴ European Union Election Observation Mission, *Republic of Rwanda Final Report Legislative Elections to the Chamber of Deputies 15 – 18 September 2008*, 2009, 33.

⁸⁵ Sobel M and McIntyre K, 'The State of Journalism and Press Freedom in Postgenocide Rwanda', 96(2) *Journalism & Mass Communication Quarterly*, 2019, 558-578.

⁸⁶ The Norwegian Institute of Human Rights/NORDEM, *Rwanda: Presidential and Parliamentary Elections 2003*, December 2003, 8.

for example in the case of Rwanda, the electorate will not hear about other opposition parties and independent candidates who do not exist in their districts, but they will learn about the ruling party which has managed to establish grassroots presence. One needs to be reminded at this juncture that Dahl lists access to alternative sources of electoral candidacy information as one of the political arrangements that should be present in a country governed democratically.⁸⁷

2.4. Closed List PR

Within electoral systems using PR, two types of ballots are in wide use: closed-list systems and open-list systems.⁸⁸ In a closed-list system, voters choose among parties, with the order in which candidates take seats being fixed within parties while in open-list system voters express a preference to specific candidates on the party list and therefore influencing which candidate wins.⁸⁹ By giving voters influence over not just the number of seats each party wins but also which candidates from a given party win seats, open-list systems introduce a measure of intra-party competition among candidates.⁹⁰

Despite the outstanding merits of the open-list ballot system, Rwanda opted for the closed-list voting system. My argument here is that this is another electoral authoritarian strategy to maintain RPF's power through subtle and mild mechanisms covered under the blanket of 'the choice of the electoral system'. Under this subsection again, I hypothesise that the choice of the electoral rules that advance closed-list is simply a strategy for controlling electoral outcomes by the ruling party. This is so because closed-list voting system denies a chance to the potential individual candidates within their parties to win elections as individuals. Instead, it necessitates the winning of the whole party which is so hard for opposition parties in Rwanda as the electoral statics will prove in the next chapter.

Blumenau and others confirm my hypothesis by articulating that voters will cast their vote in a closed-list system based on the attractiveness of the parties whereas in an open-list system will cast their votes based on the attractiveness of the candidates.⁹¹ The election law of Rwanda is very intentional at instructing competition between parties and not between candidates because the latter option might allow potential candidates from opposition parties and

⁸⁷ Dahl, *On Democracy*, 85.

⁸⁸ Blumenau J, Eggers A, Hangartner D and Hix S, 'Open/Closed List and Party Choice: Experimental Evidence from the UK' 47(4) *British Journal of Political Science*, 2017, 1.

⁸⁹ Blumenau J et al, 'Open/Closed List and Party Choice', 1.

⁹⁰ Shugart M, Valdini M, and Suominen K, 'Looking for Locals: Voter Information Demands and Personal Vote-Earning Attributes of Legislators under Proportional Representation' 49(2) *American Journal of Political Science*, 2005, 439.

⁹¹ Blumenau J et al, 'Open/Closed List and Party Choice', 4.

independent candidates to win a legislative seat against a candidate from the ruling party's list and not necessarily winning against a collective party list. All these possibilities, in an electoral authoritarian regime, are avoided. As Schedler noted earlier, such regimes will allow opposition parties to run but deny them electoral victory.⁹² The point to note here is that an open list promotes individual candidate capacity and not party capacity. If the lists are open, the electorate would be able to express their preference to specific candidates sometimes regardless of party affiliation hence democratising and liberalising elections.

For independent candidates, the situation is even acute because the independent candidacy under the electoral law is considered to be an individual closed list.⁹³ The implication of this is that instead of an independent candidate who would have otherwise competed against an individual party candidate instead ends up contesting against the party. So, it becomes an independent candidate versus a particular political party all subjected to the neutral rule of the five percent threshold and nationwide single constituency victory to earn a seat in the parliament.

2.5. Conclusion

Trying to examine the above two features from a theoretical framework this paper has adopted, one realises that the election law of Rwanda advances an electoral system that systematically disadvantages opposition and independent candidates while entrenching the dominance of the ruling party in the legislature. While I am sure that an opposition victory or of the independent candidate is not impossible under this electoral system, it however requires a level of opposition mobilisation, time, financial capacity, organisational facilities, and skill. Otherwise, the victory of an opposition party or independents requires heroism far beyond what would normally be required in a democracy. In fact, Stroh in concluding his paper finds that a combination of a National Closed List and electoral threshold reduces the chances of opposition parties with scarce resources to entering parliament and as a result, they have to negotiate their success with the ruling party.⁹⁴ Perhaps this explains why towards elections, many of the opposition parties join RPF to form a coalition, the only way to gain a seat in the parliament.⁹⁵ This trend is a confirmation of my hypothesis that Rwandan democracy is pseudo.

⁹² Schedler A, 'The Logic of electoral Authoritarianism' 3.

⁹³ Section 82, *Organic Law governing elections* (Act No. 001 of 2019).

⁹⁴ Stroh A, 'Electoral rules of the authoritarian game', 9.

⁹⁵ Stroh A, 'Electoral rules of the authoritarian game', 9.

If the Rwandan election law genuinely wanted to respond to the constitutional commitments of political inclusivity, pluralistic and democratic society then adopting Nationwide-Closed List PR is not in conformity with the aspirations. Because the essence of an electoral system is not just to provide for procedures, mechanisms, and formulas of voting and vote allocation but to strengthen and contribute to the maintenance of effective opposition and competitive elections.

Moreover, many scholars have pointed out that a single nationwide constituency tends to over-represent the ruling parties and on the other side under-represent other parties hence disproportionality.⁹⁶ It has also been pointed out that Closed List PR lacks a link between the elected representative and the electorate since electors vote for political parties and not for individual candidates.⁹⁷

It is my argument that given the Rwandan history, political and economic realities, the country should adopt a more inclusive PR system. Multi electoral districts and open list where a candidate would incline to vie in his or her stronghold where they concentrate their power so to compete against the ruling party instead of negotiating co-optation at the national level as is the case for the single nationwide constituency.⁹⁸

Also, the multi electoral constituency has been linked to a proper representative democracy because, unlike the single nationwide constituency where candidates who end up gaining the seat to the parliamentary are chosen by the party internally, the members will be chosen from an open list PR and therefore will be held accountable by their voters on a more local and smaller, geographically-defined constituency such as a district in case of Rwanda.⁹⁹ Recommendation regarding eliminating the two authoritarian controls which I have discussed as features of Rwanda's PR electoral system will be offered in a later chapter dedicated to recommendations and the way forward. The following chapter is dedicated to discussing the five percent threshold as a form of electoral authoritarian control.

⁹⁶ Charvat J, 'Single Nationwide Electoral District, Proportionality, and Territorial Representation', 59.

⁹⁷ Kadima D, 'Choosing an Electoral System Alternatives for the Post-War Democratic Republic of Congo', 45.

⁹⁸ GIGA Research Programme, *'Legitimacy and Efficiency of Political Systems: The Effects of Electoral Institutions in Rwanda: Why Proportional Representation Supports the Authoritarian Regime'*, 2009,18.

⁹⁹ GIGA Research Programme, *'Legitimacy and Efficiency of Political Systems: The Effects of Electoral Institutions in Rwanda: Why Proportional Representation Supports the Authoritarian Regime'*, 2009,18.

CHAPTER 3: THE ELECTORAL THRESHOLD: AN ELECTORAL AUTHORITARIAN CONTROL

3.1. Introduction

Under this chapter, I will discuss how the Rwandan political players have used the five percent threshold to keep off the opposition and independent candidates from the electoral arena and later from obtaining legislative representation. I argue that this is another item on the menu of electoral manipulation and control of electoral outcomes so as to perpetuate and maintain the power monopoly of the ruling party. I will discuss this chapter by contributing to the ongoing debate of whether the five percent threshold is high in Rwanda. I will first navigate the statistical data of the results produced by previous legislative elections against the opposition party and independent candidates. The aim of this subsection is to lay down the foundational basis of this chapter by illustrating and showing the nature of the premature and inappropriate imposition of the electoral threshold. I will thereafter delve into the main part of this chapter which is to discuss the democratic timing a country should or ought to invoke electoral restrictions. Under the same subsection, this chapter will briefly discuss the capacity of political parties and other candidates who compete under an electoral system with same electoral rules applying to show how it influences the behaviour of an electoral threshold towards candidates. Overall, the question I will attempt to answer is therefore *what makes the 5 percent threshold in Rwanda (for legislative elections) to be unreasonably high to the extent of qualifying as an electoral authoritarian control.*

3.2. The results and effects of the Five Percent Threshold in Previous Rwandan Legislative Elections and Representation

Students of electoral systems are cognisant to the fact that all electoral systems all around the world have thresholds of representation: that is, the minimum level of support that a party must garner to gain representation. One of the thresholds adopted by different electoral systems is the numerical threshold of exclusion which is legally imposed (formal thresholds) by the constitutional or legal provisions that define the PR system. Elsewhere legal thresholds range from 0.67 percent in the Netherlands to 10 percent in Turkey.¹⁰⁰

¹⁰⁰ Reynolds, Reilly B and Ellis A, 'Electoral System Design: The New International IDEA Handbook, International Institute for Democracy and Electoral Assistance', Trydells Tryckeri AB, Sweden, 2005, 83.

Just like other electoral systems in the world, Rwanda has set its electoral threshold of exclusion at five percent (5%) of the total valid votes cast.¹⁰¹ Ideally, this threshold is or ought to be a neutral criterion that applies uniformly to all political candidates vying for parliamentary seats in the chamber of deputies. Ostensibly, it treats all electoral candidates procedurally equal, meaning that every candidate should garner the five percent threshold regardless of other potential determinants of electoral outcomes such as organisational capacity of the candidates, financial capabilities, media coverage in campaigns, and the nature of the electoral system itself. The threshold has existed since 2003 when Rwanda adopted a new constitution. It is the period that this work intends to study. From 2003 to current (the recent 2018 legislative elections).

By studying the past four parliamentary elections in Rwanda, one can track and establish the premature imposition of the electoral threshold. This is because, in all successive four elections, the polls disproportionately produced electoral outcomes that favour the ruling party. The author is convinced that in order to prove and highlight the electoral authoritarian nature of Rwandan legislative elections, because of its strategic imposition of the threshold, it is very important to invoke and highlight the statistical and historical information on parliamentary elections.

Starting off with the 2003 Legislative elections, one hundred and ninety candidates from Eight political parties and sixteen independent candidates contested in the race. As a result of this election, at the national level, the RPF coalition got 73.78 Percent of the votes which translated into forty out of the fifty-three seats. Only two other parties, the Parti Social Democrate hereafter (PSD) and the Parti Libéral (PL), made it above the five percent threshold and got seven and six seats, respectively. It has been argued, however, and this needs qualification, that the latter two parties supported the RPF's candidate at the presidential poll hence its rewarded share.¹⁰² All of the independent candidates got less than one percent of the votes and consequently did not manage to earn any seat in the parliament.¹⁰³

In the subsequent elections of 2008 Legislative Elections, only the RPF, PSD, and PL attained the five Percent threshold thereby gaining representation in the Chamber of

¹⁰¹ Section 89 and 90, *Organic Law governing elections* (Act No. 001 of 2019).

¹⁰² Reyntjens F, 'Rwanda, Ten Years On: From Genocide to Dictatorship', 103 *African Affairs* 2004, 186.

¹⁰³ The Norwegian Institute of Human Rights/NORDEM, *Rwanda: Presidential and Parliamentary Elections 2003*, December 2003, 41.

Deputies. In these elections FPR won 42 seats, the PSD won seven, and the PL won four.¹⁰⁴ Only one independent candidate vied and obtained less than five percent (0.34%).¹⁰⁵

For the 2013 Legislative Elections were contested by a total of eight political entities. These were the RPF - leading a coalition that included four small parties, the PL, the PSD, and PS-Imberakuri. In addition, four independent candidates contested the Parliamentary elections. Who, with a terrible defeat, all lost.¹⁰⁶ The electoral outcomes did not look different from the previous one. The result was a victory for the RPF, which maintained its absolute majority in the Chamber of Deputies, winning forty-one seats of the fifty-three directly contested seats. PSD and PL again won seven and five seats, respectively.¹⁰⁷

Finally, in the 2018 Legislative Elections the RPF-led Coalition won forty seats, DGP of Rwanda with two, PS Imberakuri with two, PL with four, and PSD with five. The same ill-fated independent candidates recorded poor results where four of them contested for a seat but in vain, they all disastrously failed to garner the five percent threshold.¹⁰⁸

The above results reveal a lot. It is evident that the five percent threshold has disproportionately tilted towards the ruling party. Out of four parliamentary elections, only less than thirteen seats per each election have been won by the opposition parties noting that only fifty-three seats out of eighty seats are open for direct balloting while the remaining are indirectly elected. It is unreasonable to reserve twenty-seven seats and in addition, set a threshold that yields such results.

In fact, Stroh has observed that the ruling party has used the ‘reservation of seats’ strategy not to risk some seats to the opposition small parties because the real number of RPF deputies is probably much higher always because the indirectly elected category of deputies still is filled in by the RPF party members to reinforce the party in an obscure manner since it is not allowed by the law to publish the party affiliation of the indirectly elected parliamentarians.¹⁰⁹ This is risky because if the current threshold only can yield 24.5% of the direct seats to opposition, in an instance where the ruling party places in its deputies in all twenty-seven indirect seats, this will end up having a parliament represented by only 16.25 % of opposition and 83.48% of the

¹⁰⁴ Commonwealth Expert Team, *Rwanda legislative elections (Chamber of Deputies)*, 23 September 2013, 6.

¹⁰⁵ European Union Election Observation Mission, *Republic of Rwanda final report: legislative elections to the Chamber of Deputies 15-18 September 2008*, 41-42.

¹⁰⁶ Commonwealth Expert Team, *Rwanda legislative elections (Chamber of Deputies)*, 23 September 2013, 4.

¹⁰⁷ Commonwealth Expert Team, *Rwanda legislative elections (Chamber of Deputies)*, 23 September 2013, 4-5.

¹⁰⁸ Rwanda Electoral Commission, *urutonde rw'abadepite bemejwe ko batowe burundu mu matora*, 7 September 2018, 1-3.

¹⁰⁹ Stroh A, ‘Electoral rules of the authoritarian game’, 10.

ruling party. These fears are not exaggerated. In 2008 elections, ten out of twenty-four elections of the so-called nonpartisan indirectly elected deputies in the women's segment of the preceding electoral period have appeared on the ruling party's list.¹¹⁰

In 2016, the DGP, Rwanda's main opposition attempted to petition the Rwandan Prime Minister, later to the Parliament, NEC and RGB calling for electoral laws' reforms, especially the electoral threshold of five percent. The DGP of Rwanda submitted that the electoral threshold of five percent is unfair and should therefore be reduced to the two percent threshold for independent candidates and four percent for the parties. The petition claims were dismissed 'calling them individual opinions without substantive evidence'.¹¹¹ Clearly there was no justification for the imposition of the five percent threshold that was provided.

3.3. Timing of imposing a threshold and Party Capacity: A High or Low Threshold?

As stated in the introduction of this chapter, the imposition of the electoral threshold should not be viewed as prima facie unconstitutional.¹¹² The crucial question here is whether the threshold is so high as to become a protection of a given political oligopoly to the detriment of emerging small political entities with a significant contribution to the 'market of ideas', which could assume a positive regulatory role.¹¹³ Even, a more nuanced inquiry is whether there is perfect timing of imposing a certain electoral threshold in the country's political life? Which moderate or appropriate electoral threshold should be imposed in a transitional democracy, a new or fragile democracy? In answering these questions, I find that the Rwandan legal electoral threshold of five percent is high and was intentionally imposed to maintain the power monopoly of the ruling party.

A sizeable number of scholars have commented and pointed out the nature of Rwanda's political system. Reyntjens for example, in his authoritative and one of the few comprehensive study on Rwanda from a historical perspective, *Rwanda, Ten Years On: From Genocide to Dictatorship*, finds that Rwanda is a dictatorship which has returned to a de facto one-party rule. He argues that the country, after the Genocide instead of liberalising politics, conducted

¹¹⁰ Stroh A, 'Electoral rules of the authoritarian game', 10.

¹¹¹ Democratic Green Party of Rwanda, 'Rwanda Government refuses to make political and electoral reforms demanded by the opposition', on 20th September 2020 -<https://www.rwandagreendemocrats.org/news/rwanda-government-refuses-make-political-and-electoral-reforms-demanded-opposition>- 21st September 2016.

¹¹² *YumakandSadak v. Turkey*, ECtHR, 2008.

¹¹³ Chryssogonos K and Stratilatis C, 'Limits of electoral equality and political representation', 8(1) *European Constitutional Law Review*, 2012, 23.

a fundamentally flawed ‘democratization’ process.¹¹⁴ Reyntjens’s sentiments are shared by Lemarchand who has studied Rwanda for a long time now. Although using different critical variables from Reyntjens, he similarly finds out that Rwanda is a tragic example of aborted transition.¹¹⁵

Again, Beresford and others commenting on the Rwandan transition period from the pre-Genocide authoritarian regime to desired post-genocide democracy agree that the transition period has continued indefinitely as means of reproducing power by the ruling party.¹¹⁶ In agreement, Reyntjens furthers his argument by asserting that “the regime continued to be seen as engaged in a transition towards democracy, a path that was to be concluded by elections in 2003 yet the polls only consolidated dictatorial rule and even added legitimacy to it, at least formally instead of true democracy.”¹¹⁷

Using the above scholarly observations, I equally argue that Rwanda has failed to deliver on its transitional objectives, at least as far as its political system is concerned. The country is still transitioning if not already a consolidated electoral authoritarianism regime type. Huntington in his seminal work, *The Third Wave: Democratization in the Late Twentieth Century*, illustrates that transition processes imply the succession of authoritarian regimes by democratic ones, of oppression by freedom, of human rights abuse by the rule of law.¹¹⁸ To actualise such a transition process, elections and the choice of an electoral system has been said to matter a lot.¹¹⁹

Rwanda since its first election in 2003, has adopted an electoral system that advances exclusionary rules, threshold exclusions to be specific. Although this kind of exclusions have been justified on two grounds: to help impede the fragmentation of the political spectrum and to restrain the emergence of new parties,¹²⁰ I find that the timing of the imposition of the five percent threshold was and still unfair and disadvantaging against the small parties and other

¹¹⁴ Reyntjens F, ‘Rwanda, Ten Years On: From Genocide to Dictatorship’, 177.

¹¹⁵ Lemarchand R, ‘Managing Transition Anarchies: Rwanda, Burundi, and South Africa in Comparative Perspective’, 32(4), *The Journal of Modern African Studies*, 1994, 583.

¹¹⁶ Beresford A, Berry M and Mann L, ‘Liberation movements and stalled democratic transitions: reproducing power in Rwanda and South Africa through productive liminality’ 25 (7), *Democratization*, 2018, 1231-1250.

¹¹⁷ Reyntjens, F, ‘Post-1994 Politics in Rwanda: Problematising ‘Liberation’ and ‘Democratisation’’, 27(6) *Third World Quarterly*, 2006, 1103.

¹¹⁸ Huntington S, *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press, Norman, 1991.

¹¹⁹ Vengroff, R, ‘The impact of the electoral system on the transition to democracy in Africa: The case of Mali’, 13(1), *Electoral Studies*, 1994, 29.

¹²⁰ Reuchamps M, Onclin F, Caluwaerts D and Baudewyns P, ‘Raising the Threshold, Fighting Fragmentation? Mechanical and Psychological Effects of the Legal Electoral Threshold in Belgium’, 37(5) *West European Politics*, 2014, 1087.

independents candidates who were and still suffering from foundational issues such as party formation, finances, attracting members, establishing strong organizations, and finding a persistent core of supporters. All these challenges are against the ruling party which after the Genocide, emerged victorious and trustworthy in the eyes of Rwandans who begged hope and life again, the party also managed to gather strong organizations, human and material resources that put it in a class of its own.

Against the backdrop of all the above electoral weakness of the nascent parties, Rwanda emerged from a highly ethnised and divided past. And, Reilly and Reynolds have argued that countries like Rwanda which are moving from a deep-rooted conflict situation like genocide, typically have a greater need for inclusiveness and a lower threshold for the admission of opposition parties and other political actors and adversarial politics than their established and consolidated democracies.¹²¹ They warn that lack of inclusion and high thresholds of entry of opposition politics through exclusionary electoral rules such as electoral thresholds may permanently act as exclusionary politics and a zero-sum game with frightening results.¹²²

Rwanda establishing a five percent threshold against new and emerging small parties in such a highly divided inherited society makes it a high electoral threshold for the country that claims to have committed itself to building a State that is based on consensual and pluralistic democracy founded on power sharing, national unity and reconciliation, good governance, development, social justice, tolerance, and resolution of problems through dialogue.¹²³

The efficacy of any electoral rule needs to be seen in a juxtaposition to the broader constitutional framework of a country. Therefore, the legal electoral threshold of five percent can only be said to be fair, disadvantageous, disproportionate, high or low if only understood and examined against the big picture: the history of the country, the nature of the political system the current electoral rule exists in and the aspirations of the constitution. Indeed, it is been argued that an electoral system, or electoral for this matter should ultimately be contextual and rest on the nuances of a country's unique social cleavages.

For Rwanda, the opposite has happened. It is quite clear from the results recorded by previous legislative elections that the electoral threshold of five percent has had a major impact on the

¹²¹ Reilly B and Reynolds A, 'Electoral Systems and Conflict in Divided Societies', in Stern P and Druckman D (eds), *International Conflict Resolution After the Cold War*, National Research Council, The National Academies Press, 2000, 435.

¹²² Reilly B and Reynolds A, 'Electoral Systems and Conflict in Divided Societies', 435.

¹²³ Preamble, *Constitution of Rwanda* (2003).

emerging party system and the future of democracy in Rwanda. Although parties might not play a very large role in the actual transition to democracy, they do play a crucial role in the consolidation of democracy in newly democratized states,¹²⁴ and have come to be seen as major pre-requisite for a functioning democracy.¹²⁵ Given that Rwanda has been declared an authoritarian regime by many scholars, it is only reasonable for this current study to assert that for multiple, free, strong and therefore a representative parliament to exist and thrive, the electoral rules such as threshold of exclusions should be purposive and designed to achieve particular outcomes and in case of Rwanda: inclusiveness and political competitiveness. The current threshold is not achieving these outcomes instead it has imposed constraints on their electoral success.

3.4. Conclusion

Arguably and as, it can be seen from the above discussion is that the most important aspect of an electoral system is the degree of squeeze it puts on the representation of small parties and other political competitors (electoral thresholds) because it influences the number and strength of political contenders.¹²⁶ And again, as it was argued above, electoral thresholds should not be viewed as *prima facie* illegal, unconstitutional, or outrightly high. They instead help to strike a trade-off between political representation and legislative cohesion. However, thresholds must not be so high as to violate the principle of equal opportunities and empty the democratic substance of elections¹²⁷ or be used as a legal tool to obstruct small parties from gaining representation in parliament.¹²⁸ In fact, the Council of Europe, in its Resolution 1547 of 2007, stated that “in well-established democracies, there should be no thresholds higher than 3% during the parliamentary elections. It should thus be possible to express a maximum number of opinions. Excluding numerous groups of people from the right to be represented is detrimental to a democratic system. In well-established democracies, a balance has to be found between the fair representation of views in the community and effectiveness in parliament and government.”¹²⁹

Indeed, the above Council of Europe’s statement is not so much oriented to Rwanda. As it has been illustrated above, Rwanda is not near to be an established democracy therefore talking of

¹²⁴ Spirova M, *Political Parties in Post-Communist Societies*, Palgrave Macmillan, New York, 2007, 3.

¹²⁵ Sartori G, *Parties and Party Systems*, Cambridge University Press, Cambridge, 1976, 26-27.

¹²⁶ Taagepera R, ‘Effective Magnitude and Effective Threshold’, 17(4), *Electoral Studies*, 1998, 393.

¹²⁷ Chrysogonos, K and Stratilatis C, ‘Limits of electoral equality and political representation’, 29.

¹²⁸ Anckar C, ‘Determinants of disproportionality and wasted votes’, 16(4), *Electoral Studies*, 1997, 505.

¹²⁹ Parliamentary Assembly, *State of human rights and democracy in Europe*, Resolution 1547 of 2007, 8.

a three percent electoral threshold would be still a legal barrier to the democratisation process. The imposition of the current five percent threshold is of no accident either. The country knowing its political and historical realities as again illustrated above, proceeded to constrain the political space in support of the ruling party.

The documented results of the previous four parliamentary elections are overwhelmingly tilted towards RPF, the political timeline of Rwanda that the threshold was imposed together with the electoral weakness of the nascent small parties and independent candidates shows that the threshold of the five percent is indeed high. Ideally, a democratic political system should be to grant small party minorities and narrow special interests groups including independent candidates to compete in elections with the same chance and gain parliamentary representation.¹³⁰ For example Baskaran et al studying the German state of Hesse that involved the abolishment of the 5 percent legal electoral threshold for local elections as of 2001 finds out that there is hence evidence that abolishing an explicit threshold increases electoral competition and benefits small parties, but it does so mostly indirectly through psychological rather than mechanical effects.¹³¹

The next chapter is the recommendations and observations. In this chapter I advance three possible electoral forms that Rwanda may adopt to enhance democratic representation in the parliament.

CHAPTER 4: OBSERVATIONS AND RECOMMENDATIONS

4.1. Introduction

It is widely argued by social and political scientists of electoral systems that there is no such thing as the ideal electoral system.¹³² There is no standard form of electoral system, they vary from country to country being influenced by a country's particular conditions including its history, culture, politics, demographic composition etc. Therefore, electoral systems need to be tailored closely to what those who design them want them to do. However, it is true that most of the time those who design such systems want them to produce results that favour the interests

¹³⁰ Lijphart, A, 'Typologies of democratic systems', 1 *Comparative Political Studies*, 1968, 3–44.

¹³¹ Thushyanthan B, and Lopes da Fonseca Mariana, 'Electoral thresholds and political outcomes: Quasi-experimental evidence from a reform in Germany, cege Discussion Papers, No. 177, University of Göttingen, Center for European, Governance and Economic Development Research (cege), Göttingen, 2003, 4.

¹³² Reynolds, Reilly B and Ellis A, 'Electoral System Design: The New International IDEA Handbook, International Institute for Democracy and Electoral Assistance', Trydells Tryckeri AB, Sweden, 2005, 429.

they prefer.¹³³ Whether the overall Rwandan PR with closed-list, nationwide constituency, and electoral threshold system intentionally or unanticipatedly produced electoral authoritarian controls remains unanswered and somewhat irrelevant. The real issue was whether the said PR features behave like electoral authoritarian controls imbued in the electoral law.

International Institute for Democracy and Electoral Assistance (IDEA) in its publication, *Electoral System Reform and Design*, lays out three fundamental and very important principles that must be kept in mind and guide the electoral reform process. The first basic principle of political reform is to study and understand the pre-existing conditions. The second principle is to understand the political nature of the existing institutions.¹³⁴ The third basic principle of political reform is to acknowledge and foresee unintended consequences.¹³⁵ Taking a different approach from IDEA, Horowitz argues that the best electoral system should be one that is straightforwardly and most accurate in reflecting the preferences of voters.¹³⁶ He goes further to provide six goals that should be considered while choosing or reforming of an electoral system. Those goals are: 1) proportionality of seats to votes; 2) accountability to constituents; 3) durable governments; 4) victory of the “Condorcet winner”; 5) interethnic and interreligious conciliation; and 6) minority officeholding.¹³⁷

The following proposed reforms would not require constitutional amendments but statutory ones. Proposed reforms such as party-list system reforms, constituency size and electoral threshold could only need the amendment of the concerned sections of the organic law governing elections of 2019. The amendment of the Act is however not isolated. The electoral reforms are part of the broader constitutional reform package to enhance the quality of politics and deliver and conform to particular constitutional aspirations and provisions. After, I caution as it has been already done that there is no one-size-fits-all reform.¹³⁸ It is reforming certain electoral system elements so as to check on the electoral authoritarian nature of those certain elements.

¹³³ Horowitz D, ‘Electoral Systems and Their Goals: A Primer for Decision-Makers’, 14(4) *Journal of Democracy*, 2003, 125-126.

¹³⁴ The International Institute for Democracy and Electoral Assistance, ‘*Electoral System Reform and Design*’, 2019, 2.

¹³⁵ The International Institute for Democracy and Electoral Assistance, ‘*Electoral System Reform and Design*’, 2019, 2.

¹³⁶ Horowitz D, ‘Electoral Systems and Their Goals’, 115.

¹³⁷ Horowitz D, ‘Electoral Systems and Their Goals’, 116.

¹³⁸ The International Institute for Democracy and Electoral Assistance, ‘*Electoral System Reform and Design*’, 2019, 2.

4.2. Small Multi-Electoral Constituency/District Size

As it was discussed in Chapter two, Rwanda subscribes to one single electoral constituency and that is the nationwide district. Given its harms to a young country like Rwanda with constitutional aspirations to democratic political identity. I propose that Rwanda can instead reform its electoral system to liberalise it by reducing the big one electoral constituency to a small multi-electoral constituency.

Hix and others have affirmatively articulated that multi-member constituency PR systems tend to result in a greater number of parties with candidates elected to the legislature than is the case with single-member systems. Single-member systems are favourable and effective with well-established democracies where parties are strong such as the predominance of two parties (the USA being a prime example).¹³⁹ By extension of Hix's and others' argument, I posit that in Rwanda where the country is still in the formation process, its future depends on the inclusion of a diversity of market ideas and this can only happen where the existing small and weak parties and other political competitors can break through the large single nationwide constituency.

To ensure Small-party representation (which, apart from the ruling party, the rest can be classified as 'small parties'), Section 79 of the *Organic Law governing elections*¹⁴⁰ should be amended to dissect the single-nationwide constituency into small multi-electoral constituency. This will allow small and weak opposition parties and independent candidates to make their parties more relevant by identifying and speaking to the electorate's challenges and developing issue-based manifestos and programmes; mobilise resources that can easily match the campaigning budget and strategy of a small electoral district than the nationwide, gather tailored ideas and grassroots support; lobby for permanent membership in a very well reached and known population.

Moreover, it has been established that the voter turnout in smaller multi-constituency is usually higher at elections than in countries with larger single and multi-member constituencies.¹⁴¹ This is would be probably the case for Rwanda if the proposed reduction of the nationwide constituency into small multi constituency because the parliamentary candidates would be to

¹³⁹ Hix S, Johnston R and McLean L, 'Choosing an Electoral System', The British Academy, 2010, - https://personal.lse.ac.uk/hix/working_papers/hix-johnston-mclean-choosing-an-electoral-system.pdf-, on 15th December 2020, 16.

¹⁴⁰ Section 79, *Organic Law governing elections* (Act No. 001 of 2019).

¹⁴¹ Hix S, Johnston R and McLean L, 'Choosing an Electoral System', 16.

mobilise and touch base with the electorate in a closer and easy way than when the candidates run throughout the country as one single electoral district. The exhaustion of all possible corners of the country is out of reach for small, weak, poorly organised, and malnourished opposition and independent candidates. Only the highly organised RPF, known and well-resourced RPF has managed to reach out to the electorate under the current nationwide electoral district.

Moreover, and as I have already illustrated in chapter two, there is a stronger ‘constituency link’ in small constituencies than large constituencies.¹⁴² It is logical to anticipate that, for example, if each district in Rwanda which has 30 districts maybe let us say with differing district magnitude produce competitive winners of parliamentary seats, geographical representation and at the same time constituency-based accountability will be higher than where the parliamentary winners are secured from a single nationwide electoral district. Small constituency like on a district level in Rwanda would ensure accountability and enable deputies in understanding local conditions and advancing local needs at the national level, and at the same time allow district members (citizens) have access to their legislators to facilitate the resolution of their concerns and participation in the democratic process. Whereas in the latter, the elected legislators have no link and are not in any way tied to any specific district or province. They are only accountable to their political parties as I am going to show in the following section that discusses party-list systems that Rwanda has adopted.

4.3. Open Party-List System

Again, *section 79* of the organic law governing elections of 2019 provides that the party-list will be closed. I have discussed in chapter two that the party list can be closed or open. In this paper, I recommend that *section 79* be amended to an open-list system. For clarity purposes, by Open-List PR systems, I mean those party-list systems that open their candidates for preferential votes. The political party will draw up a list with a specific order of candidates for each constituency, in the case of Rwanda this list is one because of the single-nationwide constituency. Thereafter, lists will be presented to voters who will be able to express their preference of a candidate over the other hence increasing the chances of that candidate to win. It is thus candidate-based and not party-based. This is unlike in Closed-List party-list system where such preference voting is not possible. So, in Open-List party-list system if a party wins

¹⁴² Hix S, Johnston R and McLean L, ‘Choosing an Electoral System’, 23.

two seats in a constituency, usually the candidates with the first and second most preferential votes from that party are elected.¹⁴³

There is considerable evidence, for example, that citizens in countries with Open-List PR have easy access to their members of parliament than citizens who live in countries with Closed-List PR. Again, Hix and others find that the ‘constituency link’ seems to be stronger under Open-List PR in Denmark.¹⁴⁴ This finding is definitely trusted to be extended to Rwandan Closed-List PR. It would be hard, for example, to say that there will be a constituency link between blind electors and elected members of parliament whose names and other details were classified under party name and logo.

Apart from the constituency link created by open-list party-list systems, there is a general consensus that electoral systems that limit the power of central party leaders to choose candidates from their winning list is more responsive in terms of proportional representatives. National list-system PR (the nationwide constituency list) like that of Rwanda usually hands over a great power to party leaders to decide which candidates will have favourable positions on the parties’ lists and thus have better chances of being elected. In such a case, when a party is bestowed with such powers, the right of the voter to choose the candidates, rather than just to choose among candidates, is thought to be impaired. On this score, constituency-based systems with small constituencies, are said to be favourable of democratic representation.¹⁴⁵

In fact, echoing what Horowitz postulated, it is my expectation that Open-List party-list system would allow independent candidates and small party candidates to win parliamentary seats head-to-head with the ruling party. My expectation is grounded in the reasoning that because Open-List PR in a candidate-based system, this will mitigate the party monopoly to allow individual candidates from any party to score high if they do good personal branding and manage to understand and convince the electorate. The electoral authoritarian nature that seems to come with Closed-List would be exposed and instead, elections would be liberalised in a sense that although the strength of the political party would still play its role, individual candidates from opposition small parties and independent candidates would manage to compete with their counterparty head-to-head. Moreover, the votes of the ruling party would still be

¹⁴³ Hix S, Johnston R and McLean L, ‘Choosing an Electoral System’, 65.

¹⁴⁴ Hix S, Johnston R and McLean L, ‘Choosing an Electoral System’, 23.

¹⁴⁵ Horowitz D, ‘Electoral Systems and Their Goals’, 117.

competed among the party members themselves therefore allowing small parties and independent candidates an increase in their vote share in the parliament.

Also, just like small constituency-based PR, Hix and others have argued that the voter turnout tends to be higher where citizens can express preferential votes between individual politicians from the same political party rather than simply choosing between pre-ordered party lists. In general, the more liberty electors are offered in choosing their preferred candidates, the greater the likelihood that they will turn out and exercise it.¹⁴⁶

The various electoral arrangements that were put in place post-genocide through the 2003 Constitution and supporting legislation essentially guarantees that the Rwandans would and will have weak political parties. This is an important observation as it suggests that the weakness of Rwandan political parties does not derive from some imagined cultural propensity of the country to foster and maintain weak parties. It is the result of incentives put in place by the electoral system to produce specific desired electoral comes in favour of the ruling party.

4.4. Decrease of Electoral Threshold or Alternatives Exclusions

Lastly, is the need to reduce the five percent threshold to a more proportionate percentage to all electoral candidates in Rwanda. For sure, there is evidence that a reduction or abolishment of electoral thresholds worldwide improves the electoral prospects of smaller parties.¹⁴⁷ Given the historical and current political nature of Rwandan politics, there is a need for inclusion of small parties and independent candidates and promotion of democratic representation.

Opposition parties and independent candidates have already petitioned and demanded an amendment of sections 89 and 90, *Organic Law governing elections* that provides for five percent thresholds to independent and party-candidates respectively. The DGP, in particular, went far a point to recommend that the threshold should be reduced to two percent threshold for independent candidates and four percent for the parties.¹⁴⁸ However, with no justification for such figures, Green Party seemed arbitrary in the way they arrived at the recommended threshold percentages.

¹⁴⁶ Hix S, Johnston R and McLean L, 'Choosing an Electoral System', 16.

¹⁴⁷ Thushyanthan B, and Lopes da Fonseca Mariana, 'Electoral thresholds and the success of minor parties', cege Discussion Papers, No. 177, University of Göttingen, Center for European, Governance and Economic Development Research (cege), Göttingen, 2003, 4.

¹⁴⁸ Habineza H, 'President, Democratic Green Party of Rwanda, 'Rwanda Government refuses to make political and electoral reforms demanded by the opposition', on 20th September 2020 - <https://www.rwandagreendemocrats.org/news/rwanda-government-refuses-make-political-and-electoral-reforms-demanded-opposition>- 21st September 2016.

Similarly, Dr Christopher Kayumba, a senior lecturer at the National University of Rwanda, who has been much involved with the case of electoral threshold in Rwanda has in many instances argued that changing the whole electoral system is impossible and might not be helpful. That, instead, the opposition and independent candidates should advocate for lowering the electoral threshold to two percent.¹⁴⁹ Again with no proper methods and reasons advanced, Kayumba arrived at two percent, I will adopt a different approach.

Rwanda has a body which is in charge of bringing together political organisations for the purposes of political dialogue and building consensus and national cohesion. The National Consultative Forum of Political Organisations (hereafter the forum) was established by the Constitution¹⁵⁰ as a permanent platform which promotes political dialogue, consensual democracy and strengthening Party Capacities for political career development; and to foster institutional development and service delivery.¹⁵¹

The forum is an independent institution and it is responsible among many responsibilities, for engaging political parties in a political dialogue which may be helpful in the country's governance, ensuring that Political organisations both with and without parliamentary seats get an opportunity to share views that may help in the country governance; allowing Political organisations to debate on major issues facing the country and, according to the nature of the issue, present to the Head of Government, the Speaker of the Chamber of Deputies, the Speaker of the Chamber of Senators and to the President of the Supreme Court recommendations that may be helpful in the governance of the country.¹⁵²

Given the above powers and responsibilities bestowed in the forum, I recommend that the electoral exclusion commissioned by the discussed electoral system-specific elements is a major issue which affects country's governance and therefore should be attended to. In this regard, the forum can move the motion of discussing the efficacy of the current electoral threshold, invite all political parties and independent candidates and deliberate on the most proportionate electoral threshold for all electoral candidates. This is because, as the most outstanding scholar of electoral systems Lijphat notes, political actors many a time do have knowledge of electoral system consequences and thus promote designs which they perceive

¹⁴⁹ Kayumba C, 'Why opposition's call to change the Rwanda electoral system is unwise', 23th July 2003, -< [Why opposition's call to change the Rwanda electoral system is unwise - The East African](#)>- on 5th December 2020.

¹⁵⁰ Article 59, *Constitution of Rwanda* (2003).

¹⁵¹ Article 3, *Internal Rules of The National Consultative Forum of Political Organisations* (No 05 of 2019).

¹⁵² Article 13, *Internal Rules of The National Consultative Forum of Political Organisations* (No 05 of 2019).

will maximize their own advantage.¹⁵³ Also, Lust-Okar and Jamal have likewise argued that during political liberalization, authoritarian regimes affect the choice of new institutions during by instituting one-party state through developing electoral rules that favour dominant political parties.¹⁵⁴ I observe that this is what happened during post-genocide so-called political liberalisation. Therefore, there is a need of an inclusive, consensual, and democratic negotiation on a proportionate and low threshold that will enable and increase political representation in the Rwandan Parliament.

It is clear that the various electoral arrangements that were put in place post genocide through 2003 Constitution and supporting legislations essentially guarantees that the Rwandans would and will have weak political parties. This is an important observation as it suggests that the weakness of Rwandan political parties does not derive from some imagined cultural propensity of the country to foster and maintain weak parties. It is the result of incentives put in place by the electoral system to produce specific desired electoral outcomes in favour of the ruling party.

4.5. Conclusion

All in all, it is not an easy task to craft a “one-size-fits all” electoral system. In fact, consultants on electoral system design rightly shy away from the “perfect ideal” of an electoral system. When they are asked what a best electoral system is or ought to look like, they say it “depends” on many factors such as what is a country’s political history? Is it an established democracy, transitional democracy, or a re-democratising state? This is the same hard task this work hard to deal. My recommendations spring from the history, political system of Rwanda and the aspirations that the Constitution aspires to. For Rwanda, this study has recommended several efforts and electoral reforms that can suit its political life. Regarding the electoral district size, I proposed that Rwanda can instead reform its electoral system by reducing the big one electoral constituency to small multi-electoral constituency system. And for the electoral threshold the study pointed out the need to reduce the five percent threshold to a more proportionate percentage to all electoral candidates in Rwanda through the forum which has such mandate and powers in its hands. And finally, on the issue of party-list system, I recommended that *section 79* be amended to an open-list system where a preferential vote can be casted. The following chapter concludes this this paper.

¹⁵³ Lijphart, A, ‘Electoral Systems’, in *The Encyclopedia of Democracy*, Congressional Quarterly Press, Washington DC, 1995, 412.

¹⁵⁴ LUST-OKAR, E and Jamal A, ‘Rulers and Rules: Reassessing the Influence of Regime Type on Electoral Law Formation’, 35(3), *Comparative Political Studies*, 338.

CHAPTER 5: CONCLUSION

In conclusion, this work had set out specific hypothesis to be proven. It is the author's conviction that respective chapters tried to respond to each research questions and proved what it had hypothesised. Whether the ruling party, RPF imposed the electoral authoritarian controls through the law intentionally or unintentionally remains unanswered. What comes out from the examination of the electoral system with its specific elements namely closed-list party-list system, nationwide electoral district and the five percent threshold is that they have tilted and unjustifiably favoured the ruling party at the expense of the opposition and independent parliamentary candidates. Therefore, the electoral outcomes confirm that indeed the electoral rules found in the organic law governing elections are authoritarian in nature.

It is an important point to make that in chapter three the electoral outcomes of the analysed and studied electoral outcomes of all the previous legislative elections seemed to be somehow fair. This should be understood with a caution by Schedler electoral authoritarian regimes will allow some degree of opposition party competition by allowing it to win some seats although the intention is not to liberalise election and democratise the political space. Therefore, I pointed to a different direction that even though the results seemed to share some few votes to opposition parties, the only opened seats were 53 out of 80 seats.

In the previous chapter I also illustrated that Rwanda it being not an established democracy, it thus should adopt a more inclusive electoral system with a low threshold that can be achieved by the small-weak parties. I argued that post-genocide through out the transition period and the making and choosing of the electoral system, the ruling part, RPF should have and indeed it negotiated the new rules of the game from a position of strength compared to the opposition which almost inexistent.

Winding up, Reilly and Reynolds write that "Electoral systems, once chosen, tend to remain fairly constant, as political interests quickly congeal around and respond to the incentives for election presented by the system. If it is rare that electoral systems are deliberately chosen, it is rarer still that they are carefully designed for the particular historical and social conditions present in a given country. This is particularly the case for new democracies. Any new democracy must choose (or inherit) an electoral system to elect its parliament. But such decisions are often taken within one of two circumstances. Either political actors lack basic knowledge and information, and the choices and consequences of different electoral systems are not fully recognized or, conversely, political actors do have knowledge of electoral system

consequences and thus promote designs which they perceive will maximize their own advantage. In both of these scenarios, the choices that are made are sometimes not the best ones for the long-term political health of the country concerned; at times, they can have disastrous consequences for a country's democratic prospects.”¹⁵⁵

In the end, I recommended Section 7 of the organic law governing elections be amended so that the current party-list system, Closed-List be abandoned and instead adopt Open-List system. Also proposed that for Rwanda to liberalise its electoral system, it should consider reducing the big one electoral constituency provide by the law to small multi-electoral constituency. And finally, I invited The National Consultative Forum of Political Organisations to facilitate a whole new discussion regarding electoral exclusion present in the law. The discussion should involve all political stakeholders equally and democratically.

¹⁵⁵ Reilly B and Reynolds A, 'Electoral Systems and Conflict in Divided Societies', in Stern P and Druckman D (eds), *International Conflict Resolution After the Cold War*, National Research Council, The National Academies Press, 2000, 442.

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