

# THE IMPACT OF REFERENDUM ON CONSTITUTIONAL LEGITIMACY IN POST-CONFLICT SOCIETIES: LESSONS FROM RWANDA

Abdirahman Mohamed ABDULLAHI\*  
Ayten ERÇOBAN-EVREN\*\*

## ABSTRACT

*This article critically examines how referendum affects constitutional legitimacy in post-conflict societies, particularly in the case of Rwanda, a post-conflict and pursuing the trajectory of development State. However, this study analyzed the concepts of constitutional legitimacy, the impact of referendum on constitutional legitimacy and how constitutional referendum in Rwanda legitimized the Constitution after the conflict. The research showed that despite political challenges, the referendum is an important factor in the constitutional legitimacy of post-conflict Rwanda. The analysis reveals a substantial gap in Constitutional Theory, necessitating the development of a stronger theoretical and pragmatic frameworks for constitutional referendums, particularly considering their heightened application in post-conflict contexts. The findings underscore the need for a holistic strategy encompassing trust-building, inclusivity, legal compliance, transitional justice mechanisms, international support, effective implementation, adaptability, and sustained public awareness and civic education initiatives. Such a comprehensive approach is essential to maximizing the contribution of referendums to constitutional legitimacy in post-conflict*

\* MA Student, Faculty of Law, Near East University, Nicosia, TRNC.

\*\*Asst. Prof. Dr., Faculty of Law, Near East University, Nicosia, TRNC.

([20226765@std.neu.edu.tr](mailto:20226765@std.neu.edu.tr)) 

([ayten.ercoban@neu.edu.tr](mailto:ayten.ercoban@neu.edu.tr))  <https://0000-0001-9986-1852>

YDÜ Sosyal Bilimler Dergisi, C. XVIII, No. 1, (Nisan 2025)

Geliş Tarihi: 11.06.2024

Kabul Tarihi: 2.12.2024

Bu makaleden alıntı yapmak için: Abdullahi. A. & Erçoban, A (2025, April). The impact of referendum on constitutional legitimacy in post-conflict societies: Lessons from Rwanda, *YDÜ SOSBİLDER*, 18(1), 79-102.

*societies. The study concludes by recommending that the minority voices should be incorporated to enhance the constitutional legitimization in post-conflict democratic societies.*

**Keywords:** Referendum, constitution, legitimacy, post-conflict societies, Rwanda.

## ÖZ

### ÇATIŞMA SONRASI TOPLUMLarda REFERANDUMUN ANAYASAL MEŞRUIYET ÜZERİNDEKİ ETKİSİ: RUANDA'DAN ÇIKARILACAK DERSLER

*Bu makale, referandumun çalışma sonrası toplumlarda anayasal meşruiyeti nasıl etkilediğini, özellikle de çalışma sonrası bir devlet olan ve kalkınma rotasını takip eden Ruanda örneğinde, eleştirel bir şekilde incelemektedir. Ancak bu çalışmada anayasal meşruiyet kavramları, referandumun anayasal meşruiyet üzerindeki etkisi ve Ruanda'daki anayasa referandumunun çalışma sonrasında Anayasayı nasıl meşrulaştırdığı analiz edilmiştir. Araştırma bulguları, siyasi zorluklar mevcut olmasına rağmen, Referandumun çalışma sonrası Ruanda'nın anayasal meşruiyetinde önemli bir role sahip olduğunu gösterdi. Araştırma, Anayasa Teorisi'nde kritik bir boşluğa işaret ediyor; özellikle çalışma sonrası bağamlarda artan yaygınlığı göz önüne alındığında, anayasa referandumları için daha güçlü teorik ve pratik çerçevelerin geliştirilmesini gerektiriyor. Bulgular, güven oluşturma, kapsayıcılık, yasal uyumluluk, geçiş dönemi adaleti mekanizmaları, uluslararası destek, etkili uygulama, uyarlanabilirlik ve sürdürülebilir kamu farkındalığı ve yurttaşlık eğitimi girişimlerini kapsayan bütünsel bir stratejiye olan ihtiyacın altını çiziyor. Böylesine kapsamlı bir yaklaşım, çalışma sonrası toplumlarda referandumların anayasal meşruiyete katkısını en üst düzeye çıkarmak için gereklidir. Çalışma, çalışma sonrası demokratik toplumlarda anayasal meşruiyetin artırılması için azınlık seslerinin dahil edilmesi gereği tavsiyesiyle sonuçlanmaktadır.*

**Anahtar Kelimeler:** Referandum, anayasal, meşruiyet, çalışma sonrası toplumlar, Ruanda

---

## 1. Introduction

Traditionally, a constitution might obtain its legitimacy through a number of techniques. Therefore, in certain nations a constituent assembly, which is a body elected or designated specifically for this purpose, is used to ratify the constitutions. In addition to these, governments occasionally host open forums where people can share their thoughts and suggestions about a new or amendment

of the constitutions. In the age of technology, it has become easier for individuals to participate in constitutional change processes. Considering the constitution-making process, when the emerging opportunities are evaluated, the first point to be emphasized is the expansion of digital participation opportunities in the constitution-making process (Çatlı, 2023).

As an alternative means of achieving constitutional legitimacy, an elected legislative body like congress or parliament should ratify the constitutions. In the context of post-conflict societies, peace accords mediated by opposing parties and then endorsed by the international community may give the constitution its required legitimacy (Collin, 2020). Hence, in achieving constitution legitimacy, several nations employ indirect constitutional referendums where citizens vote for delegates or representatives assigned to draft or amend the constitutions. Yet, the direct constitutional referendum is the most effective and common way to wrap up a constitution-making process, wherein drafters present the draft document to the public for a binding vote which gives the constitution the spirit of supremacy and legitimacy (Lenowitz, 2021).

However, direct constitutional referendums, in which the public votes directly on the proposed constitutional text, have become increasingly common during the previous thirty years when it comes to the creation or reform of constitutions in the post-conflict democratic societies. (Tierney, 2012). In this situation, the voters have direct control over the final version of the constitution text. It is believed that this democratic process strengthens the validity of the constitution and gives it the spirit of legitimacy.

It is important to underline that the outcomes of direct constitutional referendums can occasionally be contentious owing to a number of problems such as voter confusion or political manipulation in the process. Many scholars including Harel and Shinar (2023) have agreed with this viewpoint, emphasizing that constitutions should reflect the unique nature, principles, essence, and desires of the nation they govern, since the legitimacy of a constitution depends on its level of representativeness.

According to Fisch (2006), in accordance with the language used in the Populist and Progressive Movements of the late 19th and early 20th centuries, there were two ways in which direct democratic law making can occur. The first was through the initiative process, which allows a small minority of citizens to create proposals for legislative or constitutional changes and present them to the

public for approval or rejection. The second was through the referendum process, which requires proposed laws, constitutions, or amendments to be voted on by the public before they can be implemented to gain its legitimacy (Fisch, 2006).

The constitutional referendum is a public vote aimed for ratifying or amending a constitution. It is among the most commonly utilized types of referendums and the most direct approach for the general public to participate in the decision-making process concerning public policy and law. In The available choices that encompasses the determination to stay or go of the endorsement of constitutional modifications and the settlement of political conflicts, The constitutional referendum exemplifies the concept of direct democracy. Furthermore, referendum is uncomplicated way for people to express their political desires, as it removes the intricate calculations of an electoral system and the negotiations of legislative politics. The political agreements achieved during the referendum may not carry substantial weight in terms of democracy, given their purpose was primarily to legitimize the democratic process. Referendums offer a transparent and unequivocal means of practicing democracy (Suksi, 2010; Albert & Stacey, 2022).

Therefore, based on this perspective, this study aims to examine the impact of referendum on constitutional legitimacy in post-conflict societies, particularly in the case of Rwanda, a post-conflict and pursuing the trajectory of development State. The Rwanda case study was selected as it clearly illustrates how successful constitutional referendums impact constitutional legitimization in post-conflict states. The review analyzed the concepts of constitutional legitimacy, the impact of referendum on constitutional legitimacy and how constitutional referendum in Rwanda legitimized the Constitution after the conflict and lastly concludes by recommending that the minority voices should be incorporated to enhance the constitutional legitimization in post-conflict democratic societies.

## **2. The Concept of Constitutional Legitimacy**

The concept of constitutional legitimacy rests upon a system of beliefs that affirms the rightful exercise of authority, thereby engendering societal support, where explicitly expressed or implicitly granted. However, its crucial to differentiate legitimacy from legality since the public perception may ascribe legitimacy to actions deemed illegal, and conversely legal actions may lack

perceived legitimacy. The legitimacy of an act, therefore, does not necessarily grantee its Legitimacy (Chau, 2012).

The interpretation of the constitution has been the topic of many academic discussions and there were people who have beliefs about how it should be understood, or more specifically, how it should not be understood. The legality of the constitution is not disputed by a large number of people. This situation is unfortunate since it prompts people to doubt the importance of upholding the constitution if it is found to be unconstitutional. It would be advantageous to determine the underlying reason for the information before assessing its dependability and understanding how to interpret it. However, it is inadequate to just presume the authenticity of the constitution. In the absence of a resolution to the question of its legitimacy, it is impossible to ascertain whether the proposition should be accepted in its current form, subject to improvements or rejected outright (Barnett, 2003). Constitutional legitimacy in post-conflict States necessitates a thorough strategy that tackles concerns about trust, inclusivity, adherence to the law, transitional justice, international assistance, execution, adaptability, and sustained democratic process. By effectively tackling these difficulties, countries that have experienced conflict can establish the basis for enduring peace, democracy, and progress (Dagher, 2018).

A widespread misunderstanding exists regarding the requirement for a constitution to effectively represent the population designed to govern in order to be considered legitimate. Many scholars including Jackson (2013), Law (2018), Fotiadou (2019), argued that constitutions should reflect the unique identity, values, character, and desires of a nation. As a result, the legitimacy of a constitution is considered to depend on its level of representativeness. In contrast, many theorists including Raz (1998), Raz (2006), and Hartwig (2015), contend that constitutions can be deemed respectable if they are founded on rationality and uphold principles of fairness. The constitution's legitimacy is determined by its adherence to essential ideals such as justice, equity, virtue, and efficiency in certain circumstances (Harel & Shinar, 2023).

Certain constitutions exhibit greater representativeness compared to others, even if the majority assert legitimacy on both fronts. These differences have important consequences for the functioning and development of various constitutions across time. This research primarily focuses on democratic constitutions in post-conflict states. In this regard, a brief summary of the two

possible approaches by which constitutions can be made legally valid was given. The term representativeness has an encompassing significance, when we describe a legitimate constitution as representative, we mean that it reflects the views, desires, and identities of its members which gave it legitimacy through public referendums. It may contend that the constitution and the citizens' governance are essentially the same, as they are closely linked together. Legitimacy, in contrast, is formed based on rationality rather than on representation. The legitimacy of constitutions grounded in rationality stems from their inherent fairness, reasonableness, and commitment to upholding the correct aims. Therefore, the constitution is legitimate as it allows the governing body to recognize and address logical arguments, which is comparable to the Raz view of authority (Raz, 2006). To achieve this goal, the constitution must be logical, fair, and beneficial to the well-being of society. Hence, the phrases reason and representation are widely used to encompass any discourse pertaining to the impartiality, justice, wisdom, or accuracy of constitutional provisions.

This article analyzed the influence of representational or reason-based forms of legitimacy on the development and interpretation of constitutions, particularly in relation to their draughting and ratification procedures. The categorization is valuable as it elucidates important elements of the constitutional development in the relevant authority. Representational constitutions are often upheld by conducting elections or other forms of participation-based processes, such as referendums. Furthermore, interpretive approaches such as originalism are typically grounded in representational objectives. As Ackerman (1993) argued that the initial popular reading of the constitution at the time of its ratification is of importance to US legal theorists because it reflects the desires and beliefs of the American people regarding what is true or just. Moreover, the conviction that the constitution is valid only if it accurately reflects the American people has motivated opposition to the use of foreign quotations. In contrast, reason-based constitutions are characterized by their willingness to include external input at the stages of draughting or ratification. Finally, this article contends that reason-based legitimacy can elucidate the presence of imposed constitutions, which are constitutions that were imposed onto States (Harel & Shinar, 2023).

### **3. The Impact of Referendum on Constitutional Legitimacy**

Traditionally, referendums have been seen as direct democratic processes, in contrast to the long-established means of parliamentary representation (Elkins, et al., 2008; Franck and Thiruvengadam, 2010; Hart, 2010; Landau, 2013). The phrase originates from the concept of presenting a particular matter to a direct public vote, rather than delegating the decision-making power to elected officials. During the late nineteenth century, Albert Venn Dicey, an English jurist and political theorist, took advantage of this hostility to develop the initial all-encompassing and logically consistent political theory of the referendum. Dicey viewed the referendum process as a means of limiting the power of elected authorities by external influences and transforming royal privileges into rights that are supported by the general public of the states. (Accetti & Oskian, 2022).

The constitutional referendum is a well-recognized and conventional form of referendum that allows for analysis and assessment. A constituent referendum, also known as the popular ratification of a constitution, is the method used to establish a new constitutional system that is different from the previous one. Hence, the legitimacy of a novel constitution relies on the result of a referendum carried out by the general public. The existing constitution undergoes a referendum for evaluation, which may result in either whole or partial modifications. As a result, many constitutions require a referendum in order to make amendments. During this process, the population is asked about their support for the proposed changes. For example, the Japanese Constitution, ratified on May 5, 1947, includes a strict three-stage constitutional review procedure that requires a referendum to enable the public to express their opinions on the proposed legislative constitutional modification. The ultimate determination on constitutional issues is consistently rendered by the individuals who utilize a referendum to exert their supreme authority. The modified constitution obtains the essential legitimacy required for its existence by being ratified in the referendum through the vote of the citizens (Uşvat, 2017).

According to International law, the principle of self-determination is applicable to all individual groups universally. The implementation of that formula has been widely adopted in the majority of modern constitutions around the world. Many states have adopted this notion to allow inhabitants to directly engage in the creation and modification of their constitutions through referendums. The people's word is considered inviolable, conclusive, and legally obligatory for persons when they are making choices concerning topics that have

been assigned to them which validates the constitutional legitimacy. A referendum on constitutional legitimacy serves as a fundamental pillar of democratic governance, embodying the principle of popular sovereignty (Nugraha, 2022). At its core, a constitution outlines the foundational framework of a nation, delineating the powers, rights, and responsibilities of its various institutions and citizens. However, for a constitution to truly reflect the will and aspirations of the people, it must possess legitimacy derived from their consent. Conducting a referendum on constitutional legitimacy allows for direct citizen participation in the validation or revision of the constitution. This process not only affirms the democratic ethos of governance but also ensures that the constitution remains a living document responsive to evolving societal values and norms (Nugraha, 2022).

However, to determine the legitimacy of constitution, one needs to possess both a procedural definition of legitimacy and a theory of justice that evaluates the suitability of the constitution-making processes. (Barnett, 2004). Implicit assumptions on justice and/or transition, which are often rational in Western philosophy underpin the practice of transitional justice. Specific historical events, including the Nuremberg and Tokyo trials in post-World War II era, the democratic transitions in South American nations, international criminal tribunals such as the Truth and Reconciliation Commission (TRC) in South Africa, and the tribunals for Rwanda and the former Yugoslavia, significantly influence these assumptions. (Buckley-Zistel, et al., 2014).

The constitutional referendum serves as a mechanism to resolve contentious constitutional crisis, for instance in Turkiye, that may arise in the democratic states. According to this framework, the 2017 referendum in Turkey, which allowed Turkish citizens to directly elect their president can be considered the most outstanding referendum for resolving constitutional crises. However, the 2017 vote on Turkey's presidential system is widely seen to have the capacity to trigger a crisis. For a long time, the secularist group in the country has considered the presidency as the final stronghold of secularism. This was because the president under the Turkish parliamentary system has far greater power compared to a standard parliamentary system. The conflict between secularists and the Justice and Development Party (*Adalet ve Kalkınma Partisi* – AKP) resulted in a constitutional crisis. The Turkish parliament's failure to choose a president in 2006, resulted in a deadlock, which was resolved by the ruling party through a

referendum of constitutional change, marking the beginning of a new era for presidential elections in the country. Hence, one may contend that the 2017 constitutional referendum vote had a substantial role in resolving the constitutional problem in Turkey's political history. In other words, it provided a platform for open debate and deliberation and fostered national dialogue and consensus-building, thereby promoted social cohesion and stability (Mete, 2021). Furthermore, a referendum on constitutional legitimacy enhanced the credibility and authority of the constitution itself. When citizens actively participated in its endorsement, they imbue it with a sense of legitimacy that strengthens its standing as the supreme law of the land and resolved the constitutional controversy (Mete, 2021).

In contexts where there are historical injustices or marginalization of certain groups, which encompass religious, ethnic, and linguistic minorities, a referendum on constitutional legitimacy can be particularly significant. It offers an opportunity to rectify past wrongs, promote inclusivity, and reaffirm the commitment to principles of equality and justice. However, the importance of a referendum on constitutional legitimacy extends beyond its procedural aspects. It embodies the democratic values of transparency, accountability, and popular sovereignty. Through active engagement in the constitutional process, citizens become stakeholders in their own governance, fostering a sense of ownership and responsibility towards the nation's foundational principles. In otherwise, a referendum on constitutional legitimacy is not merely a procedural formality but a cornerstone of democratic governance. It upholds the principle that ultimate authority resides with the people and underscores the dynamic nature of constitutionalism in adapting to the changing needs and aspirations of society. By empowering citizens to shape the very framework of their governance, it reinforces the bonds of citizenship and strengthens the foundations of democracy peace and stability. An analysis of multiple referendums in cultures recovering from conflict or engaged in state-building reveals that similar contextual obstacles exist in nations with insufficient democracy and limited citizen participation in politics (Denhardt, et al., 2009). It is so recommended to explore the possibility of referendums as a means of resolving problems. Although they can assist in resolving conflicts at specific stages of a peace process or the execution of a peace agreement, their effectiveness is dependent on a favorable atmosphere. Lack of consultation during the process of framing the referendum, the lack of

involvement from stakeholders in the development of the referendum question is a crucial contextual element that hinders the effectiveness of referendums in post-conflict scenarios. Prior planning is crucial for effectively managing expectations and preparing folks for change. Integrity and transparent dialogue are vital elements of resolving conflicts.

The case study of Guatemala illustrates the limited impact of an inefficient and patronage-based political system on the implementation of the referendum. The political center of Guatemala was dominated by Ladinos, a group comprising figures from both the left and right wings (Costello, 2004). A substantial portion of respondents in these constituencies regarded minority participation and indigenous rights as insignificant. The presidential, legislative, and local elections are slated to take place five months following the indigenous rights referendum. All the main competitors lack a significant dedication to the protection of indigenous peoples' rights. As a result, there was only occasional and limited engagement between indigenous organizations and traditional political leaders (Lee & Ginty, 2012).

Another example of the problems that arose due to insufficient involvement with the parties concerned in the outcome of the vote is the 2005 Constitutional Referendum in Iraq. In spite of its lack of efficacy, the administration tried to involve Sunnis in the creation of a new constitution. The latter stages of drafting were marked by substantial challenges, and a considerable number of Sunnis had a sense of exclusion from the process (Cleveland, 1994). The Iraqi Assembly unanimously ratified the amendments without engaging in any deliberation. For instance, the procedures for conducting referendums and determining the minimum number of votes needed to veto a decision were significantly altered. If at least two-thirds of the total votes, which amounts to three out of the eighteen votes from each province, were in favor of no, the initial text of the referendum proposal might have been rejected. Nevertheless, the plan was modified to need a veto from two-thirds of registered voters, instead of counting actual ballots, almost two weeks before the referendum. The Assembly rescinded the adjustment shortly before the referendum in reaction to intense worldwide censure. On the other hand, Sunnis perceived this as a clear and deliberate effort by Kurds and Shiites to manipulate the poll in order to support their desired form of the constitution. Several Sunni leaders reaffirmed their belief that Shiites would take advantage of the referendum to acquire political influence if they chose not to

participate in the voting process. While the original referendum that took place after Saddam Hussein's regime was generally calm, the competitive atmosphere among different organizations escalated sectarian tensions. This, according to some, hindered the participation of the Sunni minority in the democratic process (Lee & Ginty, 2012).

This article thus argues that a constitutional referendum exemplifies a direct democratic mechanism. In this context, the term referendum will encompass any type of participation that relies on the use of numbered ballots to decide a particular subject. There are two main categories of referenda. The President or Parliament often initiate plebiscites to propose constitutional modifications. In addition, many countries allow the initiation of referendums through grassroots. Constitutional modifications in certain nations require a referendum. An abrogative referendum could be held to oppose a legislative resolution on the requirements and features of legally binding consultative direct democracy (Setala & Schillar, 2009).

Similarly, the Electoral Integrity Project provides a definition of integrity specifically in the context of direct democracy. It is imperative to comply with international laws and regulations during the referendum process. They can be likened to elections in this aspect. However, there are multiple approaches to planning a referendum and a diverse range of methods for conducting debates during the campaign. Referendums are focused on certain themes, thus additional thought and analysis are necessary. The examination of referendums is carried out using the newly developed Direct Democracy Integrity Index. It follows the electoral cycle methodology of the Electoral Integrity Project while integrating novel indicators, such as electoral laws and procedures, voter registration and voting process (Norris, et al., 2014). A referendum expert evaluation thoroughly analyses every stage of the referendum process (Kersting & Grömping, 2022).

The legal framework is crucial for maintaining procedural integrity, as it has a substantial influence on the fairness of the instrument. Incorporating robust safeguards for minority rights and individual political rights, as recognized by international law, is necessary. The legislation that regulates the initiation of referendums can either increase public accessibility to the process or create institutional obstacles since it differs significantly. Although these clauses exist, the way a referendum is conducted might affect the level of credibility of the conclusions that are obtained. The degree to which the government leverages its

advantageous position to manipulate the agenda-setting process is a crucial aspect in this context. Every country has its own voter registration procedure, which can either be automatic or require individuals to actively choose to participate. In the second situation, individuals may have difficulties in registering for a referendum because of bureaucratic hurdles and administrative ineptitude. Malicious manipulation of the electoral record could also involve purposeful additions or subtractions to the votes. Typically, the registry is exclusively available to citizens who fulfil the required qualifications (Norbert & Grömping, 2022).

During the pre-referendum phase, referendums are governed by a range of statutes. The main emphasis of the referendum laws is the government's participation in the process. The issue of whether minority rights should be upheld alongside human rights, and if the current state of affairs and governing parties should be given priority, is brought up. The legal provisions are the main emphasis at the beginning of the referendum. The agenda-setting process is usually within the exclusive purview and prerogative of the executive. Government administrations or ministries often produce preliminary constitutions. However, they can also engage in a vigorous parliamentary procedure or public participation before the formulation of the initial proposal. Under certain conditions, direct democratic mechanisms seem to favor autocratic tyrants over representative parliamentary democracy (Reuchamps and Welp, 2024).

Prior to referendums, voter registration fraud is also widespread (Groarke, 2016). This is commonly the first stage in the manipulation of votes, leading to artificial increments or decrements in the electoral register for particular entities. Within this framework, the preservation of the authenticity of direct democracy is put at risk due to activities such as the inclusion of individuals who are not officially registered as voters or the prohibition of certain established social groups (Reuchamps and Welp, 2024).

In the second phase, known as the campaign phase, three subsequent integrity aspects are crucial. The referendum's outcome is both endorsed and opposed by different interest organizations. This prompts the inquiry as to whether it is suitable to partially erase a document or if it is imperative to cast a vote on the most substantial sections individually. At times, constitutional amendment referendums face criticism for their limitation to binary yes or no ballots (Reuchamps and Welp, 2024). An electoral management body is usually responsible for impartially organizing the referendum. The complexity of

constitutional referendums is heightened by the growing use of crowdsourced constitutions in deliberative democracy processes and outreach campaigns. Mini-publics are growing more common in constitutional review procedures as an innovative deliberative method. These are implemented before the final approval. Some countries such Iceland have used internet technologies to encourage discussions on draft constitutions (Gluck, J, and Ballou, B, 2024; Reuchamps & Welp, 2024).

During the campaign, people utilize various strategies to articulate their opinions on the referendum issue. It is crucial that both proponents and opponents are allowed to carry out their campaigns without any limitations. Voters participating in package referendums, which cover a range of topics, as well as in complex constitutional referendums, are required to exhibit a specific degree of cognitive complexity. The legitimacy of the referendum depends on the provision of precise, unbiased, understandable, and pertinent information, as ignorance is sometimes used as a justification against direct democratic approaches. In this situation, it may be important to include integrity measures, such as using precise wording for the referendum question or implementing outreach campaigns that have a deliberative aspect in the constitutional referendums (Kersting & Grömping, 2022).

The campaign is often subjected to biased media coverage, which consistently erodes the legitimacy of elections. During the intervening period, the government may mishandle its resources and wield control over the media, even if opponents usually lack the necessary financial means. In certain socio-economic groups have significant financial control over electoral media campaigns. Political programs and ads should be provided with equitable media coverage, ensuring equal accessibility for both supporters and opponents. The media should provide unbiased coverage, including all political parties and non-governmental organizations, without showing any favoritism towards the executive branch or supporters of the current state of affairs. While crowdsourcing information during the referendum allows well-informed media outlets, especially social media, to uncover instances of election fraud, the credibility of this process may be compromised by the dissemination of bogus information and incorrect reports (Norbert & Grömping, 2022).

The competition between different interests seeking to gain control of the government in an election is strongly impacted by the regulations and procedures

that govern campaign financing. International treaties require that political funds be allocated equitably to proponents and adversaries of this conflict. Public funding, requirements on financial disclosure, and restrictions on spending and donations are some of the strategies that can be used to accomplish these objectives (Kersting & Grömping, 2022).

Subsequently, referendum day takes place, the perceived fairness of the referendum depends on its legality, processes, administration, and management of its large number of participants. Historical observation organizations such as International Referendum Observation Mission have primarily focused on referendum day. The significance of the violence occurring at the polling place lies in its prominent features of clientelism and compulsion, which hinder voters from exercising their right to cast their ballots in a confidential manner. Consequently, voting is easy for both supporters and opponents of a fair referendum. (Reuchamps & Welp, 2024).

The management of the referendum plays a crucial role in upholding its integrity. The public must be provided with information regarding voting techniques and other relevant details. The media and observers often prioritize the examination of concerns that develop during the voting process, as instances of voter manipulation become more evident on referendum day. Furthermore, voting should be uncomplicated and efficient. It is crucial to ascertain the impact of clientelism and coercion on voters' decisions, concerns regarding ballot security, and instances of ballot box stuffing on the manifestation of their preferences (Kersting & Grömping, 2022).

It is often the case that the vote count after a referendum is unfair, which highlights the need for impartial oversight that has the ability to review a verifiable paper record. Thus, the presence of a professional election administration organization is considered crucial for ensuring the integrity of referendums and unbiased openness (Kersting & Grömping, 2022). The intricate process of counting ballots has the capacity to either strengthen or weaken the credibility of the vote and the perceptions that voters develop. The process of tallying should be overseen by multiple bodies, including both domestic and international election observers. It is imperative to ensure the security of ballot boxes and swiftly disclose the results to prevent any potential tampering. Furthermore, it is imperative to safeguard voting results from both physical and cybersecurity breaches. Vote tallying should be recorded on auditable paper in

addition to technological means. The degree to which the results of the referendum are accepted can serve as a measure of integrity, as competitions with poor levels of integrity sometimes involve accusations of fraud, disputes over the results, and peaceful or even violent protests (Kersting & Grömping, 2022).

Preferably, it is desirable to resolve any conflicts within the established legal systems (Kuehn, 2009). However, political circumstances may cast doubt on the legitimacy of the results of democratic referendums. Conversely, false referendums might be endorsed without encountering any resistance. The administrative electoral authority responsible for the referendum must demonstrate impartiality, transparency, and competence. They have a duty to permit external auditors to assess their operations and to reveal any relevant information to the public. Referendums might fulfil different purposes for electoral authorities compared to elections. The responsibility for managing elections can be assigned to either local Election Management Bodies (EMBs) or centralized to a single EMB. This is because it has the capacity to autonomously supervise the process of creating and shaping the questions for the referendum. Irrespective of any relevant legislation, election officials have an obligation to impartially supervise the process and avoid politicizing their own positions (Kersting & Grömping, 2022).

#### **4. The Constitutional Referendum of Rwanda after the Civil War**

Prior to the era of Germanic colonialism, a Tutsi Nyiginya ruler held absolute power within the Rwandan monarchy. The influence of the King and his advisers was significantly reduced when Europeans arrived at the end of the eighteenth century. However, the Nyiginya government persisted until 1961, when a referendum was held to establish a republican form of government. The referendum was held simultaneously with legislative elections, leading to the Hutus taking control and signifying the conclusion of a prolonged era of Tutsi minority governance. Until 1994, Hutus held dominant positions in Rwandan politics. However, a Tutsi rebel force, Rwandan Patriotic Front (RPF), successfully overthrew the previous Hutu administration after a four-year civil war (Seburanga & Gatesire, 2016).

During this transitional era, various measures have been implemented with the aim of fostering reconciliation, reinstating trust in the government, and reconstructing institutions (Rwigema, 2023). In 2003, a new constitution was

adopted by public referendum which obtained legitimacy to the constitution and ended the nine-year transition period that began in 1994 after the overthrow of the Hutu government, which occurred after a four-year civil conflict. The constitutional referendum in Rwanda created a sense of peace and stability in the country and ended the conflict between Hutus and Tutsis. The purpose of this was to streamline the process of replacing the self-appointed, Tutsi-led administration with a more comprehensive one through a democratic election. However, this was not the case; not only did Tutsi continue to exert their dominant authority, but there was no probability that the ruling party would ever surrender power and permit a democratically elected leadership to assume charge (Seburanga & Gatesire, 2016). Within 10 years following the approval of the 2003 Constitution, it became clear that the section concerning presidential term limits needed to be modified. In 2014, there were indications of the development of a new constitution aimed at enabling President Paul Kagame to serve from two 7-year terms (fourteen years) to three Seven-year terms plus two five-year terms (Thirty years). The new constitution was introduced within one week after the 2015 Constitutional referendum (Seburanga & Gatesire, 2016).

This article therefore argues that the constitutional referendum in Rwanda represents an enormous opportunity to consolidate constitutional legitimacy in the post-civil war period. The involvement of citizens through the voting of this constitution has fostered ownership and inclusiveness in a democratic process and is a positive sign of building trust and legitimacy after conflict. It was evidenced that the republican character of Rwanda's democratic principles and processes did not wane; instead, it was moving towards a more participatory form of governance through the referendum (Kylilis, 2023).

After the civil war in Rwanda, the Arusha Accords called for the adoption of a new constitution and the establishment of a power-sharing administration that includes a wide range of participants in the period following the transition. Following that, a three-year constitutional commission was appointed to supervise the procedure. The panel was mandated to ensure inclusivity and alignment with the goals of the Rwandan population. After the draft constitution was adopted by the Rwandan Parliament, the Commission was tasked with producing and validating draft laws, informing the public about the constitution-making process, and ensuring consistency in the content of the new constitution. The Kagame-led government, which emerged triumphant in the civil conflict that caused the

demise of President Juvenal Habyarimanna and over 800,000 Rwandan Tutsis dead, which has been criticized for being the main driving force behind the country's constitution making progress (Fombad & Steytler, 2021).

However, the process was credited with the creation of Rwanda's inaugural constitution that has legal force, and based on common values and goals. A novel aspect of the constitution is the establishment of the National Unity and Reconciliation Commission. The Commission aims to address the negative effects of poor governance and tackle the issue of genocide by promoting education. Following the prolonged period of ineffective governance that preceded the occurrence of genocide, several institutions promoting good governance were founded. These included the Commissions for Women, Youth, Civil Service, Genocide Fighting, and Education High Council. The final iteration of the Rwandan Constitution was shaped by a multitude of variables, which encompassed the process of its composition. The organization adopted a gender policy that was grounded in principles of human rights and equality. This policy required that women participate in at least 30% of the decision-making process (Ankut, 2005). In result of that democratic transition and reconciliation after the conflict, Rwanda has undergone substantial political and economic upheaval in recent decades (Buheji & Mushimiyimana, 2023).

## 5. Conclusion

This article analyzed the impact of referendum on constitutional legitimacy in post-conflict societies. It was argued that there is a significant increase in the use of referendums to address important constitutional issues in the past few decades. The constitutional referendum became the prevailing method to conclude the process of creating a constitution as well as constitutional change in the post-conflict democratic countries. During this process, the drafters put the proposed text of constitution to the public for a decisive vote, which grants the constitution the authority and legitimacy it requires. That being said, there has been a growing prevalence of direct constitutional referendums during the past three decades for the purpose of establishing or modifying constitutions after conflicts, allowing the public to directly vote on the proposed constitutional changes. It is fair enough to argue that although political challenges exist, a referendum has a significant role in the conflict resolution processes and the constitutional legitimacy in post-conflict societies.

Furthermore, this article explored the key concepts that enhance or undermine constitutional legitimacy in post-conflict countries. It was investigated how the public perceives the legitimacy of constitutional ratification in relation to referendums. Additionally, it discussed the variations in post-conflict constitutional referendums and their ability to establish constitutional legitimacy in societies recovering from conflicts. Constitutional legitimacy in post-conflict countries requires a comprehensive strategy that addresses issues of trust, inclusivity, compliance with the law, transitional justice, international support, implementation, flexibility, and continued participation of the people in the process of constitution-making and conflict resolutions. Through adeptly addressing these challenges, nations that have undergone conflict can provide the foundation for lasting peace, reconciliation and democracy. This article highlighted that the constitutional theorists should improve the theoretical and practical foundation for conducting constitutional referendums, given their widespread adoption as a decision-making mechanism in post-conflict states.

In light of all these, the importance of public awareness and education in post-conflict societies to ensure that referendums effectively contribute to constitutional legitimacy is recommended. The governments and civil societies should invest in educational programs about the importance of constitutional changes and implications for referendum outcomes to educate people on constitutional matters. It is also recommended to undertake a fair and transparent process to ensure the integrity of constitutional referendums in post-conflict countries. Independent electoral bodies which oversee the whole process from the beginning of the campaign to the vote counting of the referendum to enhance transparency and fairness can help prevent manipulation and bolster the outcome of the legitimacy. The article underlined that the minority voices should be incorporated. To enhance the constitutional legitimization in post-conflict democratic societies, it is important to consider the views of minority groups. An oversight mechanism should be put in place to ensure that the interests of all segments of the society are represented and protected during the referendum process. The effectiveness of constitutional referendums does not end up with the vote. It is important to monitor and evaluate the implementation of the constitutional provisions to make sure that they reflected the will of the people. Ongoing reviews can help address issues arising in the process of constitutional implementation and acceptance and recognition in post-conflict situations.

The study recommends further research in this area: It argues that long-term studies could follow up on the evaluation of traditional legitimacy after referendums in post-conflict democratic societies. This would help in understanding whether the perceived legitimacy of the convention decreases, increases or remains stable over time and what factors contribute to those trends in post-conflict societies. The study recommends that further research could compare the impact of referendums on conventional legitimacy across different cultural contexts and political systems, understanding how various factors such as manipulation and exclusiveness influence the success or failure of referendums in various post-conflict societies can provide valuable insights for future constitutional referendums. Thus, owing to the increasing influence of social media on public opinion, research could explore how online platforms affect the outcomes of constitutional referendums and their subsequent impact on conventional legitimacy. This includes the role of misinformation, digital activism and echo chambers.

## **REFERENCES**

Accetti, C. I., & Oskian, G. (2022). What is a consultative referendum? The democratic legitimacy of popular consultations. *Perspectives on Politics* 20(1): 123-138.

Albert, R., & Stacey, R. (Eds.). (2022). The limits and legitimacy of referendums. Oxford: Oxford University Press.

Ankut, P. Y. (2005). *The role of constitution-building processes: Case study*. Stockholm: International IDEA.

Barnett, R. E. (2003). Constitutional Legitimacy. *Georgetown University Law Center*, <https://scholarship.law.georgetown.edu/facpub/43/>

Barnett, R. E. (2004). Constitutional legitimacy without consent: Do the laws of a nation state ever bind in conscience. *Archives for Philosophy of Law and Social Philosophy*, 90(2): 197-209.

Buckley-Zistel, S., Beck, T. K., Braun, C. & Mieth, F. (Eds.). (2014). *Transitional justice theories*. Routledge.

Buheji M., & Mushimiyimana E., (2023). Optimizing socioeconomic resilience strategies- case study of Rwanda. *International Journal of Social Sciences Research and Development (IJSSRD)* 5(2): 94-113.

Çatlı, M. (2023). Yapay Zekanın Anayasası: Akıllı Anayasa Üzerine (The Constitution of Artificial Intelligence: An Approach to the Smart Constitution), *Adalet Dergisi* 70: 369-383.

Chau, B. (2012). Constitutional legitimacy: An analysis under Max Weber's traditional sources of authority. Available at SSRN. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2192172](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2192172)

Cleveland, W. L. (2018). *A History of the Modern Middle East*, Westview Press.

Collin, K. (2020). Peacemaking referendums: the use of direct democracy in peace processes. *Democratization*, 27(5), 717-736.

Costello, P. (2004). 'Historical Background,' *Accords* 2: 10 (1997); David Carey, Jr., 'Maya Perspectives on the 1999 Referendum in Guatemala: Ethnic Equality Rejected?' *Latin American Perspectives* 139(31): 69–95.

Dagher, R. (2018). Legitimacy and post-conflict state-building: the undervalued role of performance legitimacy. *Conflict, Security & Development* 18(2): 85–111.

Denhardt, J, Terry, L, Delacruz, E.R, and Andonoska, L, (2009). Barriers to Citizen Engagement in Developing Countries, *International Journal of Public Administration* 32(14), 1268–1288.

Elkins, Z., Ginsburg, T., & Blount, J. (2008). The citizen as founder: public participation in constitutional approval, *Temp. L. Rev.* 81(2). [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2451&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2451&context=journal_articles)

Fisch, W. B. (2006). Constitutional referendum in the United States of America. *The American Journal of Comparative Law* 54 (Fall): 485–504.

Fombad, C. M. & Steytler, N. (2021). *Democracy, elections and constitutionalism in Africa*. Oxford University Press.

Fotiadou, A. (2019). The law and legitimacy of imposed constitutions, R. Albert, & X. Contiades (Eds.). London and New York: Routledge.

Frank, T. M. and Thiruvengadam, A. K. (2016). Norms of International Law Relating to the Constitution Making Process. In L. Aucoin and L. Miller (eds). *Framing the State in Times of Transition*, University of Edinburg, <https://psrpdev.law.ed.ac.uk/psrpx/wp-content/uploads/2016/10/Global-Constitutionalism-SSRN.pdf>

Gluck, Jason and Brendan Ballou (2014). *New Technologies in Constitution Making. Special Report* 343. Washington D.C.: United States Institute of Peace.

Groarke, M. (2016). The Impact of Voter Fraud Claims on Voter Registration Reform Legislation, *Political Science Quarterly* 131(3): 571–595.

Harel, A., & Shinar, A. (2023). Two concepts of constitutional legitimacy. *Global Constitutionalism*, 12(1), 80-105.

Hart, V. (2010). Constitution making and the right to take part in a public affair. Framing the state in times of transition: Case studies in constitution making, 20. [https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter2\\_Framing.pdf](https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter2_Framing.pdf)

Hartwig, M. (2015). What Legitimizes a National Constitution? On the Importance of international Embedding. In *Constitutional Crisis in the European Constitutional Area*, Nomos Verlagsgesellschaft mbH & Co. KG, 311-330.

Jackson, V. (2013). *Constitutional engagement in a transnational era*, Oxford University Press.

Kersting, N. & Grömping, M. (2022). Direct democracy integrity and the 2017 constitutional referendum in Turkey: a new research instrument. *European Political Science* 21: 216-236.

Kuehn, T. (2009). Conflict Resolution and Legal Systems, Blackwell Publishing Ltd. <https://doi.org/10.1002/9781444324198.ch16>

Kylilis P., (2023). Healing the wounds, bridging the divide exploring “community participation” in post-conflict development through trauma healing in Rwanda. Stockholms Universitet.

Landau, D. (2013). Abusive constitutionalism. *UCDL Rev.* 47(1).

Law, D. S. (2016). *Constitutional archetypes*, *Tex. L. Rev.*, 95(2): 153-243.

Lee , S. Y., & Ginty, R. M. (2012). Context and postconflict referendums. *Nationalism and Ethnic Politics* 8(1): 43-64.

Lenowitz, J. A. (2021). The people cannot choose a constitution: Constituent power's inability to justify ratification referendums. *The Journal of Politics* 83, 617.

Mete, M. D. (2021). Constitutional crises and referendums in Turkey, *Yasama Dergisi* 44 (Temuz-Aralık): 64-70.

Norbert, & Grömping. (2022). Direct democracy integrity and the 2017 constitutional referendum in Turkey: a new research instrument. *European Political Science* 2: 216-236.

Norris, P., Frank, R. W., & I Coma, F. M. (2014). Measuring electoral integrity around the world: A new dataset. *PS: Political Science & Politics* 47(4): 789-798.

Nugraha, I. Y. (2022). Popular sovereignty and constitutional referendum: Can “the people” be limited by human rights? *German Law Journal* 23(1). <https://www.cambridge.org/core/journals/german-law-journal/article/popular-sovereignty-and-constitutional-referendum-can-the-people-be-limited-by-human-rights/08B772A3FEFC606DDBC36B0D2EC7A03D>

Raz, J. (1998). Disagreement in politics, *Am. J. Juris* 43(1): 25–52.

Raz, J. (2006). The problem of authority: Revisiting the service conception. *Minnesota Law Review* 90: 1003-1044.

Reuchamps, M., & Welp, Y. (2024). *Deliberative constitution-making opportunities and challenges*. Abingdon: Routledge.

Rwigema, C. P. (2023). Historical development of governance in Rwanda and how the development shaped the landscape of its institutions. *The Strategic Journal of Business & Change Management*, 10(2): 85–528.

Seburanga, J. L., & Gatesire, T. (2016). The 2003 and 2015 constitutional referenda in Rwanda: A significant change in voter turnout. *Democracy and Security* 12(3) (July-September): 162-182.

Setala, M., & Schillar, T. (2009). *Referendums and representative democracy: Responsiveness, accountability and deliberation*. Oxford: Routledge.

Suksi, M. (2010). *Referendums in constitution-making processes*. Inter peace. <https://peacemaker.un.org/sites/default/files/document/files/2022/07/ipsuksireferendums20in20cmp2010.pdf>

Tierney, S. (2012). *Constitutional referendums: The theory and practice of republican deliberation*. Oxford: Oxford University Press

Uşvat, L. F. (2017). Legitimation of the referendum - the standeard mechanism of participatory. *Journal of legal studies* 91(33): 84-95.