

**THE THREAT TO CONSTITUTIONALISM AND DEMOCRACY
BY AN INCUMBENT GOVERNMENT. THE CASE OF
VENEZUELA**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENT OF THE MASTER OF SCIENCE DEGREE IN INTERNATIONAL
RELATIONS**

DEPARMENT OF POLITICAL AND ADMINISTRATIVE STUDIES

FACULTY OF SOCIAL STUDIES

UNIVERSITY OF ZIMBABWE

JANUARY 2018

Dedications

I dedicate this piece of art to my family. You are my source of inspiration

Acknowledgements

I would like to make special mention and give thanks to my supervisor Mr Linington. Your guide and temperance were invaluable. Special mention goes to my family for their support which never wanes.

Abstract

Constitutionalism and democracy is under attack by sitting governments. The study is an analysis of how incumbent governments threaten the whole concept of constitutional democracy. The study also pays attention to the role that international relations play in mitigating this phenomenon. Unconstitutional change of government, constitution fabrication, abuse and disregard of the rule of law, separation of powers and a whole gamut of other unconstitutional and undemocratic practices characterise the trend of governance in most states today. The rise of pseudo democracies that can alternatively apply both democratic and authoritarian practices has resulted in the submerging of constitutional and democratic rupture. The ability to subvert constitutional democracy by incumbent governments has made it difficult to resolve the issue. Focus is now on how international relations as a paradigm that seem to have the greatest influence on state action can best protect and maintain the spirit of constitutionalism and democracy. The constitutional and democratic narrative of Venezuela is used to provide a classical point of reference of how incumbent governments threaten constitutional democracy and how the international community has responded.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.0 Introduction

The upheavals currently occurring in the State of Venezuela are not and have not been particular only to the aforementioned State. Instead of ushering peace and stability as the envisaged outcome, the practice of constitutionalism and democracy has often led to civil protest and unrest and in extreme cases to unprecedented levels of violence in different states. The question thus arises, is it that the concepts under discussion are flawed or is it the sitting governments approach to these concepts that poses the hub of the problem? What constitutionalism and democracy entail is an apt starting point. An in-depth understanding of how these governing instruments are ideally supposed to function gives room for a comparison with the actual application by governments be it in the past or in the present. It is of the utmost importance to note the fact that, constitutionalism and democracy are not mutually exclusive terms. To underscore this point it can be noted that adherence to constitutionalism is part of a functioning democracy *inter alia*. In fact, constitutionalism and democracy gave birth to the term, ‘constitutional democracy’. Keohane et al (2011: 599) state, “We defend instead a constitutional conception of democracy, in which properly constituted democratic political institutions promote informed deliberation, faction control, and minority rights protection, as well as political accountability.” Noteworthy however is that states do not operate in a vacuum and interchange in different spheres of activities with other international actors is inevitable. Globalisation and technological advancement has aided the subsequent demise of the Westphalia model of international governance, which maintained the supremacy of States as the only international actors. This has restricted the States privilege to act in isolation. It is therefore within the purview of this paper to examine the extent of influence the international community can exert on individual States in pursuit of ideals such as constitutionalism and democracy. It is a point of high note that, the partial restructuring of global governance has opened a wide crevice for international influence on domestic politics within member States. Besides states, regional and international organisations as well as international law play central roles as part of the international community. Kalb (2013: 432) states that, “the notion of vertical accountability arguably extends further to characterise the relationship between the domestic population, the national government

and the international community which includes international courts, the governments of other nations and international NGOs.”

1.1 Background of the study

Due to the anarchy that pervades the international system, international relations has evolved and broadened in scope so as to better provide a uniformed approach to issues affecting the globe. The raging debate about whether global governance is now following a constitutional and democratic model, will not receive much attention here, but remains informative nevertheless. Increased relevance of intergovernmental organisations, the growth and rise of powerful trade organisations such as the World Trade Organisation (WTO) and the International Monetary Fund (IMF) as well as the central role played by regional organisations, point to a constitutionalised global system of governance, where norms and laws set the precedence. The peculiarity of these constitutional methods of governance is their imposed limitation on the sovereignty of states in as much as they oblige them to treat their citizens and residents in accordance with certain human rights standards. Involvement with the other actors on the international realm through various treaties and human rights covenants has imposed limitations on state actors as their sovereignty has become limited.

Perhaps the most evident impact of international relations is reflected in the rising importance of international law in global and domestic governance. Despite the evident increase of international law as a basis for arriving at justice, the discourse remains plagued by divergent scholars of monism and dualism. Marian (2003, 54) states, “if international law compels the state, it occurs because the state has agreed to limit its sovereignty. State self-induced limitation is due to its freely complied will to take part in treaties and by the free acceptance of customary international law.” Disagreement on the extent that international law should encroach on states domestic politics and systems of justice has somehow left the paradigm in limbo. All is well when individual states adhere to international law especially when contentious issues such as constitutionalism and democracy are in question, but sometimes due to the anarchic nature of the international system states sometimes choose to deliberately ignore international law in pursuance of political and domestic interests. In the threat to constitutionalism and democracy debate, focus is on the influence that international law has in restraining sitting governments from abusing the spirit of constitutionalism and democracy as well as offering a basis for judicial review based on international law. Some scholars are however skeptical about the effect of

international law. International law is accused of being a tool used by the powerful states to keep the less powerful states in line. The legitimacy of international law is marred by charges that recent actions by the UN Security Council are creating a worldwide emergency condition, through which impartial interpretation of law and extra-judicial political measures are gaining influence. (Rabkin, 2005: 78). It would be amiss to deny therefore, the ambivalences, contradictions and treacherous double meanings of the current world situation, which often transforms cosmopolitan intents into hegemonic nightmares.

The watchdog function that once was the domain of the domestic civil society, has broadened in scope to encapsulate the international community. International criticism or approval has garnered much bearing in the conduct of individual States. This can be explained by the growing interdependence between States and the growth of Non State actors such as IOs. Sitting governments have found it more difficult to ignore international opinion as this can bear negative consequences. Kalb (2013: 428) points out that, “modern democratic transitions are characterized by a tremendous degree of international influence and pressure, which continues beyond the formal establishment of a democratic government and can threaten the representativeness and accountability of new political institutions.” After carrying out delegitimized elections, the incumbent government of Kenyatta in 2017 went on to enact unfavorable legislation that weakens the position of the opposition political parties. Albeit the civil protests that arose from this action, the government in Kenya also faced the brunt of international criticism. It thus can be argued that in some instances international relations is an external factor that has the effect of pressuring a sitting government to act in circumspect ways.

The international community employs the use of many devices to cajole incumbent governments to act in certain ways, especially in alignment to internationally accepted norms. Political dialogue and the imposition of sanctions where there is reticence are some of the main methods that international actors use to achieve their aims. The proliferation of international organisations has the positive impact of providing a podium for States to work together and likewise for States to be restrained in their conduct on particular issues. The United Nations (UN), an intergovernmental organisation serves as a good clarification example. As one of its main agendas, the UN has been a champion of constitutionalism and democracy, with member States expected to abide by these internationally recognised values of governance. Failure to do so has

seen States such as Chile sanctioned when it disparaged democratic principles. Besides the use of coercion, international influence in the domestic politics of states is also mired in a legitimacy paradigm. Entailed is that, the international community can to a greater magnitude confer or defer legitimacy on sitting governments in relation to their actions. Despite the enormous influence that international relations can have in promoting constitutionalism and democracy, it is necessary to point out that it is not always the case, as states retain the capacity to comply with or to defy internationally acclaimed values in relation to their self-interests.

It is not surprising that, focus has swiveled on to the ability of international relations to act as the champion for democracy and constitutionalism. The subsequent reason for increased reliance on international cooperation on domestic issues such as democracy and constitutionalism follows from the upsurge of internal abuse of the aforementioned concepts by incumbent governments. Unlike the classical doctrine of democracy envisaged by Schumpeter (2003: 250) that presents democracy as, “that institutional arrangement for arriving at political decisions which recognizes the shared good by making the people itself decide matters through the election of individuals who are to gather in order to carry out its willpower.” A tendency where an incumbent government willingly forego the same principles of democracy such as separation of powers, rule of law and due electoral processes has emerged as a norm. In most cases, as in the Democratic Republic of Congo (DRC) under Kabila, who wanted to make constitutional changes to allow for a third term, it seems democratic principles are falling victim to the self-interest of incumbent leaders that want to perpetuate their stay in power. Such a narrative widens the scope of involvement by the international community in protecting the concept of constitutional democracy.

1.2 Statement of the problem

The fusion of the idea of constitutionalism and democracy in practice has resulted in the creation of constitutional democracies. Such status is befitting to countries that strive to ensure that governance is in accordance with set laws and that democratic tendencies pervade the whole system of governance. These ideals are supposed to safeguard the people from arbitrary rule as well as from the tyranny of the majority. This however rings true if the aforementioned ideals are to enjoy strict adherence. In as much as constitutional democracies have tried to live up to the term, most are found wanting in one respect or the other. The major aspect of concern in this debate is the role that the international community plays in safeguarding the spirit of

constitutional democracy. The main challenges facing the global community of actors comprise of, the ability to change the constitution by sitting governments, the abuse of democratic principles inclusive of the rule of law, separation of powers, judicial review and electoral process. This development has created the need for strong international cooperation in protecting the values of constitutionalism and democracy. This is however against the claim by some scholars that, international influence is a weak political tool that plays a secondary role to state interest and is in most cases shaped by dominant powerful states, thereby making it a redundant gateway for influencing domestic politics even when crucial values of constitutionalism and democracy are challenged. Such views open an assortment of problems that calls for deeper study.

Attacks on constitutions have been many and varied in form. The constitution that has been operational in Venezuela came into force in 1999 when Hugo Chavez became the President. The current government under President Maduro, inherited this constitution amicably as it worked well with their socialist aspirations. After more than a decade, President Maduro amid internal squabbles has instigated the formation of a new constituent assembly to rewrite the constitution. Whether this is due to genuine need for a revised supreme law or due to ulterior self-interest motives is a fact to be ascertained. This scenario where, incumbent leaders rush to amend the constitution has meant that the doctrine of constitutionalism is now just a paper tiger as constitutions are being tailor amended to suit the wishes of those in power. In Africa, there has been a spate of similar occurrences. In Algeria, a constitutional amendment was passed by the parliament in 2008, abolishing the two-term limit for rulers, paving way for President Abdelaziz Bouteflika to be reelected. Burkina Faso had a similar scenario where President Blaise Compaore reached the end of his first two seven year terms in office in 2005, the constitutional council ruled that a 2000 amendment to the constitution limiting the president to two five year limits did not have effect on him since it took effect when he was president. This cleared the way for his candidacy in the 2005 election, which he won. (Mazrui, 2001: 8). The recurring effect of the threat to constitutionalism and democracy has witnessed the rise and increased frequency of civil protests in constitutional democracies as attested to by the recent upheaval that played out in the State of Venezuela. Civil protests have become one of the most popular ways of raising international awareness as was the case in Burundi in 2016 when the former president Pierre Nkuruziza wanted to amend the constitution to make way for a third term bid and in Kenya in

2017 amid accusations of incumbent governments tampering with constitutionalism and democratic values. Despite the pinball assertion of a world grown small due to technology, where knowledge of events occurring in distant parts of the world is just fingertips away, the impact of this facet of the modern day world remains questionable. If awareness of constitutional and democratic principles abuse does not lead to action and intervention or if action and intervention is in accordance to a set of political considerations.

Immunity from negative repercussions by the international community has enabled sitting leaders such as Nicholas Maduro of Venezuela to get away with the flouting of democratic principles such as the separation of power. After suspending the mainly opposition dominated congress, in a move denounced by the head of the OAS as a “self-inflicted coup by the presidents regime against the opposition controlled congress.” The government of Maduro went on to create a judicial panel aligned to it. Following such moves, the UN high commissioner for human rights, Zeid Ra’ad al Hussein said in a statement, “separation of powers is important for democracy to function, and maintaining democratic spaces open is crucial to ensure human rights are secure.” (The Guardian, 2017). Where separation of powers is not strictly in force, the possibility of one body exercising more power than is legal increases. Also on the other hand the international community seems to be remiss in providing for judicial review. There are instances where the judiciary is aligned to the government in power and therefore makes a habit of passing unlawful or arbitrary judgments. International law ought to provide for judicial review through the establishment of an international court like the Southern Africa Development Committee (SADC) tribunal to review decisions of domestic courts. As Kalb (2013: 431) notes, “an effective judiciary may thus be a key institutional actor in preventing the reconsolidation of power in the executive that has characterised so many nations in transition.” A biased judiciary therefore bears appalling consequences for constitutionalism and democracy. Such a scenario can be depicted in Venezuela, where following antigovernment protests, the President relieved the attorney general of her duties in a move many critics have pointed to be motivated by the drive to appoint a judicial bench that is pro the government.

Is the international community doing enough to ensure that sitting governments adhere to the tenets of constitutionalism and democracy? A critical eye has turned to the role that international relations can play as a restraint on arbitrary rule by governments in power. It is the position of

this paper that international relations can play a phenomenal role in curtailing attacks on constitutionalism, but this has not been the case as international pressure and opinion has often been sidelined. Indeed if interdependence has increased then why would the combined force of an allied international community fail to secure the preservation of fundamental values such as constitutionalism and democracy? Keohane and Nye (1998, 92) argued that, “governments will not and empirically do not, always override the interests of transnational actors, even when pursuing security interests and in wartime. Not only can transnational actors shift basic state preferences, but they can enforce new external restrictions and change the nature of relative interstate power, with traditional statesmanship and military power playing lesser roles.” Albeit instances of international influence in domestic politics as was the case in Gambia in 2017 where Yaya Jammeh succumbed to foreign pressure in the form of the regional bloc Economic Community of West African States (ECOWAS) to quit office after trying to tamper with constitutionalism and democracy. There are many cases however where the international community seems to have taken a backseat. This might however mirror the argument by realists like Morgenthau and Waltz. Realists have long upheld that the exact preferences, interests, beliefs and internal politics of states are epiphenomenal, because they can be assumed conflictual. If preferences are fixed, then relative material power is all that shapes State behavior in the end. (Morgenthau, 1960). Entailed thereof is that states and ultimately sitting governments retain the discretion to bend in line with international views in relation to State interests. An analysis of whether the international community is an effective safeguard for constitutionalism and democracy becomes necessary.

1.3 Objectives of the study

The study seeks to

- Examine the concepts of constitutionalism and democracy in Venezuela
- Assess the application of these concepts by sitting governments and in particular Venezuela
- Assess the effectiveness of international influence in curtailing sitting governments attack on constitutionalism and democracy
- Evaluate the relevance of constitutionalism and democracy in the contemporary world

1.4 Research questions

- What is constitutionalism and democracy?
- What is the role of international law in promoting constitutionalism and democracy in Venezuela?
- To what extent has the Venezuelan government adhered to the concepts of constitutionalism and democracy?
- How effective has been international influence in promoting the ideals of constitutionalism and democracy?
- How effective and relevant are the concepts of constitutionalism and democracy in modern day governance and in particular Venezuela?

1.5 Hypothesis

International relations is the lever for mitigating the attack on constitutionalism and democracy by an incumbent government.

1.6 Justification of the study

The increased frequency of civil protests and instability calls for in-depth study of the underlying causes for disquiet. Constitutionalism and democracy are the recurrent issues animating this debate. This study seeks to add on to the body of literature on the subject matter, with the intention of disseminating some of the contentious issues that characterize the practice of constitutionalism and democracy. Due to increased interdependence, international relations has taken a prominent position in protection and maintaining constitutional democracy. Whether international relations has been successful or not bears need for study. The study also aims to proffer sustainable solutions in the mitigation of bad governance due to a skewed application of constitutionalism and democracy. The focus is on Venezuela as a country currently facing a crisis of constitutionalism and democracy under President Nicholas Maduro. Publication of this research on the internet means that policy makers are in a position to benefit from this incursion. Those undertaking studies, within the purview of the issues under discussion, namely, the relationship between sitting governments and the concepts of constitutionalism and democracy, also stand to gain from this study.

1.7 Methodology

Research methodology denote the approach used by the researcher to garner information. This study will employ the use of qualitative research methods to gather data. According to Neuman (2014: 45), “Qualitative research methods normally entail reasoning from induction, gathering data and drawing conclusions from a multiplicity of interpretations and perceptions, beginning with observation, rather than a single, objective truth or rationality.” The choice of research design is mainly influenced by the textual nature of the research as far as it seeks to investigate the issue under discussion.

1.8 Research design

To enable the smooth collection and tabulation of data, a research design is called for. A research design illustrates the process and type of instruments to be utilised during the conduct of the research. According to Creswell (2014; 14), “research design is the overall plan for connecting the conceptual research problems to the pertinent and empirical research.” This study employed a qualitative research design, which is suited for collecting descriptive (non-numerical) data.

- Case study

Leedy and Ormrod (2001; 149) defines a case study as a, “method used when the researcher wants to find out the solution of a little known situation, a specific activity or event.” A case study can be regarded as a referral point in an investigation on a particular issue. The study made use of Venezuela as the main focal point of discussion. This was mainly influenced by the current and very recent occurrences in Venezuela related to the subject matter of constitutionalism and democracy. Thus Venezuela offers a fresh starting point for making an analysis on the state of constitutionalism and democracy as practiced in States.

1.9 Data collection methods

- Interview

Interviews is the main qualitative tool used in qualitative research. Siegfried (2005:23) states that, “an interview can be thought of as a guided conversation between a researcher and the informant.” This study will make use of structured interviews to gather information from respondents. Structured interviews are fixed interviews where questions are put in the same format to each interviewee. In this research, structured interviews will be used to fully get

reliable and detailed information on how sitting governments are posing a threat to constitutionalism and democracy, if at all. The structured interviews will be administered on a face-to-face basis, to create a formal relationship between the interviewer and the interviewee. In choosing respondents, purposive sampling will be used. Palys (2008: 13), states that purposive sampling suggests that one sees sampling as a sequence of strategic choices about with whom, where and how one does research. This method of sampling is most suitable to the research as it allows the researcher to select suitable respondents that are knowledgeable in the subject matter.

- Documentary analysis

Documents are important sources of information in as much as they widely used to capture data. Rolls (2005: 13) defines documentary analysis as, “involving obtaining data from existing documents without having to question people through interviews and questionnaires.” In unravelling the constitutionalism and democracy conundrum, the research will make use of use of written and produced material in newspapers, articles, government policy records, international organisations and documents. These will provide a wide array of information on the subject matter under investigation.

1.10 Data analysis and Presentation

Thompson (1997: 12) asserts that, “data analysis is the process of developing answers to questions through the examination and interpretation of data.” This allows for the identification of patterns or causality during data interpretation. The research study will use the descriptive category of data analysis. Use of sample information to explain or make abstractions of phenomena will be employed. Data reduction which emphasises the reduction of data to manageable levels making understanding and interpretation easier will be used throughout the research process as data collected will need to be synthesized.

1.11 Delimitations

According to Simon (2011:12), delimitations describe those characteristics that limit the scope and define restrictions of one’s study. Despite the fact that there are many problems afflicting constitutional democracies making effective and stable governance remain an elusive dream, the focus of this research touches on aspects to do with constitutionalism and democracy. Democracy as it is commonly understood find basis in a number of democratic principles. The

study will however not comprehensively touch on all these principles, but will dwell on those contentious aspects that are liable and have been apt to be tempered around with by incumbent governments. Particular focus will be on the actions of sitting governments despite that there may be other political actors that can influence and impact on the doctrines of constitutionalism and democracy.

1.12 Limitations

Limitations are inherent design parameters that can limit the scope of the research findings. The geographical position of Venezuela makes it inaccessible to the researcher. This constrains the scope of the research as empirical analysis and research from primary sources is not possible. The application of qualitative research methods only is a limiting factor of the study. However, it is upon careful consideration that the research has not applied a mixed approach, the nature of the research problem calls for understanding of the precedent and antecedent events. This calls for a comprehensive literary approach that leaves little room to inculcate quantitative research.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.0 Introduction

The concept of constitutional democracy is under threat from incumbent governments. It is an ironic situation indeed as the same constitutional and democratic principles, are used to perpetuate authoritarian rule under the guise of democracy. Constitutionalism and democracy are such acclaimed concepts internationally it is thus vexing to see discourse of the abuse of these intricately linked concepts take center stage. The recurring spates of attacks on constitutionalism and democracy in domestic state politics as currently underlined by the situation in Venezuela swivels attention to the role international relations play in the sustenance of global order by playing a watchdog function. Sitting governments on the other hand have tended to target particular laws and concepts of democracy indiscriminately. Occurrences in Venezuela in 2017 can be used as to illustrate this growing phenomena. The incumbent President Nicholas Maduro instigated questionable constitutional changes and was accused of tampering with democratic principles such as the rule of law and separation of powers. In most cases the civil society is not in a position to do much in cases of unconstitutional and undemocratic practices by the government in power where entrenched safeguards against arbitrary rule such as judicial review are manipulated. It is in such scenarios that the international community is perceived as having a duty to halt or remedy such capricious actions. The ensuing tension that often arises between domestic autonomy and the responsibility of the international community in safeguarding internationally acknowledged concepts bears need for extensive literature review. As Morgan (2001: 234) points out,

The ever-increasing negative effects of transnational social forces tend to generate the pervasive force of a neo-liberal cosmopolitan moral view of international relations that increasingly sanctions both military and non-military interventions to maintain the existing structure of states and international society. The consequence is that states, in particular, developing states, are progressively losing their individual identities, rights, and obligations vis-à-vis civil society, in the wake of external impositions. In other words, the disintegrative effects of globalization as well as the dislocative aspects of weak developing economies are increasingly undermining the twin pillars of non-intervention and state sovereignty.

2.1 Dissemination of the constitutional democracy concept

The strongest international influence on the rule of law, justice and human rights development at the domestic level pre-dates the 1990s. That influence arose through what is now referred to as the internationalization of constitutional law principles and standards, which can be traced to the end of the Second World War when governments' treatment of their nationals became a matter of legitimate concern for the international community. (Fombad et al, 2013: 7). Constitutionalism can be interpreted in a 'narrow' or 'broader' sense. The latter denotes the application of constitutions, written or not, as the main referent object of authority within state borders and the former referring to the use of constitutional mechanisms to govern interaction between states as well as prescribe certain internationally acknowledged norms.(Waldron, 2010: 23). Kleinlein (2012: 120) broadens the scope of the definition by taking note that, "Constitutionalism has one essential quality: it is a legal limitation on government; it is the contrast of capricious rule; its opposite is autocratic government, the regime of will instead of law," and "all constitutional government is by definition limited government." In support of this perspective of viewing constitutionalism, Fombad and Murray (2013: 19) point out that, "a constitution in general and modern constitutionalism in particular, is fundamentally preoccupied with limiting governmental power in order to counter the twin evils of arbitrariness and anarchy." The main recurring fundamental aspect from these definitions is the restraining effect of constitutionalism on state actors. Therefore, by laying down precedents, the legitimacy of the government's actions can be determined in relation to the governing constitution.

What however has remained an issue of contention especially for domestic constitutionalism is the idealistic nature of the concept. Incumbent governments are often able to play around with constitutions with few or insubstantial losses. As Baker (2002: 88) points out, "if significant strife exists on the ground or the government is not accepted by the people, then the constitution may become a façade constitution." A façade constitution can announce aspirational principles and assume power structures for government, but such doctrines and actions are ineffective and potentially delegitimized because they are not followed in practice. It is notable in such scenarios that one of the first things that authoritarian leaders try to do is roll back existing constitutional constraints. The actions of presidents Hugo Chavez in Venezuela in 1999 and Nicholas Maduro in 2017 are cases in point. It is against such a backdrop that global constitutionalism manifest in

different ways such as international law, has had to play a role as a monitoring agent of sitting governments.

2.2 Efficacy of International Law in constitutional democracy

There has been some heavy contestations in international relations circles as to the extent that international law is increasingly moving to regulate the application of constitutionalism and democracy. As Kalb (2013; 3) points out, “international legal standards are also increasingly moving towards requiring ‘constitutionalism’ as a ‘good’ per se, and international legal defense of constitutions as an instrument in averting ‘democratic regression’.” Standards in Africa and the Americas have seen the African Union (AU), and the Organisation of American States (OAS) firmly commit to democratic government and both have treaties committing their member states to democracy. Both bodies have recently developed these principles towards more precise prohibitions of unconstitutional rupture, or unconstitutional change of government, to be enforced through sanctions and ultimately expulsion from the relevant regional organization. (Bell, 2016: 23). An example is Article 30 of the AU Constitutive Act, which provides that ‘governments which will gain power through unconstitutional means will not be permitted to participate in the activities of the Union.’ In an argument set to show the influence of international instruments in monitoring state activity, Kleinlein (2012: 85) advances the view that, “international law regulates domestic governance to an unprecedented extent, in particular with regard to the democratic origin of governments. Some regard WTO rule as ‘another line of constitutional entrenchment’ to give economic freedom to market actors.” Kumm (2004: 910) attests that, “political choices concerning the desirability of economic globalization and the assessment of new security threats have given shape to a new kind of international law. This international law is, largely, built on institutions, treaties and the substantive international law established after WWII.” The International Criminal Court (ICC) and the International Court of Justice (ICJ) an organ of the UN have taken center stage in the adjudication of matters arising from either the domestic or international domains affecting internationally accepted norms. The rising eminence of international law aided by the interdependent global order, has seen it playing an instrumental albeit contentious role in preserving the sanctity of the principles that form the ground roots of constitutional democracies.

International law has developed in a myriad of ways. It has become embedded in many international structures such that it would be a fallacy to claim that a state can claim impunity

from its influence. As Kalb (2013: 433) posits, “Courts may draw on international support “vertically” to protect against encroachment from the other branches ‘horizontally’, for example, by reaching out to influential international institutions to put pressure on the president to comply with judicial orders limiting executive authority.” An empowered judiciary in Kenya managed to nullify the 2017 elections in which the incumbent president Uhuru Kenyatta had emerged as the victor on the grounds of the impartiality of the election process. Kumm (2004: 913) points out that, “the idea of ‘matters basically within the domestic influence of any state’ has little practical significance for cabining in the domain of international law. International law, then, has remained the handmaiden of denationalisation by having created an increasingly dense set of functional rules that openly concern questions traditionally decided by national legal processes.” International law contributes to the checks and balances of a constitutional system, complementing domestic separation of powers and federalism as another means of achieving this. An effective institutionalization, international legality also has the propensity to limit the choices of the executive branch to assert foreign affairs prerogatives and in so doing shift power to the executive branch in a manner that endangers and possibly destabilises democracy on the domestic level. In these ways, the international rule of law has the inclination to lock in and stabilise liberal constitutional democracy on the domestic level. (Kumm, 2004: 915)

It however seems the impact of international law has been marginal in agitating for constitutionalism and democracy in Venezuela. Questionable actions by the incumbent government highlighted by McCoy (2006: 98) who notes that “public authorities had just crossed a line in the sand of democratic principles when they suspended indefinitely the presidential recall referendum and postponed till 2017 the gubernatorial elections scheduled for December”, seem to not have received ire from the international legal community. In a show of defiance, the current President of Venezuela, Nicholas Maduro, went on to upset the separation of powers doctrine by creating a partial judicial commission with absolute powers. As the desecration of constitutionalism and democracy occurred in Venezuela aided by the heavy-handed approach by the state of Venezuela to civil protests, the international community only managed to show awareness of the prevailing crisis through cable news. Which as a form of international pressure point can be cited to have failed dismally as this did little to change the actions of the Venezuelan incumbent government. What however seems perplexing is that the lethargy affecting international law and the international community at large seems to be discriminate.

The power and effect of international law seems vigorous in some cases, such as the response of the UN in Liberia or the alacrity which sanctions were imposed on Zimbabwe by the United States of America (USA) and the European Union (EU) after claims of undemocratic governance. This discrepancy in the implementation of international law has resulted in scholars denigrating its undemocratic nature. Kalb (2013: 426) assert that, “there are a few different variations on the antidemocratic critique, depending on what type of international or foreign law is under study. One is that the process by which international law is generated is antidemocratic. Another is that dependence on international law to decide constitutional ambiguities “could effectually result in the relegation of all domestic law” to international standards, which could (perhaps counterintuitively) weaken domestic constitutional guarantees.” Further questioning the legitimacy of international law, Bell (2016: 910) argues that, “the state, from the perspective of citizens in a constitutional democracy, is just the institutional framework within which citizens govern themselves. Anything that imposes constraints on states also inflicts constraints on citizens and how they govern themselves.” This highlights the major reservations about the extensive use of international law, as a tool of international relations in the promotion of constitutional democracy.

2.3 A practical analysis of Constitutionalism and democracy in Venezuela

The history of Venezuela as a constitutional democracy is one characterised by continuous changes. The recent crisis in the country can be traced to Maduro’s ascendancy to power in 2013. Corrales (2015: 44) observes that, “The heightening of autocratic legalism under Maduro has proved destabilizing. In early 2014 the opposition split over how to react to the defective electoral process and the government’s denial to address irregularities, with one faction calling for and carrying out street protests.” Although at some period, touted as the most stable and successful democratic aspirant among the Latin states, Venezuela’s constitutional and democratic form has taken a downturn spiral for the worse. Lalander (2004: 71) notes that, “in 1999, Hugo Chavez was like a ray of hope for the downcast people of Venezuela. Riding a wave of populism accentuated by robust promises for democracy according to the new constitution.” The euphoria that gripped Venezuela after Chavez attained political office have slowly faded away, as constitutionalism and democracy has slowly regressed. Nearly ten years later, the downward spiral continues as the country rocks under the pseudo democratic government of President Nicholas Maduro. Assessing the state of democracy in Venezuela, Lalander (2004: 3)

notes that, “Venezuelan democracy was considered an exception in Latin America at a time when most neighboring countries were still governed by authoritarian regimes. But over time, the ideal of “pacted” democracy began to display signs that it systematically excepted broad sectors of society. It settled into a “democracy for the privileged”, and the idea of what democracy really meant outside elections, party representation in parliament and the presidency was lost.” The constitutional trajectory followed by the state of Venezuela is not peculiar, as other states such as Chile in the 90s have suffered assaults on democracy that necessitates international action.

The recent protests by the Venezuelan population for change largely went unheeded and in fact were the cause of repression by the sitting government. Scholars such as Omotola (2014) are of the view that the petro state status of the Venezuelan economy plays a vital role in its domestic constitution, especially how the government treats issues such as constitutionalism and democracy. This is substantiated by the argument of Sachs and Warner (2001: 44) that, “states that receive the bulk of revenue from resource rents tend to be undemocratic and unresponsive to popular demands.” As Leon (2005: 4) expound, “the Venezuelan State is an economically autonomous entity that can afford the luxury of ignoring or destroying private enterprise without jeopardizing its own existence.” The state’s perennial source of wealth, its major as well as its minor sources of income, depend on the fluctuation of petroleum prices on the world market, but never on the economic efforts of Venezuelan society or on the government’s ability to collect taxes from taxpayers. (ibid). This ability to derive revenue from natural resource rents seem to have been instrumental in the ability of both the government of Hugo Chavez and Nicholas Maduro in largely sidelining internal and international pressure to the detriment of constitutionalism and democracy. In a related argument, Corrales (2015: 46) is of the view that, “During Chávez’s presidency, Venezuela started using its foreign policy to form an ‘alliance of tolerance’, that is, an alliance of countries unwilling to criticize Venezuela, let alone join any international effort to sanction it for domestic wrong doings. In essence, Venezuela used its oil resources to expand this alliance across Latin America and beyond.” This perhaps explains the lack of effective regional and international pressure in the case of Venezuela, despite Latin American regional blocs such as the OAS or UNSUR having democratic clauses. The Latin American clause, found in article 20 of the Inter-American Democratic Charter, allows for the suspension of member states in the event of an “unconstitutional alteration of the constitutional

regime that seriously impairs the democratic order in a member state” (Landau, 2017: 100). Largely, the state of constitutionalism and democracy in Venezuela remain dismal and actually shows signs of degeneration, following from the recent actions of the incumbent government. In this context, the future of constitutionalism and democracy remains in a precarious position.

2.4 International influence on constitutionalism and democracy

The restructuring of the global setup-encompassing constitutionalism and democratization as the pinnacle of international relations, has obviously had an impact on the application of these concepts in individual states. As Fombad et al (2013: 8) observe, “The International Monetary Fund and the World Bank also attached political conditionality to aid, loans and investments. Those policies imposed by Western governments and intergovernmental organizations have been controversial, but there is no doubt that these external forces have played a very important role in ushering in the new era of democratization and constitutional reforms.” This interchange and interlinkage, has a rippling effect that usually makes it difficult for states to ignore international opinion and covenants. Thus, it can be ascertained that international relations is strategically positioned to champion the values of constitutionalism and democracy. Some scholars however hold contrary views, Anika et al (2011: 3) argues that, “the very intent by external actors to help construct a just political order implies interfering in the internal concerns of other states and can therefore, itself, be regarded as violating the (collective) prerogative to sovereignty and self-determination. In this sense, external democracy advancement is both premised on and challenged by assertions to perceived entitlements.”

It is recently in Africa that regional organisations stopped being stooges in the face of a barrage of attacks on the concept of constitutional democracy. The post liberation period in Africa, was marked by one party states, defunct electoral processes and often characterised by coups. The need for democratic governance is among the shared values of the African states today. It is one of the primacies of the AU and some of its regional economic communities (RECs). Yaya (2014: 87) points out that, “the African Union, having recognized the value of political stability, established a Mechanism for Conflict Prevention, Management and Resolution in Africa on 29 June 1993 and an African Charter on Democracy, Elections and Governance on 30th January 2006.” These mechanisms embody rules, principles, norms as well as values that are to ensure there is political stability and less conflicts through obedience to the principles of democracy and democratic governance. ECOWAS is a shining example of the impact of RECs

in promoting constitutionalism and democracy. Some of the major achievements of ECOWAS in the application of regional instruments to bolster democratic governance were the vehement refusal to allow former President of Cote d'Ivoire, Laurent Gbagbo to subvert constitutionalism. The threat by the Organization to use force as an option in resolving the matter was applied. ECOWAS has also applied sanctions on some of its member states. This comprises the suspension of Niger, Togo, and Cote d'Ivoire on the grounds of unconstitutional practices like tempering with the constitution. Guinea and Mali on the other hand were suspended for having coup d'état. ECOWAS, (2001:8) maintains that, "zero tolerance for power attained or retained by unconstitutional means should become a norm in ECOWAS." The consensus among the member states is that democracy and democratic governance is not negotiable. (ibid). Gbesan (2010: 45) holds a different view, highlighting that, "despite efforts by ECOWAS to enthrone democratic governance, West Africa is still threatened with 'democratic recession' or reversals of democratic gains." This is evident in the recent crises that the organization had to deal with, in the form of an unconstitutional power grab by Pierre Nkuruziza the former president of Burundi.

The international community has played a role in promoting constitutional democracy by engaging in extensive election monitoring exercises. A plethora of international actors is involved in election monitoring. Most notably involved are, regional and international organisations encompassing Non-Governmental Organisations (NGOs). At the regional level, ACDEG, the AU's Declaration Governing Democratic Elections, and Declaration on the Observation and Monitoring of Elections are the most relevant in this context. The AU adopted ACDEG during the 8th Ordinary Session of the Assembly of the Heads of State and Government convened in Addis Ababa, Ethiopia, on 30 January 2007. (Omotola, 2014, 12). Election monitoring has become universally accepted as an important component of election governance and democratic development. Baradei (2012: 588) defines 'election monitoring' as the process of "following and observing the election process, ensuring that it is devoid of any violations, is in accord with governing rules and regulations, then taking stock of any defilements and documenting them, while maintaining objectivity as an observer or monitor." In a more elaborate definition, the International Institute for Democracy and Electoral Assistance (IDEA) defines it as follows:

the objective gathering of information about an election process so as to make informed judgments on the credibility of the process on the basis of the

information gathered by persons who are not inherently allowed to intervene in the process, and whose part in mediation or technical assistance processes should not be such as to jeopardise their main observation responsibilities.

The effect of election monitoring is highlighted by, Omotola (2014: 14), who observes that, “on the positive side are those who see election observation as generally capable of constructing ‘international accountability for the process through which national authorities assume powers, a “seal of quality” to legitimise them’.” Thereby underlining the importance and role of international relations as a watchdog over state actors. Some scholars have argued to the contrary, emphasising the other sides of election monitoring. Baker (2002: 145), a leading light in this school of thought, drawing insights from the monitoring of the 2002 Zimbabwe election, argues “the current system of election monitoring lacks satisfactory justification, is vulnerable to being tricked, is an inexact science, and at times seem to follow scripts pre-written by their backers.” In regard to the same 2002 elections in Zimbabwe, Baradei (2012: 45) also emphasises the increasing politicisation of international election monitoring which, according to him, ‘had less to do with the levels of violence or of electoral fraud and much more to do with the Mugabe government’s violent attacks on white farmers and rhetorical confrontations with European donors.” Despite the ongoing debate over the democratic utility of election monitoring, there seems to be some measure of consensus in the literature that if well managed, election monitoring could be a viable strategy for improving the integrity of elections worldwide. (Omotola, 2014)

Despite the efforts of the international community to preserve ideals of constitutionalism and democracy, much still depends on state actor’s perception of threat and the subsequent action they are willing to adopt. Political will remains the last standpoint for constitutionalism in most cases. Fombad et al (2013: 12) aptly sums up this dilemma by stating that, “The constitutional rights revolution in general, and with respect for human rights in particular, can only be realized with a judiciary that is ready to use its powers to negate the continuous authoritarian impulses of elected politicians. This requires a new judicial attitude towards adjudication in which judges adopt a more principled and rights-sensitive approach that takes account of the radical political, economic and social changes of our times and the revulsion against dictatorship.” This shows that the success of constitutional democracy is premised on a number of stakeholders, least of which is not the international community. This follows the line of thought proffered by

Tratchman (2010: 135) that, “compliance by any individual state with an international legal rule is, in the final analysis, dependent on a political decision to comply made within that state's domestic political process.” Noteworthy therefore is that, while this decision is purely a domestic political decision, it is importantly influenced by international dynamics.

The influence of the power politics and in particular the nature of a state cannot be overlooked in determining the impact of international relations on a particular state. Corrales (2015: 46) argues that, “The flow of petro products, petro subsidies, petrodollars, and petro contracts from Venezuela to foreign countries won Chávez remarkable diplomatic support. Even though many countries detested Chávez’s policy of maintaining high oil prices and frowned on the restriction of civil freedoms inside Venezuela, his generous foreign economic aid was welcomed by recipients as well as ideologues who saw the aid policy as another example of the regime’s commitment to anti capitalism.” In support of the contention that state actors can use entrenchment as a shield against international pressure. Tolstrup (2010: 1) posits that, “the degree of interdependency and power differences between the external actor and the target state more or less have a bearing on the success of external influence.” These arguments accentuate how domestic political leaders, on the basis of their main interests and calculations of both the internal and external costs and benefits of political change, decide whether or not to give into external demands. Leverage and linkage between a state and the international community substantially determine to a greater magnitude whether or not international influence will be effective in upholding the constitutional democracy concept

2.5 A necessary evil? Constitutionalism and democracy examined

It hardly seems necessary to point out that Westphalian sovereignty, based on territoriality and the marginalization of external actors from domestic institutions, has eroded extensively. The idea of nation-state sovereignty and its applied relevance is called into question by the rise of internationalisation and globalisation, which challenge domestic supremacy and bring about new forms of governance beyond the territorially defined state. (Smith, 2015: 17) The continued disaggregation of the statist approach to international relations arguably makes both national and international constitutionalism and democracy increasingly relevant. Hamman and Fabri (2008: 481) aptly phrases it by stating that, “The phenomenon of internationalization, combined with the internal process of state fragmentation, has confronted the Westphalian model of sovereignty, substituting it with a disaggregated sovereignty in which transnational networks have become

the primary vectors of international cooperation as well as the primary actors in international policy making.” Effectively addressing these challenges of constitutionalism and democracy implies a paradigm shift from an approach that only understands constitutionalism in the context of the state but also as a concept that goes beyond the state. Intergovernmental organizations (IGOs) have generated a role for themselves in maintaining democracy and defending constitutionalism. An apt example is the OAS, which has been actively involved in monitoring and responding to democratic crises in its member-states under the procedures laid out in the Santiago Commitment, Resolution 1080, and the Inter-American Democratic Charter (IADC). (Smith, 2015: 1).

The role played by international relations on the democratic transition of Chile, presents a persuasive case for international constitutionalism and democracy with particular focus on the influence in nation states. The salience of international relations is underscored by Fombad et al (2013: 17) who state that, “constitutional provisions to promote democracy, good governance and respect for the rule of law are no longer merely options which states can adopt at their pleasure, but are in many instances mandatory obligations for any state that wants to interact and cooperate with others.” It is another indication for the transfer of constitutional functions to the international order that states use constitutional standards like the human rights record and adherence to the rule of law and democratic elections as guidelines for their foreign policy, in particular with regard to the recognition of states and in development cooperation. Kleinlein (2012: 432) observes that, “Constitution-making often takes place under external influence, as the examples of East Timor, Bosnia and Herzegovina, Afghanistan, Iraq or Sudan show.” These phenomena reflect the importance of the international legal system for domestic constitutional law. Not to be outdone, NGOs are part of the international community that champions values of constitutionalism and democracy. Stein (2009: 295) notes that, “The Swedish Bar Association joined with the American Bar Association and other organizations to form a NGO known as the International Legal Assistance Consortium (ILAC).” ILACs mission is to provide assistance to nations in post conflict situations by bringing in a group of advisors who have been trained and prepared to assist in reestablishing the rule of law after the collapse of a government and the administration of justice in a country.(ibid).

In as much as international relations have seemed to augur the concepts of constitutionalism in states by expropriating the same concept to the international level, some scholars are of a different view. As opposed to liberal internationalists who endorse global constitutionalisation as a step away from anarchical state voluntarism to a law-based international order, which may also remedy domestic democracy and responsibility deficits triggered by globalization (Keohane et al., 2009). Critical theorists, by contrast, interpret global constitutionalisation as an attempt to hide the exercise of power through international law (May, 2014). The argument subsist that, constitutional and democratic internationalism may culminate to be an effective vehicle for the diffusion and protection of constitutionalism and democracy but also on the other hand globalized constitutionalism might take on an authoritarian fashion that violates the same constitutional principles of democracy and the rule of law that IOs are generally expected to promote. As Vanderhill (2013: 23) adumbrates, “the constitutionalisation thesis lost much of its appeal particularly in the light of US unilateralism and interventionism after the 11 September 2001 attacks. The unauthorised invasion of Iraq in 2003 and the American assertion of a right to declare a pre-emptive war could only be thought as a broadside at the idea of the UN Charter as a ‘constitution of the international community’.” More subtly, democratic regime change under the so-called ‘Bush doctrine’ distorted a well-intended principle of “democratic teleology” in international law. (ibid). The use of constitutionalism and democracy as tools for intervention by powerful states, in furtherance of self-interest mirrors the legitimacy crisis facing international relations.

2.6 Theoretical underpinning for international influence in promoting constitutionalism and democracy

Many theories have been advanced to account for how external actors promote constitutional democracy abroad. Levitsky and Way (2005) have developed a theory in which they explain the democratic susceptibility of competitive authoritarian regimes. The linkage and leverage theory can be applied to understand the variables between international influence and the protection and entrenchment of constitutionalism and democracy. The main premise of the linkage and leverage is that, states with developed systems of linkages with the international community are susceptible to high levels of leverage by external actors. Dense linkages makes it difficult for a state to ignore international pressure as this can have negative consequences. The term ‘linkage’ was conceptualized by Levitsky and Way (2005: 12), who defined it as “the density of

ties (economic, political, diplomatic, social and organizational) and cross-border flows (capital, goods and services, people and information) among particular countries and Western democracies and multilateral Western dominated institutions.” However, the concept of linkage can be applied also to powerful non-Western international actors: this form of interaction between states cannot be considered as a prerogative of the West alone.(Mudler, 2011: 42). Linkage is a complex dimension of foreign policy that manifests itself in different spheres of inter-state relations. For example, Tolstrup (2010: 11) sees “nothing particular Western” in the concepts of leverage and linkage and suggests making them “more general” and “more applicable to all of the various external actors.” On the other hand, Levitsky and Way (2005) define leverage as, “governments vulnerability to external (Western) democratizing pressure. According to the scholars, mechanisms of leverage comprise diplomatic pressure, political conditionality, sanctions and military intervention, and of course, the threat of them.(ibid).

Levitsky and Way (2005) differentiate between six main types of linkage: economic, intergovernmental, social, communication, civil society and technocratic. Levitsky (2010: 5) states that, “the dense set of links creates the basis for projection of leverage: the dependence (caused by linkage) can be used as a tool of influence on one’s foreign policy decision -making (that is leverage). Linkage is indispensable for the effective application of leverage: the denser the linkage in an asymmetrical models of cooperation, the stronger the leverage.” Levitsky and Way identified three factors that determine leverage. The first is the states’ size and military and economic strength. Obviously, small and weak states are more vulnerable to external pressure than those in larger countries with substantial military and economic strength (such as China or Russia). The second factor is “the existence of competing issues on Western foreign policy. Levitsky and way (2005: 23) argues that “leverage may be limited in countries where Western governments have important economic or security interests at stake, such as in Egypt, Saudi Arabia, UAE and Turkey.” The lack of intensive external pressure on the government of Venezuela for failing to uphold the constitutional democracy concept can be used as a pertinent example. Thirdly, the degree of international leverage can be affected by the existence of military, economic and political support that alternative (usually regional) power provides to incumbent governments facing Western pressure. After the international isolation of Zimbabwe for undemocratic practices under the leadership of Robert Mugabe, both China and

Russia provided alternative sources of linkages enabling the sustenance of the Mugabe regime. It therefore can be noted that, in as much as a system of linkage and leverage can be used to influence domestic actors actions on issues such as constitutionalism and democracy, there are other equally crucial factors that can impact on the effectiveness of leverage based on linkages.

According to Levitsky and Way (2005: 13) “linkage serves as a transmitter of international influence” and contributes to ‘democratization’ through: heightening the international salience of everything that goes ‘wrong’ in the states under “the democratizing pressure”; shaping preferences and so creating domestic constituencies with a stake adhering to ‘international norms’.” A comparison between linkage and soft power inevitably comes to mind. Both linkage and soft power shape incentives and preferences inside of states. This is not surprising, after all, Levitsky and Way admit that their concept of linkage draws on Keohane and Nye’s work on “complex interdependence”, understood as “multiple channels of contacts among societies.” According to Keohane and Nye (1977: 10), “interdependence should not be understood entirely as situations of ‘equally balanced mutual dependence’. Asymmetries in dependence often provide sources of influence for actors in their relations with one another. Less dependent actors can often employ this relationship as a source of power in bargaining over an issue and possibly to affect other issues.” In their first article on linkage and leverage, Levitsky and Way (2005: 15) stated:

Unlike leverage, linkage is primarily a source of soft power. Its effects are diffuse, indirect, and often difficult to detect. Yet where linkage is broad, it creates multiple pressure points... As a result, the democratizing pressure produced by linkage is often more pervasive, and more persistent, than that generated via leverage alone.

Brownlee (2002: 36) argues that, “extensive patrimonialism, when unrestrained by external dependence, can enable regimes to withstand challenges that otherwise lead to transition” thereby highlighting the importance of linkages for restraining state actors from acting in an inimical way. In states where linkage is low, Joseph (2003: 23) observed that, “With a low linkage as in parts of Africa, regimes which “rely overwhelmingly on violence and exclusionary tactics manage to slip totally beneath the radar of international media.” Morlino and Magen (2013: 144) substantiate this line of thought noting that, “in case of low linkage, extensive leverage can contribute even to maintenance of power and preservation of the policy orientation by incumbents: when the government does not face strong domestic opposition

it can successfully build the image of the enemy upon the external states who put pressure on its authority and legitimacy.”

The application of sanctions, withdrawal of economic and political benefits, and other instances of realized downsizing cooperation, as well as the military intervention, represent the actual stage of linkage-leverage nexus. (Levitsky and Way, 2010: 23). Belarus is an example where sanctions imposed by the EU since 2004 are used as leverage. Thus as Morlino and Magen (2009: 31) elaborate, “powerful external actors manipulate threats of punitive measures and promises of positive rewards to alter the costs and benefit of domestic policy choices.” By increasing domestic actors’ sensitivity to alterations in a regime’ image abroad, linkage thus distorts international and domestic politics, transforming international norms into domestic demands. The reluctance of key political, economic, and technocratic elites to sanction actions that risk international isolation makes it hard for governments to maintain stable coalitions in support of authoritarian rule. For example, when Alberto Fujimori’s 1992 presidential coup threatened Peru’s restoration into the international financial system, bureaucrats and business elites lobbied him to forsake plans for a Pinochet-style dictatorship and call for early elections. And in Serbia, the damaging effects of sanctions and international isolation amplified by the country’s close proximity to the EU eroded Milošević’s support within the military and security forces, which did little to defend the regime in 2000. (Finnermore, 1996: 106). Kelley (2006) acknowledges that, it is now widely accepted that international factors played an important role in supporting democratization and democratic consolidation in the post-communist democracies of Central and Eastern Europe (CEE). Among the most central of these international forces was the European Union (EU), which applied the strong enticement of membership and a system of democratic conditionality to boost political changes including the isolation of populist, nationalist, and other anti-democratic forces strengthened administrative capacity and minority protections.

In this globalized order, the system of linkage and leverage should be highly effective in curtailing attacks on constitutionalism and democracy by sitting governments. Other scholars point to a deficiency in the linkage and leverage theory as propounded by Levitsky and Way (2005) that explains the varied impact linkage and leverage when applied by international actors. Tolstrup (2010: 33) is of the view that Levitsky’s and Way’s opinions for the primacy of

structures are not completely valid, “the structural determinants (linkages) that make up the basis of their explanation are not non-amenable as they claim but can be prejudiced to a great degree by what I term the gatekeeper elites of the target country.” Where Levitsky and Way emphasise the role of linkages without appreciating other factors that can affect the effective of leverage, Tolstrup (2010) advances that, domestic elites should not only be seen as mere objects of external influence, as they are in the organisational accounts, but rather as gatekeepers that actively enable or constrain ties to external actors. By upgrading or downgrading these ties, the gatekeeper elites directly affect the capacity that determines the strength of the external actor. From the same leverage, the level of linkages, and the decisions of gatekeeper elites interact and, consequently, continuously influence each other. This interaction amongst the three variables determines the degree to which external actors can influence democratization. (ibid). It can be argued that linkages are not determined by a country’s geographical, historical, and cultural traits alone. Gatekeeper elites are, at least, just as important since they can both condition the relationship given by the structural factors and create linkages on their own, independently of structural preconditions. Erdmann et al (2013: 206) substantiates this line of thought noting that, “if part of a country’s economy is under direct control of the government, the ruling elites can also encourage or restrict investment flows from certain external actors and even to some degree influence patterns of import and export. The self-imposed isolation of the autarkic economy of the late years of Hoxha’s rule in Albania, or the forceful renationalisation policy in Mugabe’s Zimbabwe are examples of how ruling elites cut economic linkages to the external environment and, thus, seal off external economic influence.

Turning to geopolitical linkage, the political elites in power once again play the ultimate role in deciding whether or not to join new intergovernmental initiatives or to emphasize ties to some countries on behalf of others. It is the ruling elites that decide to upgrade or downgrade activity in the country’s various international commitments, and as such, they are the primary facilitators or constrainers of the geopolitical linkages to external actors. (Tolstrup, 2010:10). In a related argument, Levitsky and Way (2010: 41) explained that one of the reasons why these competitive authoritarian regimes do not democratize, is that, “they are influenced by other nondemocratic regimes, which they brand ‘black knights’. Instead of endorsing democracy, these black knights, direct or indirectly, promote authoritarianism.” Levitsky and Way use the concept of black knights as follows, ‘A black knight is a counter-hegemonic power

whose economic, military, and diplomatic support helps to blunt the impact of US or EU democratizing pressure'. (ibid). As Merkel (2010: 54) highlight, "in politics and political science alike, awareness is growing about the increasing international influence of authoritarian regimes. The primary focus of attention has been the neighborhood strategies of Russia's post-Soviet regime as well as China's international political and economic activities. The controversy about a "reverse wave" of democratization, the expansion of nondemocratic rule and the earlier 'backlash against democracy promotion'." This shows the environment under which linkage and leverage has to operate in pursuance of state adherence to constitutionalism and democracy. However as shown by many scholars, dense linkages do not only engender effective leverage in the promotion of constitutional and democratic ethos as they are other factors that influence the effectiveness of international diplomacy.

CHAPTER THREE

HISTORICAL CHAPTER

3.0 Introduction

This chapter discusses on the history behind the study: the attack on constitutionalism and democracy by sitting governments. The case of Venezuela. The chapter investigates on the history of constitutionalism and democracy in Venezuela. Also covered in the chapter is the history of the response by the international community to constitutional and democratic rupture in states with particular focus on Venezuela.

3.1 Venezuela and constitutional democracy

The crisis that Venezuela is experiencing today is not a recent crisis. It is a crisis that has deep structural roots and is longstanding. Lalander (2006: 12) posit that, “the crisis is not just what we have experienced in the last three years, nor is it limited to the Chávez era. It’s a deep crisis that has been developing since at least the early 1980s.” A history skewed towards authoritarianism can be traced to the constitutional narrative of Hugo Chavez characterised by coups. Scholars have pointed out that, Hugo Chavez installed a form of authoritarian electoral system during his tenure. Alvarez (2011: 14) notes that, “Venezuela’s political government, at least after a 2009 constitutional amendment that allowed for the possibility of unlimited reelection to all offices, has transformed toward electoral authoritarianism, a system characterised by elected leaders who violate the liberal democratic principles of freedom and fairness so severely and systematically as to reduce elections to instruments of authoritarian rule.” Vestiges of such trends remain a part of Venezuela’s unfolding history as the subsequent government of Nicholas Maduro which took office in 2013 has made extensive use of entrenched authoritarian measures to stay in power. An example of this is the highly contested constituent assembly elected by the incumbent president to draft a new constitution and to assume the power of the parliament.

The constitutional democracy concept has been manipulated over time, resulting in what are termed pseudo democracies, these being states that exhibit partial signs of democracy. The description of the state of affairs during Hugo Chavez’s presidential term by Piccone (2005: 109) can be generalized for most constitutional democracies in the past decade or so.

The governance cost has increased in the last five years, civil and political rights have been battered through repeated legal reforms, informal actions, and

unrestrained administrative and political decisions. Aided by the legislative and judicial branches lack of interest in challenging presidential power, the government has used legal and institutional arrangements to concentrate power in the executive. Freedom of speech, information rights, property rights, and labor rights have all deteriorated. The work of independent journalists is hindered in both law and practice.

It is the position of this paper that threats to constitutionalism and democracy have historically evolved and become more subtle in nature. The recurring tendency by leaders to subvert constitutional and democratic safeguards has made it difficult to restrain unconstitutional and undemocratic practices. Olivari (2014: 9) opines that, “classic coups d’ état are rare in the Americas today. Since the third wave of democratization, threats to democracy come from elected leaders who undermine the constitutional order from within (constitutional crises in Ecuador and Bolivia in the 2000s) or a gradual process of democratic weakening (Nicaragua in 2010).” This shows that the threat to constitutionalism and democracy has been prevalent since the inception of constitutional democracies, but has changed over time as leaders have found ways to go around these principles.

The international response to the sporadic flouting of constitutionalism and democracy by incumbent governments in Venezuela has been and still remains, regionally based. In addition to the USA, Latin American countries represented in various regional blocs have spearheaded mediation on constitutional and democratic rupture in Venezuela. The role that the international community has played in Venezuela is a matter for debate. Sullivan (2017: 14) notes that, “many Latin American nations had a restrained response to the situation in Venezuela. While they lamented the deaths of activists and called for dialogue, most did not disparage the Maduro government for its tough response to the protests.” Despite misgivings by some scholars, international involvement in the constitutional democracy crisis that has plagued and has been a part of Venezuelan politics cannot be ignored. Whether this has been successful or not is another issue altogether. In Latin America, the OAS has taken the lead by asserting an obligation to promote representative democracy. Article 2(a) of the charter states that the OAS has an obligation to “promote and consolidate representative democracy, with due deference for the principle of nonintervention.” Following its mandate, the OAS was effective in its effort to restore democracy in Peru, but it was incapable of reversing the government’s own withdrawal of democratic rights in Venezuela. (Axlerod, 2005: 4). Furthermore, On June 15, 2016, at the

OAS General Assembly held in the Dominican Republic, 15 of 34 OAS member states issued a statement on the situation in Venezuela that reaffirmed the Permanent Council resolution adopted on June 1, 2016. In the statement, the 15 member states expressed support for a, appropriate, national, inclusive, and effective political dialogue, encouraged respect for the Venezuelan constitution, which enshrines ‘the separation of powers, respect for the rule of law and democratic institutions’; expressed support ‘for the fair and timely implementation of constitutional mechanisms’ and condemned violence regardless of its origin. (Sullivan, 2017: 22). The OAS has however been the recipient of criticism from different quarters. Ramis (2010) notes that, “OAS decisions are voluntary and non-binding. Some argue that it shows the will, but not the real commitment to democracy that is required” This has witnessed the formation of other regional bodies such as the Union of South American Nations (UNASUR), established in 2008, and in 2012. In response to the political strife in Venezuela, UNASUR foreign ministers had accepted a resolution on March 12, 2014, expressing support for dialogue between the Venezuelan government and all political forces and social sectors as well as accepting the duty to form a commission, requested by Venezuela, to accompany, provide backing, and advise a broad and constructive political dialogue aimed at restoring peace.(Sullivan 2017). This paints a deep picture of international involvement in the fight for constitutionalism and democracy. The absence of international involvement by non-regional organisations such as the UN in the crisis in Venezuela is conspicuous and ought to be noted.

3.2 A history of International involvement

What however is remarkable is the significant shift from a passive international involvement in mitigating the victimization of constitutionalism and democracy. This perhaps is best explained by the decline of the statist system that was so prevalent during and immediately after the cold war. The role played by international actors in the attempted democratization of Haiti can be used as an example of the interventionist thrust by international actors. In October 1994, Jean-Bertrand Aristide, the first democratically chosen President in the nearly 200 year history of Haiti, who had succumbed to a coup only months after his election, was returned to power by approximately 20,000 American troops. (Stotzky, 2007: 5). After the failure of external pressure to reinstate Aristide, the UN mandated the use of all means, which resulted in the subsequent intervention by the UN, the USA and other external actors. In July 1994, the U.N. Security Council, for the first time in its history, gave approval for a forcible intervention in a Member

State to change its government to restore its democratically elected government. This clearly marked a departure from the use of passive forms of pressure such as the naval blockade or economic sanctions. The more proactive approach by international actors in defense of constitutional democracy as recently substantiated by the move by ECOWAS in deposing the previous government of Nkrunziza in Burundi where direct intervention was a viable option shows a change in approach by the international community. It is however, imperative to note that, despite military intervention to restore democracy in Haiti, democracy remained in a dismal state. Stotzky (2007: 7) explains the reason for the failure of international pressure illuminating that, “if the relevant political actors, both domestic and international, are to be successful in helping to create the conditions for democracy to bloom, they must be highly educated and thoughtful on a number of significant issues. They must be intimately familiar with, and understand the history and culture of a nation. They must understand the major problems and complexities inherent in the transition from dictatorship to democracy.”

It is noticeable that the trend of upholding constitutionalism and democracy now seem to be entrenched as an international obligation. This view is given weight by the seemingly endless measures that the international community can collectively enforce to coerce governments to review their internal policies. Multilaterism has become the order of the day. International agreements and opinion now carry the force of law. Scholars of normativism have strenuously pointed out that the sphere of international relations has evolved and increased in relevance as attested by the deepening of complex interdependence and advent of global governance by international instruments. Kleinlein (2012: 82) in support of this position points out that, “a normative autonomization becomes manifest in the progression of international law from the Westphalian order into an ‘inclusive blueprint’ for social life, comprising at least traces of constitutional virtues like human rights, democracy, good governance, separation of powers and judicial control.” As alluded to earlier, the defense of constitutionalism and democracy by the international community has over time come to involve a host of different measures. In conjunction with passive methods of coercion such as economic sanctions as used in Peru, international action has also taken an interventionist approach, as was the case in Haiti. This bespeaks a long history of international involvement in the protection of recognised values such as democracy and constitutionalism as international rules and procedures have created an

environment that has progressively made it hard for incumbent governments to drastically tamper around with such concepts.

As past events have demonstrated, international response has been inconsistent. For instance, when President Zelaya was ousted in Honduras in 2009, the coup was promptly suspended on the grounds that the IADC had been violated. At the same time, three democratically elected authorities in Venezuela, Antonio Ledezma (mayor of Caracas), Pablo Pérez (mayor of Zulia) and César Pérez Vivas (mayor of Tachira) were deprived of exercising their power because they belonged to the opposition. Although stripping power from local authorities is an erosion of democracy, it was somewhat less clear how to proceed in these cases. (Olivari 2014: 12). Despite the lack of clear-cut strategies by the international community in addressing constitutional and democratic issues in states, minimal involvement can be noticed. It therefore can be argued that the development of strong international response to constitutional crises is marred by accusations of deliberate inertia by international actors depending on the states involved and the accompanying political considerations. Axlerod (2005: 19) however makes an incursive observation noting that, “the international politics of restraint at the UN has not prevented many non-governmental organisations and private foundations from playing an operational role in helping to establish democracies as well as assisting in the consolidation of democracy.” An example is the EU, which has been very effective in promoting democracy among countries seeking membership in the Union. Membership in the European Union is so treasured that countries from Estonia to Turkey have agreed to major political and economic reforms to meet the Union’s entry requirements. Among these requirements are the institutional and legal foundations for a functioning and secure democracy. (ibid).

CHATER FOUR

RESEARCH FINDINGS AND ANALYSIS

4.0 Introduction

This chapter presents and analyses the research findings under the study: the threat to constitutionalism and democracy by an incumbent government. The case of Venezuela. The chapter examines how sitting governments threaten the concept of constitutional democracy and how international relations has interfaced with this problem. Documentary search and review as well as key informant interviews were used to gather pertinent information. The research findings are a collation of different perspectives from academics, diplomats and those with relevant information garnered with the intention to provide an overview of the international relations aspect in dealing with the threat to constitutionalism and democracy by an incumbent government.

4.1 Constitutionalism and democracy from a vantage point

The application of the related concepts of constitutionalism and democracy remain a continuous narrative. Different opinions and perspectives have been presented by scholars and academics alike to explain the issues of contention that arise in regard to these two fundamentals for governance in the new world order. Constitutionalism and democracy are supposed to be the bedrock of peace, stability and prosperity, but most touted democratic states are bedeviled by unrest due to the misappropriation of the same concepts. Constitutionalism and democracy are concepts often misunderstood. This opens up room for varied interpretations and nuanced application by different actors, but largely a general framework of what these concepts ought to entail can be generated. Upon interrogation of the main causes for the abuse of constitutional democracy, an academic in an interview notes that, it is usually a case of self-interest where leaders want to retain their political positions along with the benefits that these positions present. According to the respondent, this is why you find that most of these abrogations target sensitive areas such as separation of power, constitutional term office limits and the rule of law, which are eminent in curtailing arbitrary rule by a sitting government. The kleptocratic form of governance by most authoritarian governments such as the infamous rule by Mobuto se seko of DRC formerly Zaire accused of being excessively corrupt seem to affirm that indeed self-interest

seem to be a major aspect contributing to the ruthless attack on constitutional democracy by office holders.

Omotola (2011: 9) proffers the argument that, “the weak institutionalisation of democracy, which constrains the capacity to structure electoral rules and ensure acquiescence by political players, also imposes a substantial toll on efforts at democratisation.” Presumably, this weakness makes dealing with constitutional and democratic abuse a delicate and difficult issue. This line of thought that lays partial blame on institutional weakness resonates with the view of the first respondent to the effect that, there is increased importance of international scrutiny on government action due to the rise in hybrid or competitive authoritarian regimes. The respondent further pointed out that, gone are the days when governments and leaders openly flaunted democratic principles, giving way to an emerging nefarious trend where governments are now combining both democratic and authoritarian practices to govern. Urribarri (2011: 855) explains the concept of hybrid regimes stating that, “how these hybrid regimes operate is premised on the ruling elites greater dominance of the political system and consolidation of power that facilitates the government’s ability to reshape the institutional features of the courts and their composition.” It therefore can be surmised that the same power that ruling elites are accorded to carry out their constitutional and democratic mandate, is being used by the same people to authoritatively meddle and muddy up democratic the space. Existing institutional mechanisms that should constrain public office holder’s decisions and actions are serving as legitimating tools for arbitrary authoritarian governance. The current political dispensation in Venezuela under the leadership of Nicholas Maduro can be cited as a typical case of a hybrid government, where both democratic and autocratic tendencies mix to form a hybrid system of governance. Summarily the state of constitutionalism and democracy in Venezuela can be depicted as a democratic state, where those sworn to protect and defend the constitution and the rule of law are the ones at the leading in its mutilation. A scenario that, Brinks (2009: 7) has defined as, “an example of the transition from patriotism to patronage and integrity to greed and corruption”

Attempting the subject matter from a different angle, an academic, goes on to point out that, in fact, incumbent leaders are not the only active threats to constitutional democracy. Particularly in Africa, there has been a rise in military takeovers in the guise of restoring democracy and constitutionalism as well as good governance. While the idea seems noble, the very actions of

such military takeovers often challenge the sanctity of constitutionalism and democracy as in often cases these constitute unconstitutional and undemocratic forms of imposing either constitutionalism or democracy. An apt example of this phenomenon is the recent occurrence in the republic of Zimbabwe in November 2018 where a military takeover presaged a change in government despite the lack of a constitutional basis for such action. The AU and SADC initially asked some questions about the process without launching an investigation. Subsequently a similar scenario occurred in the state of DRC. The DRC military arm in January 2018 assumed power to foster democracy amid accusations of undemocratic tendencies by the incumbent president Kabila. Surprisingly there has been limited international involvement with this method of restoring constitutional and democratic order. The negative impact about the adoption of this method of engineering democratic turnaround is the pervasive effect this might have on other fledgling democracies where the military might thus be convinced to more or less act in a similar manner, thereby always creating room for military incursions in civil and political matters.

4.2 Is International law a stooge?

The role that international law plays in aiding global governance through the protection of fundamentals such as constitutionalism and democracy seems to be a bit blurry. That international law exists as an authoritative source of law cannot be doubted, however its efficacy in resolving contentious issues as well as its ability to pro-actively inhibit generally accepted inimical behavior by states, government and political actors stands much in doubt. An academic and expert in international law is of the standpoint that, international law is ineffective in the enforcement of constitutionalism and democracy because it remains a barking dog that does not bite. He bemoans the lack of enforcement and structural mechanisms to carry out its activities and support its decisions. The respondent acknowledges that the marginal effect of international law ought not to be overlooked. This includes its restraining effect and show of strength, but add on to that international law remains but just talk with marginal effect on how states uphold constitutionalism and democracy. This is however in contrast to the view upheld by staunch advocates of international law such as Marks (2011: 500) who state that,

international law contains a large number of obligations relevant for democratic governance and democratic elections. These obligations are usually detailed and comprehensive. International law guarantees key fundamentals of democratic governance, such as the separation of powers, accountability, rule of law, and transparency. International law also defends key principles of democratic

elections like universal suffrage, the right to vote and be elected, the right to liberally assemble and associate, and, prominently, the right to an election that is “genuine.”

There are many instruments that international law uses to achieve its aim. An example of how international law aids constitutionalism and democracy is encapsulated in Article 25 of the International Covenant on Civil and Political Rights (ICCPR). It is the foundation of democratic governance and genuine elections in international law. Article 25 explicitly grants the right to participate in the conduct of public affairs and to equal suffrage. Other key elements of democracy stem from article 25, in particular the separation of powers, minimum privileges of Parliament, full and effective national supervision of the security sector, and transparent and inclusive constitution making processes. (Marks, 2011: 506). Despite these wide sweeping measures by international law that establishes a number of minimum measures to regulate states approach towards democratic governance, many have pointed out that these are often vague and ambiguous. According to Wiebusch (2016: 65) “despite its virtually universal scope and high authority, international law has shaped national debates and international discussions on democratic governance and elections only to a limited extent. Constitution makers and election observers refer to international law rarely.” What however seems to augur the case for international law is that, international law is legally binding and non-compliance is therefore a breach of a legal obligation, but also because ignoring international law deprives constitution makers and national election administrators of a key benchmark and source of inspiration. (Marks, 2011: 507)

The manipulation and subjugation of the courts by incumbent governments is an area that international law has to pay close attention to in its quest to uphold constitutional democracy. Where the judiciary is subservient to the government, the restraining effect that this arm of government should play is lost. International law might be seen as the next resort of guaranteeing constitutional order, but upon close examination, it seems remote and ineffectual in the occurrences within state borders. As Brinks (2009: 17) notes, “with respect to the ruling elites domination strategy, the government can control the courts through both ex ante and ex post actions.” Ex ante actions include, most importantly, the appointment of justices who are politically allied with the government. Ex post actions include a whole gamut of measures that restrict the court’s realm of action or place additional incentives or constraints upon the judges to

ensure their support (Hilbink, 2007: 76). Upon inspection of how best international law can resolve internal judiciary ruptures, the second respondent offers that judicial review should remain an open door and be vigorous. Increased international monitoring and foreign aid conditionality, that might negatively impact the government's capacity to dominate the courts due to the costs of acting against the judiciary is also necessary. Possibly the effect and influence of international criticism was evident in the annulment of the Supreme Court decision by the Venezuela high court to suspend the powers of the opposition dominated National Congress which had resulted in heavy condemnation by the international community

4.3 International relations at play

Dependence means a state of being determined or significantly affected by external forces. Interdependence, most simply defined, means mutual dependence. Interdependence in world politics refers to circumstances characterised by reciprocal effects between countries or among actors in different countries. (Keohane and Nye, 1977: 8). In this system of 'Interdependence', states collaborate because it is in their own collective interest and direct result of this teamwork is prosperity and stability in the international system. This state of affairs puts international relations at the center of the fight to preserve constitutional democracy, since it has become a legitimate way of governing political actors conduct. As scholars have pointed out, international organisations derive from their very existence a semblance of collective legitimacy. Even Morgenthau (1985: 34) has acknowledged the legality of IOs as well as its effects, "legitimate power has a better chance to influence the will of its objects than equivalent illegitimate power. Power exercised in the name of the UN has a better chance to succeed than comparable power exercised by an 'aggressor' nation or in violation of international law." An academic and expert in international relations is of a similar disposition. He argued that to undermine the role of IOs in aiding global governance as well as the resonance of their actions in domestic policy making is to lose the plot altogether. The academic pointed out that IOs are acting as the transmission belts between the international civil society and government action.

External actors have applied different measures in response to constitutional and democratic rupture in states. The most common form of international response in such a crisis has been the imposition of sanctions. The effectiveness of sanctions as a tool for fostering change of policy in individual states has engendered mixed feelings in different scholars. Teorell (2010: 46) argues

that, “economic stress is one of the most vigorous determinants of democratisation and regime change in authoritarian regimes. As a consequence, economic downturn often marks regime accommodation or, even more dramatically, regime collapse.” He however qualifies his point of view by noting that, “however, democratic sanctions rarely manage to instantly create liberal democracies. More commonly, we see a regime path where closed authoritarian regimes are supplanted by some form of electoral authoritarianism. Although such conversions do not amount to a fully-fledged transition to democracy, they increase competition and increases chances for future democratisation.” (ibid). On the other hand, in a seminal and widely cited study, Peksen and Drury (2010: 18) are of the different supposition that sanctions have an adverse effect on the level of democracy in targeted countries. According to the logic presented by Peksen and Drury, “the negative democratic effect of sanctions is a result of increased levels of repression used by political leaders in targeted countries as they try to cope with increased domestic pressure. Indeed, severe and widespread repression has often shadowed the use of sanctions by the international community as a means to fight off increased opposition.” Despite misgivings by some scholars, there is need to appreciate the effort by the international community in responding to constitutional and democratic perversion. A plethora of examples can be pointed out where the effect of sanctions has been instrumental in the preservation and promotion of democracy. Collins (2009: 80) points out that,

In Peru, sanctions contributed to democratization without ruler change. When President Fujimori suspended the legislature and announced rule by decree in 1992, the US withheld military help and economic aid and obstructed Peru’s efforts to obtain loans from international financial institutions. In response, Fujimori decided to hold elections and to restore formally democratic institutions. Although his presidential dominance persisted until 2000, Peru’s political structure was liberalized, to some extent, for the rest of his time in office. In this specific case it could be observed that both institutional change and democratisation occurred without change in leadership.

An example of a concerted international reaction to the constitutional and democratic crisis in Venezuela is the use of state diplomacy. When the supreme court of Venezuela suspended the national congress, the state of Peru recalled its ambassador and the US state department put pressure on president Maduro to conduct free elections and restore democracy. It seems the international community has become more responsive and quick to condemn constitutional and democratic irregularities. The government of Kabila in DRC bears testimony of the pressure that

external actors can exert in pursuit of constitutional democracy. The incumbent president of DRC has since the past 2 years been postponing elections and promising to step down. As reported by Al Jazeera (2018), “in office since 2001, Kabila’s constitutional term ended in December 2016, but he stayed on. Under an arrangement brokered by the Catholic Church, he was allowed to stay in office provided elections were held in 2017. This did not happen.” Because of this conduct the UN chief called on Joseph Kabila, president of the DRC to peacefully leave office in accord with an agreement in late 2016. (Al Jazeera, 2018). Besides the role played by the UN, regional organisations seem to play an important part in promoting and protecting constitutional democracy. Young (2009: 900) states that, “within the EU democracy is subject to a hierarchical mode. Democracy is a basic, essential and non-negotiable condition of EU membership. Existing members can be evicted in the event that governments cease to respect such norms.” It is however worth noting that mere involvement of states in regional organisations does not always result in the positive advancement of constitutional and democratic practices. A danger exists that states might want the legitimacy conferred by being part of a regional organisation and on their part regional organisation might degenerate into passive bodies characterised by rhetoric without substantive action. In the case of the EU, Young (2009: 902) notes that, “the EU is often successful in exporting its rules; but these rules are equally often ineffective in propelling democratization in third countries. Democracy might be a tenet selected, and even in some formal sense assumed, but far less applied in significant fashion.” Venezuela is also an apt example of the weakness and ineffectiveness that might pervade regional organisations as arms of international relations. Venezuela played an important role in the December 2011 establishment of the Community of Latin American and Caribbean States (CELAC), Venezuela was also one of the founding members of the Union of South American Nations (UNASUR), established in 2008, and in 2012, and it became a participant of the Brazil-led Common Market of the South (Mercosur). Venezuela remains a part of the Organization of American States (OAS). (Sullivan, 2017: 12). Despite being part many regional organisations, the state of constitutionalism and democracy is in a deplorable state, casting shadows on the impact of regional organisations.

In a discussion with an academic, the contention arose that, the effect of international relations has been more or less overshadowed by the politicisation of international organisations, a reason he blames on the source of their funds and origins. In such a scenario he argues, IOs stop serving

as an effective monitoring agent, as political interests usually predetermine the type of approach and results. This phenomenon is not exclusive only to the narrative involving IOs but is pervasive to the general sphere of international influence on domestic issues like constitutionalism and democracy. The position of international relations as an enforcer of constitutional and democratic principles has been disparaged for its unconstitutional and undemocratic nature. According to the academic, that is why some semi democratic or even largely autocratic states such as Saudi Arabia manage to get away with it because of their relations with powerful states such as USA. Keohane and Grant (2005: 30) point out that, “the problem of abuse of power is particularly serious in world politics, since even the minimal types of constraints found in domestic governments are absent on the global level. Not only is there no global democracy, but there is not even an effective constitutional system that constrains power in an institutionalised way, through mechanisms such as checks and balances. Lacking institutionalized checks and balances, the principal constraints in world politics are potential compulsion and the need for states and other actors to reach mutually beneficial agreements.” The key challenge is then to establish the precise conditions under which it is possible or necessary for a regional organization to protect the constitutional order in one of its member states. It would not be fitting a regional organization to intervene in every violation of the constitutional order committed by a member state. An intervention would only seem well founded if foundational values were violated in a necessarily serious manner, for example if there were multiple or systematic infringements. (Wiebusch, 2016: 8). This possibly can have the effect of closing a wide room for self-interested interventions by external actors on the pretext of maintaining or restoring constitutional and democratic order. Many scholars are optimistic that perhaps the gradual adoption of global governance premised on constitutional and democratic ethos will finally resolve this crisis as this will foster and deepen constitutional and democratic practices.

4.4 Can the desecration of constitutionalism and democracy be averted?

Whatever the impact of international relations in curbing threats to constitutionalism and democracy it remains clear that there are some aspects that ought to be given attention if effectiveness of the study is to increase. Scholars have noticed and perambulated on some deficiencies that plague the best efforts of a collective international community. The Venezuelan

crisis in constitutional democracy is just an example of what is occurring in different parts of the globe.

An academic in an interview is of the opinion that, internal focus on constitutionalism and democracy is the best way of promoting these principles. The academic argues that prior focus should be given on the creation and strengthening of domestic institutional structures so that constitutionalism and democracy can flourish. The academic propounds that in such a setting the best way the international community can assist is to provide both the technical and bureaucratic support that such institutions need so that they can best carry out the task of restraining arbitrary leaders. This view finds congruence with the postulation by Young (2009: 896) to the effect that, “domestic structures are also the most potent variable in understanding the way in which external policies impact on the dynamics of political change.” In a related argument, a diplomat points out that, dialogue is often the best way for the international community to deal with constitutional and democratic irregularities. He notes that a heavy-handed approach by the international community can be approximated as a due cause for the lack of effective international intervention. The diplomat in stressing this point argues and gives the examples of the dismal failure of sanctions targeted at the authoritarian Mugabe regime and punitive measures by the EU against its Eastern authoritarian neighbor, Belarus. He argues that, possibly the methods of interaction by international actors exacerbated the erosion of democracy, as it is more likely that undemocratic states respond to being put under pressure by becoming more undemocratic and unconstitutional. Therefore the international community ought to desist from applying hostile approaches that can be counterproductive, and explore more pacifist methods of curtailing constitutional and democratic erosion. Indeed, it seems that it is of importance for democratic consolidation to be a Venezuelan led effort, as there is an inherent danger in depending on international actors to resolve the crisis yet in often cases, these are not well versed with the actual situation on the ground. The downside of this approach however seems to be the difficulty this position poses in reconciling the efforts of the international community such as the OAS with the current democracy and human rights in the country.

According to an academic, bargaining power is a major determinant factor on whether international efforts are fruitful or in vain. He posits that, many factors come to the fore, like the type of leverage that particular instruments of international action has, for example continental or

regional bodies such as the AU and SADC have much more impact in influencing the state of democracy in African states as opposed to purely international coalitions or groups such as United States Aid (USAID). The main reason for this is the relationship that exists as well as the issue of interests between the state and international agent involved. Drezner (2002: 6) states that, “bargaining with IOs is intrinsically distinct from bargaining with other nation states because it involves the legitimacy of different authorities.” This therefore points to the necessity for international actors to apply appropriate tools of international relations in agitating for stable constitutional democracies. It is noteworthy that the effectiveness of leverage is also dependent on the nature of the state. Literature from scholars such as Sachs and Warner (2001: 68) highlights that rentier states, these being states mainly dependent on natural resources and lacking economic diversity, are largely non responsive to external leverage. The self-defeating nature of such regimes need to be taken into account as they eventually face economic collapse which usually justifies and pave way for international actors such as NGOs to intervene and in the process demand concessions. A similar trajectory can be noticed in the case of Venezuela starting with the economic tumble down in 2015, which has slowly worsened and put pressure on the government for reforms.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter outlines the conclusions and recommendations pertaining to the study, the threat to constitutionalism and democracy by an incumbent government: the case of Venezuela. Conclusions and recommendations were derived from the research findings. This chapter will proffer a conclusion on how incumbent governments have threatened constitutional democracy as well as the role played by international relations in mitigating this threat. Based from observations made during the course of the study, recommendations on how international relations can maintain and protect constitutional democracy will also fall under the purview of this chapter.

5.1 Conclusion

The discipline of international relations has indeed managed to worm its way into contemporary discourse on constitutionalism and democracy. The focus is on how this broadening paradigm can assist in restraining incumbent governments from covertly or overtly manipulating the principles of constitutionalism and democracy in pursuit of system preservation. Many hopes have been pinned on the growth of global governance as the antidote for constitutional rupture. Such views seem to come about from the evident inclination by most states in the world today to pay heed to the international community. This preponderance has resulted in a slow but gradual erosion of the divide between the intra state and the surrounding environment comprising of both state and non-state actors. Whether this rise in eminence of international relations as a way of implementing concepts such as constitutionalism and democracy, which were previously the preserve of the domestic political arena has actually threatened the existence of the nation state and the right to self-determination does not elicit a clear cut answer.

International relations seems to have heightened the attention paid to incumbent governments, Media coverage of constitutional and democratic ruptures have made it difficult for the actions of political leaders to escape the scrutiny of both the domestic and international community. It

therefore can be advanced that international monitoring of the state of constitutional democracy has worked hand in hand with domestic political actors in the fight for the preservation of constitutionalism and democracy. Indeed a phenomenon where the domestic population of a state rise up in protest against the reversal of democratic gains has been on the increase. The support that the international community guarantees to such movements and protests against constitutional and democratic subversion cannot be discounted. It however is noteworthy that international support for grassroots movements advancing democratic efforts and agitating for open and fair application of democratic and constitutional values seem to comprise of media coverage without any substantive support. Despite the presence of international monitors in Venezuela, the incumbent government of Maduro went on to subdue efforts by domestic political players and the civic community calling for a return to democratic rule. Such a repressive manner of responding to the challenge of legitimacy posed by the citizens of Venezuela marks the further shrinking of the space for positive dialogue aimed at restoring the state of constitutionalism and democracy in the Latin American country.

The growth of international relations to encompass more than just state actors has formidably increased its effect in policing the actions of incumbent governments. It can be noted that, international relations has come to involve many actors such that involvement with state policies has vastly increased due to these increased linkages between the domestic and international spheres. Local political actors now have to pay heed to the generally accepted position of other actors in the international arena. The continuous focus on the domestic policymaking and implementation of governments by external actors have resulted in tradeoffs and compromises by local political actors. This obviously has had the positive impact of bolstering the state of constitutional democracy in many states, as those occupying high political office are forced to act in circumspect ways lest they incur the wrath of a collective international community.

One of the areas that the international community seem to have scored positively in pursuit of the preservation of constitutional democracy is in election monitoring. Some consider free and fair elections as the bedrock of a stable and true democracy. Indeed what usually delineates authoritarian regimes from democratic ones is the representativeness of the election system in as much as it avails equal opportunity for the change of power and government, a spirit which makes the definition of democracy as rule by the people a valid assertion. International

monitoring agents can either validate or deny legitimacy to an election process paying particular attention to whether the way elections were conducted is democratic or not. It is however worth noting that the effect of the international community in ensuring that the election process is free and fair is severely constrained by the lack of a mandatory framework that makes election monitoring a prerequisite for the legitimacy of any election process. The scenario that exists on the ground seems to confer priority on the position of dominant political actors towards election monitoring. A state can wholly decide to disallow international observers during the election process and there is nothing that the international community can do, as any action to the contrary can be construed as a breach of sovereignty. This inadvertently opens up room for strong manipulation of the electoral process by the dominant political actors, particularly from the incumbent government. Issues of contention that usually arise during and after elections such as the disputed elections in Kenya bears testimony to this phenomenon. It would be remiss not to highlight that election monitoring is also one area of involvement between the domestic and international spheres where power politics and self-interest abound. One can find that states relation to powerful states can determine the legitimacy of an election process in a particular state. A tendency exists of labelling elections as fraudulent if they occur in a state where the incumbent government is assumed to be autocratic, undemocratic and unconstitutional. This might not bear correct connotations of the actual situation on the ground as judgement on the legitimacy or illegitimacy of the elections would have been made prior to the election process itself.

Ultimately the level of linkage with a state which subsequently determines the extent of leverage is a factor that ought to be taken into account when devising strategies to offset unconstitutional and undemocratic practices. The high level of interdependence prevailing in the international system makes for a dense network for linkage, thereby positioning international actors in a pivotal position to influence each other's domestic policies. It however will be wrong to presuppose that dense networks of linkage always results in effective leverage. Other factors come into consideration before international mediation is successful. The nature of state is one example of impacting factors. A state able to economically support itself is less susceptible to external pressure based on a system of linkages.

5.2 Recommendations

It is the responsibility of both internal and external actors to ensure that constitutionalism and democracy is preserved. The preservation of these principles will increase the prospect of equitable governance and increase the chances of economic development.

It is the imperative of the incumbent government and political leaders to govern according to constitutional and democratic guidelines in order to offset the need for international actors to intervene to restore constitutional democracy. Political will is the key word that domestic political actors have to embrace. If political actors practice self-restraint and do away with the tendency to amass political power and immense wealth, constitutionalism and democracy would be in a better state. Adagbabiri (2015: 111) points out that, “one of the reasons why most of the highly developed states are experiencing stable democracy is the undiluted commitments of their elite to ensuring right political governance.” The significance of political will in preserving constitutional democracy is not a virtue only supposed to be applied by actors whilst working in their domestic capacities. When actors conglomerate to form an international community, the same spirit of political will ought to apply in their deliberations on matters affecting the internal policies of peer states. The propensity of making self-interested decisions needs to be dealt with so that constitutionalism and democracy has a true chance of surviving and thriving.

International law needs to increase its linkage with domestic judicial processes so that it can best carry out its restraining and oversight role according to internationally accepted legal rules. It is now time that the discipline of international law evolved to include enforcement measures. Where political actors vitiate legally accepted norms, international law should be in a position to act in repudiation. It is however advisable to note that care need be taken to maintain the thin line that guarantees the sovereignty of domestic judiciary systems. If this is not done, there subsists the risk that international law instruments will smother domestic courts.

Regional and International organisations should restructure their approaches in dealing with constitutional and democratic ruptures to increase effectiveness. Halfhearted attempts by such organisations has the adverse effect of exhorting authoritarian government to greater efforts in their quest to subvert the rule of law. International organisations particularly regional organisations should move beyond policies concentrating on only major abuses of

constitutionalism like the unconstitutional change of government through coups. There is need to pay close attention to the subtle mechanisms used by leaders to interrupt the constitutional order such as created constitutional crises set to pave way for the adoption of unconstitutional measures to undermine the democratic and constitutional process. In future, the OAS has to play a more involved role in the problems affecting Venezuela such as the lack of separation and independence of power, the co-optation of judiciary power by the executive branch, the repression of the national assembly and the humanitarian crisis itself. (Adagbabiri, 2015: 113)

Focusing on internal subversion of constitutional and democratic values ought to be given priority. This entails that the international community ought to be well versed with how sitting governments can internally tamper around with the principles of constitutionalism and democracy whilst presenting a façade of following the similar principles. A system of monitoring mechanisms ought to be installed in states so that accountability of incumbent governments is increased. It is prudent to highlight that such measures remain contentious in as much as they challenge the Westphalia model of global governance where state sovereignty is regarded as sacrosanct.

Lastly it is important for the international community to support and strengthen domestic institutions in states where constitutionalism and democracy is under threat. As Davices (1996: 12) notes, “a political organization is constitutional to the extent that it contains institutionalized mechanisms of power control for the protection of the interests and liberties of the citizenry, including those that may be in the minority.”

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ANNEXTURES

Annexure A

**UNIVERSITY OF ZIMBABWE
FACULTY OF SOCIAL STUDIES
DEPARTMENT OF POLITICS AND ADMINSTRATIVE STUDIES**

Interview Guide

Topic: THE THREAT TO CONSTITUTIONALISM AND DEMOCRACY BY AN INCUMBENT GOVERNMENT. THE CASE OF VENEZUELA.

1. What is your understanding of constitutionalism and democracy and the Venezuela crisis in particular?
2. How has the incumbent government of Venezuela threatened constitutional democracy looking at the following pointers?
 - Costitutitucionalism
 - Rule of law
 - Separation of power
3. To what extent has international efforts at mediation impacted on the state of constitutionalism and democracy in Venezuela.
3. How has the constitutional crisis in Venezuela shaped the approach of the international community.
4. What recommendations would you give that can be put in place in order to solve the crisis of constitutionalism and democracy in Venezuela?

Annexure B

Letter of information

Dear Participant

Thank you for your interest in my research. My name is Nyenwa Athins and I am currently doing Masters of Science in International Relations with the University of Zimbabwe (UZ). As part of partial requirements of my studies I am doing a research on the following topic: The threat to constitutionalism and democracy by an incumbent government: The case of Venezuela. My study seeks to critically analyse how the constitutionalism and democracy is being threatened by sitting governments and the measures the international community have taken to deal with this crisis. It also offers to proffer some recommendations to that can be put in place in as far as resolving of the crisis is concerned.

Your participation in this research is voluntary. I must also assure you that confidentiality will be maintained and this research is specifically for academic purposes.

I am available on the following; Email-athinsras@gmail.com and phone number +263778014870.

Should you need more information about my profile and research, do not be hesitant to contact the Department of Political and Administrative Studies (UZ), polad@sociol.ac.uz.zw.

Your participation is greatly valued and I would be thankful for any information that you can provide me.

Yours faithfully

Nyenwa Athins.

Annexure C

CONSENT

Statement of Agreement to Participate in the Research Study

- I hereby confirm that I have been informed by the researcher Nyenwa Athins about the nature, conduct, benefits and risks of this study.
- I have also received, read and understood the above written information (Participant Letter of Information) regarding the study.
- I am aware that the results of the study including personal details regarding my name, age, date of birth, initials and diagnosis will be anonymously processed into the study report.
- In view of the requirements of research, I agree that the data collected during this study can be processed in a computerized system by this researcher.
- I may at any stage without prejudice withdraw my consent and participation in the study.
- I have had sufficient opportunity to ask questions and (of my own free will) declare myself prepared to participate in the study.
- I understand that significant new findings developed during the course of this research which may relate to my participation will be made available to me.

.....

Full name of Participant Date Time

I herewith confirm that the above participant has been fully informed about the nature, conduct and risks of the above study.

.....

Full Name of Researcher Date Time

.....

