

Constitutional Fragility and Dual Nationality Disputes: Legal Implications of Madagascar 2023 Presidential Election

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Abstract

The 2023 presidential election in Madagascar raised serious constitutional and legal questions surrounding the eligibility of incumbent President Andry Rajoelina, who was revealed to have acquired French nationality in 2014. This fact, under the Malagasy Code of Nationality, automatically triggers the loss of his Malagasy citizenship – an essential constitutional requirement for presidential candidacy. Despite legal provisions and widespread objections from civil society and opposition coalitions, the High Constitutional Court (HCC) dismissed all challenges and upheld his candidacy. This paper identifies a gap in existing constitutional law literature in Madagascar, which has not sufficiently addressed the legal implications of nationality loss in the context of presidential eligibility. The paper aims to examine how key legal institutions, particularly the HCC and the electoral commission (CENI), responded to this controversy and what their actions reveal about judicial independence and constitutional compliance. Using a doctrinal approach grounded in positivist and originalist lenses, complemented by judicial independence and democratic legitimacy lenses, this study analyses relevant constitutional provisions, court decisions, and political developments. It argues that the HCC's refusal to substantively address the nationality issue reflects broader institutional weaknesses and signals a worrying trend of legal uncertainty. The findings highlight the need for reform to restore public trust, ensure electoral integrity, and safeguard constitutionalism in Madagascar.

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Introduction

In a state governed by the rule of law, the Constitution serves as the foundational legal framework that structures political authority, limits governmental power, and secures the rights and liberties of citizens.¹ It is not merely a document of aspiration but a binding legal instrument that commands adherence from all institutions and individuals, including those who govern.² The supremacy of the Constitution lies in its capacity to restrain arbitrary rule and prevent the abuse of power through clearly established rules. It is the anchor of legitimacy for any democratic order. Without it, the exercise of political power risks descending into authoritarianism, and the boundaries between legality and convenience begin to erode.³

Central to this idea is the principle of constitutionalism, which entails not only the existence of a constitution but also the actual practice of governance in accordance with constitutional norms. Constitutionalism demands more than formal declarations—it insists on institutional commitment, judicial independence, and consistent enforcement. While it includes the traditional function of restraining power and preventing abuse, a richer understanding—aligned with Barber’s positive model of constitutionalism—views the Constitution as a framework that enables the state to actively promote the public good. It reflects the belief that all actions of the state must derive from and conform to the Constitution, not only to limit excess but also to ensure institutional coherence and purposive governance. Any deviation from constitutional obligations, particularly by the highest state authorities, poses a direct threat to democratic integrity and the credibility of the legal order.⁴ In this context, constitutional provisions are not open to subjective reinterpretation; they are to be applied as they are written, with respect for their original meaning and purpose.⁵

¹ Ferioli Elena, ‘Rule of Law and Constitutional Democracy’, *Milletleraras* 46, no. 0 (2015): 93–95,

² See, e.g., Nikolas Bowie and Daphna Renan, ‘The Separation-of-Powers Counterrevolution’, *Yale Law Journal* 131, no. 7 (2021): 2020–2125.

³ See, e.g., Micha Wiebusch and Christina Murray, ‘Presidential Term Limits and the African Union’, *Journal of African Law* 63, no. S1 (14 May 2019): 131–60. See also generally, Jack R. Mangala, ed., *The Politics of Presidential Term Limits in Africa* (Cham: Palgrave Macmillan and Springer Nature Switzerland AG, 2020).

⁴ See N. W. Barber, *The Principles of Constitutionalism* (Oxford: Oxford University Press, 2018), 1–19.

⁵ See, e.g., Robert J Pushaw, ‘Comparing Literary and Biblical Hermeneutics to Constitutional and Statutory Interpretation’, *Pepperdine Law Review* 47, no. Special Issue (2020): 481 (“[C]ourt need not—and should not—imaginatively reinterpret the Constitution”).

Legal positivism, as a complementary theoretical framework, reinforces this view by asserting that the validity of law depends not on its moral content but on its source and formal enactment. According to positivist doctrine, legal norms derive their authority from being promulgated through established procedures—once enacted, they are binding regardless of political convenience. This perspective is crucial in maintaining legal certainty and institutional accountability, particularly in cases where political actors seek to bypass legal constraints. It affirms the idea that no one is above the law and that even the most powerful must submit to the dictates of the legal system. In a fragile democracy, where institutions may be susceptible to manipulation, positivism provides a necessary safeguard against selective interpretation and arbitrary enforcement.⁶

In Madagascar, the Constitution holds a particularly sacred place in the legal and political imagination. Lastly revised in 2010 following a turbulent political transition, the current Constitution (“2010 Constitution”) reflects an effort to re-establish democratic norms and build a state governed by the rule of law. It contains detailed provisions regulating the separation of powers, citizenship, fundamental rights, and electoral procedures.⁷ Among its most important principles is the requirement that presidential candidates must hold Malagasy nationality—a provision that speaks to the nation's sovereignty and the symbolic role of the presidency. Article 46 of the Constitution explicitly states that candidates for the presidency must possess Malagasy nationality.⁸ In addition, Article 42 of the Malagasy Code of Nationality provides that a Malagasy citizen of full age who voluntarily acquires another nationality loses Malagasy nationality by operation of law.⁹ These foundational texts form the legal bedrock upon which eligibility for the nation's highest office is determined.

In 2023, Madagascar's political and legal institutions were confronted with a high-profile test of these provisions. In June of that year, public disclosures revealed that President Andry Rajoelina had been naturalised as a French citizen in November 2014, following the end of his presidency over the transitional

⁶ See, e.g., Felipe Jiménez, ‘Legal Positivism for Legal Officials’, *Canadian Journal of Law and Jurisprudence* 36, no. 2 (2023): 359–86. See, contra, Torben Spaak, ‘Legal Positivism, Conventionalism, and the Normativity of Law’, *Jurisprudence* 9, no. 2 (2018): 319–44.

⁷ See Randianina Radilofe, ‘Chronique de Droit Constitutionnel Malgache’, *Revue Juridique de l’Océan Indien* hal-033275 (2020): 629–41.

⁸ Constitution of Republic of Madagascar, Article 46.

⁹ Ordonnance n° 60 - 064 concerning Code of Nationality, 22nd July 1960, (hereinafter “Malagasy Nationality Code”), Article 42.

government (2009–2014). This information, published in the French Official Journal (see Figure 1), sparked a wave of national debate and public attention. Critics raised questions about the legal implications of such naturalisation under Madagascar's nationality laws, and whether Rajoelina remained eligible to seek re-election in 2023. In response, Rajoelina stated that his acquisition of French nationality was motivated by personal and family reasons and that he had never lost his Malagasy nationality. The High Constitutional Court ("HCC") subsequently approved his candidacy without substantively addressing the nationality issue, asserting that nationality questions fell outside its jurisdiction. This institutional response marked the beginning of an election season marked by controversy.

RAJAB (Susan), née le 08/08/1982 à Alep (Syrie), NAT, 201 031533, dép. 054, Dt. 046/879.

RAJIH (Mohamed, El Mehdi), né le 24/01/1982 à Casablanca (Maroc), NAT, 2014X 015386, dép. 075, Dt. 046/880, autorisé à s'appeler légalement RAJIH Mohamed, El Mehdi, Alexandre

RAJOELINA (Andry, Nirina), né le 30/05/1974 à Antsir (Madagascar), NAT, 2014X 034326, dép. 99, Dt. 046/881.

RAJOELINA (Ilona, Andrialy), née le 19/06/2005 à Neuilly-sur-Seine (92200), EFF, 2014X 034326, dép. 99, Dt. 046/882.

RAJOELINA RAZAKANDISA (Arena, Fanambinantsoa), né le 11/06/2001 à Antananarivo (Madagascar), EFF, 201 034326, dép. 99, Dt. 046/883.

RAJOELINA RAZAKANDISA (Eïtan, Ilontsoa), né le 15/02/2004 à Neuilly-sur-Seine (92200), EFF, 2014X 034326, dép. 99, Dt. 046/884.

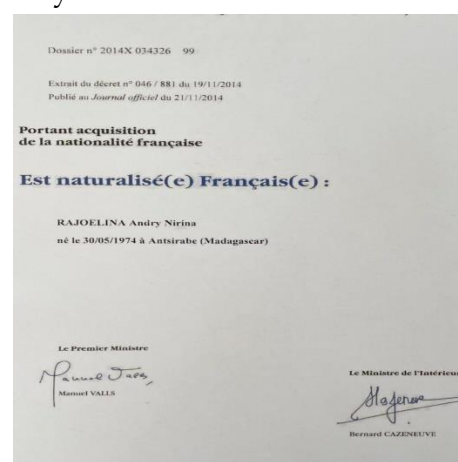


Figure 1: Proof of Andry Rajoelina's Naturalisation

Source: Extracted from French Official Gazette of 21/11/2014 as published by KoolSaina¹⁰

In the months that followed, the dispute surrounding President Rajoelina's eligibility evolved into a broader political crisis. Eleven of the twelve presidential candidates publicly rejected the legitimacy of the electoral process and announced a coordinated boycott, including high-profile figures such as former presidents Marc Ravalomanana and Hery Rajaonarimampianina. The pre-election period was characterised by public demonstrations, a visible deployment of security forces, and widespread public debate. The election held on 16 November 2023 recorded a notably low participation of 43.05%, signalling a high level of political

¹⁰ KoolSaina, "VIDEO. Madagascar Est Dirigé Par Un Président Exclusivement Français Depuis 2019 | KoolSaina.com," KoolSaina.com, June 30, 2023, <https://www.koolsaina.com/video-madagascar-est-dirige-par-un-president-exclusivement-francais-depuis-2019/>.

disengagement (see Figure 4). In the wake of the election and the confirmation of Rajoelina's victory by the HCC, the political atmosphere remained tense.¹¹

Previous research on constitutional law in Madagascar has explored a range of institutional, doctrinal, and practical challenges facing the country's legal and political system. Randianina Radilofe's work focuses on the procedural and structural role of constitutional justice, particularly the HCC authority in electoral matters, highlighting gaps in the Court's ability to enforce constitutional norms.¹² Éric M. Ngango Youmbi examines the rationalisation of Madagascar's political regime under the Fourth Republic, analysing how constitutional design—particularly the shift from parliamentarism to a more hybrid model—has shaped the balance of power between institutions.¹³ Rasamoely Mirantsoa's research turns to electoral finance, analysing how the absence of rigorous enforcement mechanisms regarding campaign spending undermines electoral fairness and constitutional legitimacy.¹⁴ Giammaria Milani, meanwhile, provides a broader critique of the 2010 Constitution, questioning its effectiveness and normativity in the face of recurring political instability and weak constitutional enforcement.¹⁵ While these studies offer valuable insights into Madagascar's constitutional framework, none have specifically interrogated the constitutional and legal implications of the HCC's handling of President Andry Rajoelina's 2023 candidacy, particularly from a positivist and originalist perspective. This paper fills that gap by analysing the HCC's decision through the lens of constitutional compliance and the rule of law,

¹¹ The low voter turnout of 43.05% observed in Madagascar's 2023 presidential election reflects a broader pattern of political disengagement that often accompanies electoral environments perceived as unfair or uncompetitive. As André Blais, Fernando Feitosa, and Semra Sevi, 'Was My Decision to Vote (or Abstain) the Right One?', *Party Politics* 25, no. 3 (2019): 382–89, suggests, voter abstention may not only stem from logistical or political barriers but also from doubts about the efficacy or moral clarity of abstaining, with many non-voters subsequently questioning the wisdom of their decision. In a tense post-election context, such as Madagascar's, where institutional trust is eroded, this disengagement signals not apathy but a crisis of confidence in the democratic process itself.

¹² Radilofe, 'Chronique de Droit Constitutionnel Malgache'.

¹³ Éric M Ngango Youmbi, 'Le juge constitutionnel et la rationalisation du régime politique malgache sous la IV République', *Revue du droit public* Juillet, no. 4 (2017): 999–1027, <https://droit.cairn.info/revue-revue-du-droit-public-2017-4-page-999?lang=fr>.

¹⁴ Miarintsoa Rasamoely, 'Droit constitutionnel étranger. Le contrôle des comptes de campagne électorale à Madagascar : d'urgentes clarifications pour réduire les risques d'une crise politique', *Revue française de droit constitutionnel* N° 134, no. 2 (2023): 479–98.

¹⁵ Giammaria Milani, 'A Quoi Serve La Constitution Malgache? Les Défis Pour l'édification d'une Constitution Effective et Efficace à Madagascar', *FEDERALISMI. IT* 3 (2018): 1–25, https://usienair.unisi.it/bitstream/11365/1066354/2/AIR_Giammaria_Federalismi.pdf.

offering a novel critique of how legal interpretation, institutional discretion, and questions of national sovereignty converge in politically sensitive electoral contexts.

In light of these developments, this paper seeks to examine a central question: How did the constitutional and legal responses to the 2023 presidential election in Madagascar affect the integrity of democratic governance and the rule of law? The objective is to critically assess how legal institutions interpreted and applied constitutional provisions during a politically sensitive electoral period and to identify the implications of these actions for constitutionalism in Madagascar. The analysis draws from legal texts, court decisions, and political developments to offer a comprehensive understanding of the relationship between law and politics in the country's electoral context. To structure this inquiry, the paper is organised into three sections: (1) Andry Rajoelina's Political Trajectory and the Constitutional Crisis of Dual Nationality; (2) Institutional Responses and the Erosion of Electoral Integrity; and (3) Post-Election Challenges and its Legal Implications. Through this framework, the study aims to contribute to the broader discourse on constitutional compliance, judicial independence, and democratic resilience in emerging democracies.

Theoretical Framework

This research applies legal positivism and originalism to examine Andry Rajoelina's political trajectory and the constitutional crisis of dual nationality. Legal positivism holds that the validity of a legal rule stems from its enactment through proper authority, not from its moral or political content.¹⁶ It therefore insists that constitutional interpretation must adhere strictly to the text of the law, such as the provisions in the Malagasy Code of Nationality and Electoral Law. Originalism, on the other hand, asserts that constitutional meaning must be derived from the original intent of the drafters or the plain understanding at the time of adoption.¹⁷ Together, these theories guide the inquiry into whether the High Constitutional Court faithfully applied the constitutional and legal framework governing nationality and eligibility, or whether it deviated from the letter and spirit of the law to accommodate political expediency.

In analysing Institutional Responses and the Erosion of Electoral Integrity, the paper uses the lenses of judicial independence and democratic legitimacy.

¹⁶ Andrew Jordan, 'The (Ir)Relevance of Positivist Arguments for Originalism', *Loyola of Los Angeles Law Review* 56, no. 3 (2023): 937–80.

¹⁷ Hartmut Kliemt, 'The Logical Foundations of Constitutional Democracy between Legal Positivism and Natural Law Theory', *Public Choice* 195, no. 3–4 (2023): 269–81.

Judicial independence refers to the ability of courts to perform their constitutional duties free from external influence, particularly from the executive.¹⁸ Democratic legitimacy relates to public trust in institutions and the belief that power is exercised through legal, transparent, and participatory means.¹⁹ These two lenses help assess the impartiality of the judiciary and the credibility of electoral oversight during the 2023 presidential election. All four theories – legal positivism, originalism, judicial independence, and democratic legitimacy – are then jointly applied in the final part of the paper to evaluate Post-Election Challenges and their Legal Implications. This integrated framework allows the research to critically explore how legal interpretation, institutional authority, and public perception collectively shape the resilience or fragility of constitutional governance in Madagascar (see Figure 2).

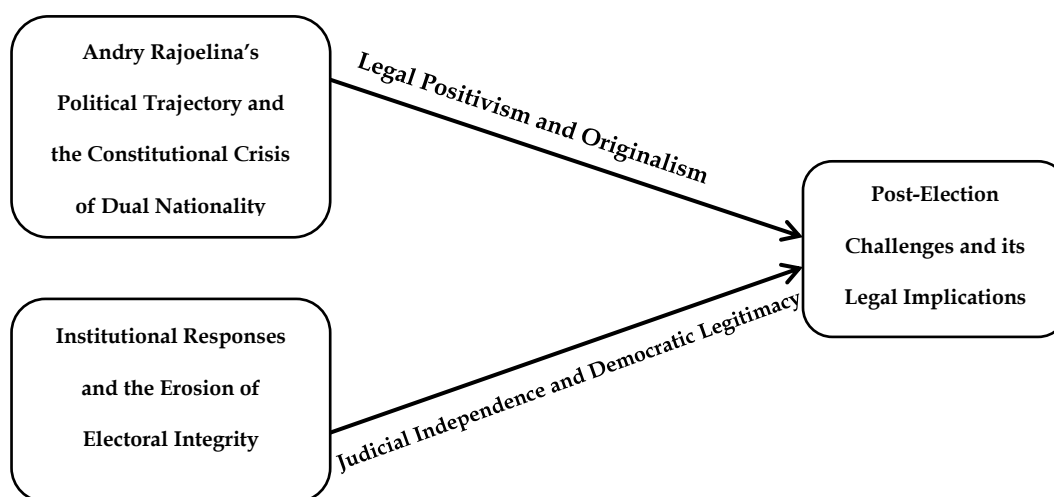


Figure 2. Theoretical Framework

Source: Author's analysis

Method

This research adopts a legal doctrinal method as its primary approach, enabling a systematic and critical analysis of the relevant constitutional and statutory provisions governing presidential eligibility in Madagascar, particularly considering the HCC decision to validate President Andry

¹⁸ For further understanding on judicial independence, see, e.g., Tara Leigh Grove, 'The Origins (and Fragility) of Judicial Independence', *Vanderbilt Law Review* 71, no. 2 (2018): 465–546.

¹⁹ Eri Bertsou, 'Rethinking Political Distrust', *European Political Science Review* 11, no. 2 (17 May 2019): 213–30.

Rajoelina's candidacy in the 2023 election. The doctrinal method is complemented by a normative approach to interpret and assess the internal consistency and authority of the Constitution, the Electoral Law, and the Malagasy Code of Nationality,²⁰ viewed through the lens of legal positivism and originalism, which frame law as a product of formally enacted texts.²¹ A conceptual approach further supports this inquiry by clarifying fundamental legal principles such as constitutionalism, judicial independence, and the rule of law, within both national and comparative constitutional contexts.²² To broaden the analytical scope, a sociological approach is incorporated to understand how the institutional handling of the 2023 election—including mass protests, electoral boycotts, and public disillusionment—reflects broader tensions between legal legitimacy and popular sovereignty in fragile democracies.²³ The research relies on secondary sources, including national laws, judicial decisions, scholarly literature, and policy reports, and employs comparative references drawn from similar constitutional crises in other jurisdictions to substantiate key arguments (mostly in the footnotes).²⁴ The overall analysis is conducted qualitatively to evaluate how legal interpretation and institutional behaviour affected the integrity of the electoral process and the constitutional order in Madagascar.

Results and Discussion

Andry Rajoelina's Political Trajectory and the Constitutional Crisis of Dual Nationality

Andry Nirina Rajoelina, born on 30 May 1974 in Antsirabe, represents a unique intersection of business, media, and politics in Madagascar's postcolonial history. Prior to his political involvement, Rajoelina built a successful career in the private sector. In 1999, he founded Injet, a digital printing company, which was followed by the acquisition and rebranding of Ravinala radio and television stations

²⁰ Bethel Uzoma Ihugba, *Introduction to Legal Research Method and Legal Writing* (Lagos: Malthouse Press Limited and African Books Collective, 2020), 5–6.

²¹ Ihugba, 31.

²² Ihugba, 8.

²³ Ihugba, 115.

²⁴ Ihugba, 74–79.

into Viva FM and Viva TV in 2007. These platforms not only boosted his public image but also became powerful vehicles for his political messaging. His increasing popularity and assertive presence in media set the stage for his entry into public office.²⁵

In December 2007, Rajoelina was elected Mayor of Antananarivo, Madagascar's capital, where he quickly positioned himself as a vocal critic of then-President Marc Ravalomanana. His confrontational approach catalysed political instability, culminating in the 2009 political crisis. Backed by military forces, Rajoelina ousted Ravalomanana and assumed leadership of the High Transitional Authority (HTA), an interim government body created without electoral legitimacy. This abrupt transition, widely condemned by international actors as a coup d'état, fundamentally altered the country's political landscape and marked the beginning of Rajoelina's controversial national leadership.

As head of the HTA from 2009 to 2014, Rajoelina governed by decree, dissolved the National Assembly, and initiated a new constitutional order through a 2010 referendum. This process led to the adoption of Madagascar's Fourth Republic, introducing a revised framework that many argued entrenched presidential authority. Though he did not run in the 2013 election, his influence loomed large over the transition period. His decision to step down in 2014 temporarily removed him from the national political arena, but his political capital remained intact.

Rajoelina's political comeback materialised in 2018 when he ran once more for president. After a tense electoral campaign, he was declared the winner and inaugurated on 19 January 2019. His presidency was marked by bold infrastructure projects and aggressive public relations, but it was also mired in criticism regarding governance, transparency, and human rights. By 2023, as he prepared for re-election, his legitimacy came under renewed scrutiny – not due to his policies or popularity, but because of a legal and constitutional controversy surrounding his nationality.²⁶

²⁵ The biography of Andry Rajoelina in the following paragraphs of this section were derived from McKenna and Amy, "Andry Rajoelina | Biography, Age, Education, Nationality, & Wife," Encyclopedia Britannica, November 17, 2023, <https://www.britannica.com/biography/Andry-Rajoelina>.

²⁶ Mamiasoa Raveloaritiana and Jean Sovon, "In Madagascar, Andry Rajoelina's Dual Nationality Courts Controversy on Eve of Presidential Election," trans. Adam Long, Global Voices, November 23, 2023, <https://globalvoices.org/2023/11/23/in-madagascar-andry-rajoelinas-dual-nationality-courts-controversy-on-eve-of-presidential-election/>.

In June 2023, investigative reports revealed that Rajoelina had been naturalised as a French citizen in November 2014, a fact confirmed by the French Official Journal (see Figure 1). The disclosure sent shockwaves across the Malagasy political spectrum. According to Madagascar's Ordonnance No. 61-052 on Code of Nationality ("Malagasy Code of Nationality"), acquiring another nationality voluntarily leads to automatic revocation of Malagasy citizenship. This is clearly established in the nationality code: "A Malagasy citizen of full age who voluntarily acquires a foreign nationality loses Malagasy nationality".²⁷ Since holding Malagasy nationality is a prerequisite for presidential candidates,²⁸ this requirement is further clarified in the Organic Law No. 2018-009 concerning Election of the President of Republic, (hereinafter "Malagasy Electoral Law"): "Each candidacy declaration must be accompanied by [...] a certificate of Malagasy nationality issued within the last six months".²⁹ The revelation therefore posed a direct threat to the legality of his candidacy.

Opposition figures, notably the coalition of presidential contenders known as the *Collectif des 11 candidats*, challenged the legitimacy of Rajoelina's candidacy. They argued that his French naturalisation nullified his Malagasy nationality, thereby disqualifying him from running. The legal crux of their argument was based on the supposed "automatic" loss of Malagasy citizenship upon naturalisation elsewhere.³⁰ This interpretation is reinforced by the following provision: "A Malagasy who loses Malagasy nationality is released from allegiance to Madagascar as of the date of acquisition of the foreign nationality".³¹ However, in a controversial ruling, the HCC dismissed their appeals, stating that the loss of Malagasy nationality required a prior court decision, which had not occurred.³²

Moreover, to clarify this decision, the president of HCC during his speech on 3rd December 2023 stated:

"When two professors – both of whom have previously served as presidents of this very institution [the HCC], and whose expertise is widely respected – declared that Article 42 of the Nationality Code cannot be interpreted in isolation, and must be accompanied by

²⁷ Malagasy Code of Nationality, Article 42.

²⁸ Constitution of the 4th Republic of Madagascar, 17th November 2010, (hereinafter "2010 Constitution"), Article 46.

²⁹ Organic Law No. 2018-009 concerning Election of the President of Republic, 10th April 2018, (hereinafter "Malagasy Electoral Law"), Article 10

³⁰ Raveloaritiana and Sovon, "In Madagascar, Andry Rajoelina's Dual Nationality Courts Controversy on Eve of Presidential Election."

³¹ Malagasy Code of Nationality, Article 46

³² Malagasy Code of Nationality, Article 48.

a decree confirming the loss of nationality, they were met not with reasoned debate, but with insults, abuse, and accusations of ignorance. People pretend to forget that in the 2018 presidential election, when the HCC published the official list of candidates, it knew full well that one of them [Andry Rajoelina] held a foreign nationality. Yet the candidacy was accepted, because Article 46 of the Constitution does not prohibit it. The former President of the HCC mentioned earlier is witness to this.”³³

The HCC's response was met with significant backlash. Critics accused the Court of adopting a narrow and politicised interpretation of the nationality law, thereby enabling Rajoelina's continued grip on power. The judiciary, once seen as a pillar of the post-transition democratic order, came under fire for its perceived subservience to executive influence.³⁴ The HCC's refusal to address the constitutional implications of the dual nationality revelation cast serious doubts on the judiciary's independence and capacity to enforce constitutional norms impartially.³⁵ This is especially critical given that “The HCC rules on the regularity

³³ Florent Rakotoarisoa, “DIFFEREND ELECTORAL – Le message de Florent Rakotoarisoa à la classe politique et à la société civile malgaches,” video of speech, posted by 2424.MG, December 3, 2023, https://www.facebook.com/watch/?ref=embed_video&v=660669006259438. (French subtitles by 2424.MG; English translation and transcript by the Author.)

³⁴ The controversial ruling on the nationality law was not the first instance in which the HCC delivered a legally reasoned but politically charged decision in favour of Andry Rajoelina. As early as 2009, the HCC had already demonstrated a willingness to legitimise extra-constitutional transitions of power. In *Decision No. 03-HCC/D2 of 23 April 2009*, the Court introduced the unprecedented concept of the “*ordonnance transitionnelle*”, effectively recognising two unconstitutional executive ordinances (Nos. 2009-001 and 2009-002) that transferred state authority to Rajoelina, despite their clear violation of Article 60 of the Constitution. While acknowledging the unconstitutionality of these acts, the HCC nonetheless justified them by invoking the principle of state continuity and the exceptional nature of the political context. Furthermore, in *Decision No. 04-HCC/D2*, the Court rejected a challenge to the constitutionality of Ordinance No. 2009-003, which had suspended Parliament, again signalling its willingness to prioritise political stability over constitutional adherence. This pattern of judicial behaviour reveals a recurring tendency by the HCC to provide legal cover for politically expedient actions, especially when these serve to reinforce Rajoelina's consolidation of power, raising serious concerns about the erosion of judicial independence and the instrumentalisation of constitutional law in Madagascar. See Laurent Sermet, ‘Réflexions Sur La Notion de Droit Constitutionnel Transitionnel à La Lumière de La Jurisprudence Des Cours Constitutionnelles Des Comores et de Madagascar’, in *Constitution-Building in Africa Conference* (Dullah Omar Institute, 2013), 3–4, [https://dullahomarininstitute.org.za/constitution-making-in-africa-conference/constitution-building-in-africa-conference-papers/Laurent Sermet - Intervention.pdf/@@download/file/Laurent Sermet - Intervention.pdf](https://dullahomarininstitute.org.za/constitution-making-in-africa-conference/constitution-building-in-africa-conference-papers/Laurent%20Sermet%20-%20Intervention.pdf/@@download/file/Laurent%20Sermet%20-%20Intervention.pdf).

³⁵ For a case comparison, see, e.g., Fryderyk Zoll and Leah Wortham, ‘Judicial Independence and Accountability: Withstanding Political Stress in Poland’, *Fordham International Law Journal* 42, no. 3 (2019): 875–948. (In Poland, the ruling party systematically undermined judicial independence by unlawfully appointing judges, restructuring the Constitutional Tribunal, and using disciplinary mechanisms to pressure the judiciary. These actions led to widespread concerns about the legitimacy of judicial decisions, as courts operated under unconstitutional procedures and served political

of the election of the President of the Republic”.³⁶ This responsibility is also echoed in the Electoral Law: “The HCC verifies compliance with the conditions for the admissibility of candidacies and the eligibility of candidates as stipulated by this Organic Law”.³⁷

In defending himself, Rajoelina claimed that his French nationality had been acquired solely for his children’s education in France. He framed the issue as a private, family-centred decision that bore no impact on his loyalty to Madagascar. His supporters echoed this narrative and dismissed the controversy as a political smear campaign orchestrated by opposition factions lacking popular support. This defence, however, did little to dispel the perception that Madagascar’s legal framework on nationality and public office eligibility was being selectively interpreted for political expediency. Even if the court rejected automatic loss under Article 42, an alternative basis exists under another provision: “A Malagasy who behaves in fact as a national of a foreign country may, if he holds the nationality of that country, be declared by decree to have lost Malagasy nationality”.³⁸

The dual nationality crisis not only exposed contradictions within Madagascar’s nationality law but also highlighted the fragility of its constitutional institutions. The requirement of a court order to confirm loss of citizenship—despite clear legal texts indicating automatic revocation—revealed a legal vacuum. It also reignited debates around national identity, sovereignty, and postcolonial dependency, especially given France’s continued symbolic presence in Malagasy politics. This is particularly sensitive considering that “The President of the Republic is the guarantor of national unity and of national independence”.³⁹

Ultimately, the controversy over Rajoelina’s dual nationality became the gateway to a broader institutional breakdown. It showed how technical legal ambiguities could be manipulated to bypass democratic safeguards and reinforce incumbent advantage. The unresolved nature of this legal issue—and the institutional failure to adequately address it—escalated political tensions and undermined the legitimacy of the 2023 electoral process. This crisis in constitutional interpretation and institutional trust set the stage for the next phase of political and

interests. As a result, restoring the rule of law now requires not only legal reforms but also rebuilding public trust and ensuring that future judicial institutions are insulated from executive control.)

³⁶ 2010 Constitution, Article 116.

³⁷ Malagasy Electoral Law, Article 15

³⁸ Malagasy Code of Nationality, Article 48.

³⁹ 2010 Constitution, Article 45

legal confrontation: the contested judicial and administrative handling of Rajoelina's candidacy, which is examined in the next section.

Institutional Responses and the Erosion of Electoral Integrity

The controversy surrounding President Andry Rajoelina's dual nationality, as detailed in Section 1, precipitated a series of institutional responses that exposed significant weaknesses within Madagascar's democratic framework. The HCC, when petitioned to rule on Rajoelina's eligibility, declared in its Ruling No. 04-HCC/AR of August 22, 2023, that it lacked jurisdiction to determine the loss of Malagasy nationality, stating that such matters should be addressed by other competent authorities.⁴⁰ This decision effectively sidestepped the core issue and failed to provide the necessary legal clarity, leading to widespread criticism from opposition figures and civil society organisations who accused the court of abdicating its constitutional responsibilities and undermining the rule of law. This position is particularly controversial given that "The HCC shall rule on the regularity of the election of the President of the Republic",⁴¹ a mandate that implies evaluating the lawfulness of candidates' eligibility. This obligation is further affirmed in the Electoral Law: "The HCC verifies compliance with the conditions for the admissibility of candidacies and the eligibility of candidates as stipulated by this Organic Law".⁴²

Simultaneously, the Independent National Electoral Commission (CENI) proceeded with preparations for the presidential election, scheduled for November 16, 2023. Despite the unresolved questions surrounding Rajoelina's nationality, CENI accepted his candidacy and included his name on the ballot. This decision further fuelled allegations of institutional bias and collusion, with critics asserting that CENI failed to uphold its mandate to ensure free and fair elections. The opposition accused CENI of facilitating electoral malpractice by allowing a

⁴⁰ HCC Ruling No. 04-HCC/AR of August 22, 2023:

"ON THESE GROUNDS

RULED:

Article 1: That the plea for the appointment of a public hearing is rejected.

Article 2: That the Constitutional High Court is not competent to state and judge that Monsieur RAJOELINA Andry Nirina has lost Malagasy nationality.

Article 3: That the plea for invalidation of the candidacy of Monsieur RAJOELINA Andry Nirina for the presidential election of 2018 has been ruled out of order and is inadmissible.

Article 4: That the present ruling be notified to the requestor, to Monsieur RAJOELINA Andry Nirina, and published in the Official Journal of the Republic."

⁴¹ 2010 Constitution, Article 116

⁴² Malagasy Electoral Law, Article 15.

candidate with questionable eligibility to contest the presidency. It should be noted that the legal basis for CENI's role is grounded in organic law, which is authorised under the Constitution: "The organic law shall determine the rules relating to the election of the President of the Republic".⁴³ In accordance with the Malagasy Electoral Law, "Each candidacy declaration must be accompanied by [...] a certificate of Malagasy nationality issued within the last six months".⁴⁴ This procedural safeguard is critical for assessing eligibility and should have prompted further scrutiny by both CENI and the HCC.

In protest, a coalition of opposition candidates, known as the *Collectif des 11 Candidats*, organised mass demonstrations and called for the postponement of the election (see Figure 3). They demanded that the authorities address the legal ambiguities surrounding Rajoelina's nationality and ensure a transparent electoral process.⁴⁵ The government's refusal to engage with the opposition's concerns exacerbated political tensions and raised doubts about the legitimacy of the electoral process. The situation escalated when security forces used tear gas and other measures to disperse opposition rallies, resulting in injuries to several candidates, including former President Marc Ravalomanana. These incidents raise questions about compliance with constitutional principles of political freedoms, especially given the institutional duty to protect civil rights under democratic governance.⁴⁶

Despite the opposition's boycott and the prevailing political unrest, the presidential election was held on November 16, 2023. Rajoelina secured a third term in an election marked by low voter turnout and widespread allegations of irregularities. The opposition refused to recognise the results, citing the unresolved issues surrounding Rajoelina's nationality and broader concerns about the fairness of the electoral process. The HCC's authority to officially proclaim the results is enshrined in the Constitution: "The HCC shall proclaim the official result of

⁴³ 2010 Constitution, Article 88(1).

⁴⁴ Malagasy Electoral Law, Article 10.

⁴⁵ See, *cp.*, Chad Flanders, 'Was the 2016 Election Legitimate?', *Saint Louis University Law Journal* 64, no. 4 (2020): 635–52.

⁴⁶ As Illan rua Wall, 'The Right to Protest', *The International Journal of Human Rights* 28, no. 8–9 (20 October 2024): 1378–93, argues, the state's violent suppression of protest reveals its contingent and particular nature, undermining its claim to rationality and universality. The crackdown on opposition rallies in Madagascar exposes a deeper crisis where the state, rather than safeguarding civility, reverts to brute force to maintain its political form. In such moments, the right to protest transcends mere legality and becomes a powerful lens through which citizens perceive the incivility embedded in institutional structures, challenging the legitimacy of the state itself.

presidential elections”.⁴⁷ This is echoed in the Electoral Law, which states: “The HCC shall proclaim the official results of the presidential election within nine (9) days following the publication of provisional results”.⁴⁸

In the aftermath of the election, the HCC was once again petitioned to address the legal challenges related to Rajoelina's eligibility. However, the court maintained its earlier stance, asserting that it lacked the jurisdiction to rule on matters of nationality. This consistent refusal to engage with the core legal issues further eroded public confidence in the judiciary and reinforced perceptions of institutional complicity.⁴⁹ Given that “The decisions of the HCC shall be reasoned; they shall not be subject to any appeal. They shall be binding on all public authorities as well as on administrative and judicial authorities”,⁵⁰ the lack of substantive reasoning or transparency in its rulings significantly weakened judicial credibility.⁵¹ Moreover, the Electoral Law mandates that “The HCC shall be competent to hear any request or challenge relating to the acts that constitute the preliminaries to the electoral operations and to those relating to the conduct of the vote”.⁵² Its failure to examine the alleged nationality-based ineligibility undermined the integrity of this constitutional and legal duty.

The government—including the HCC—response to the opposition's grievances was characterised by a combination of denial and repression. Authorities dismissed allegations of electoral fraud and accused the opposition of attempting to

⁴⁷ 2010 Constitution, Article 116.

⁴⁸ Malagasy Electoral Law, Article 61.

⁴⁹ Questioning the legitimacy of a presidential candidate is not unprecedented and forms part of democratic accountability, as illustrated by debates surrounding Donald Trump's 2016 election and alleged foreign interference. As Flanders, ‘Was the 2016 Election Legitimate?’, 649, notes, even in flawed or potentially illegitimate elections, mechanisms such as impeachment or future electoral defeat are often relied upon to remedy past injustices and uphold democratic ideals. Similarly, the protest by the *Collectif des 11 Candidats* reflects a legitimate concern for ensuring that elections genuinely reflect the will of the people and adhere to constitutional standards.

⁵⁰ 2010 Constitution, Article 120.

⁵¹ See, *cp.*, Bert I. Huang, ‘Judicial Credibility’, *William & Mary Law Review* 61, no. 4 (2020): 1053–82. (In the United States, growing public skepticism has undermined the credibility of the judiciary, with many citizens believing that federal judges base their rulings more on political affiliation than legal reasoning. Studies have shown that while some people still defer to court decisions, others perceive rulings through a partisan lens, especially on controversial issues. This erosion of judicial credibility threatens the sociological legitimacy of the courts and weakens their ability to serve as effective checks on executive power.)

⁵² Malagasy Electoral Law, Article 65.

destabilise the country.⁵³ Security forces continued to crack down on protests, and several opposition figures faced legal harassment (see Figure 3). These actions underscored the shrinking space for political dissent and the challenges facing democratic governance in Madagascar.⁵⁴ In this context, the Constitution's preamble and fundamental values—which endorse the protection of rights and democratic pluralism—serve as a normative backdrop to critique such repression.⁵⁵

International observers expressed concern over the conduct of the election and the broader political climate.⁵⁶ Reports highlighted not only the lack of transparency and suppression of opposition voices, but also the broader structural weaknesses of Madagascar's governance system, including institutional failure to uphold democratic norms. As noted by the World Bank, entrenched issues such as state capture, elite domination, and the absence of effective accountability mechanisms have long constrained the country's development⁵⁷—making the 2023 electoral crisis a stark illustration of how these systemic flaws endanger both constitutional governance and judicial independence.

⁵³ This situation could be considered as denial of justice. See Guiseppe Mecca, 'Denied Justice and Kinds of Liability of the Judge: Paradigms of Injustice in the Modern Age', *Historia et Ius* 14 (2018): 1–22.

⁵⁴ For further information on similar examples such as Honduras, Turkmenistan, Papua New Guinea, Equatorial Guinea, and the Republic of Congo, see Pippa Norris, Thomas Wynter, and Sarah Cameron, 'Corruption and Coercion: The Year in Elections 2017' (Sydney: Electoral Integrity Project, 2018), <https://static1.squarespace.com/static/58533f31bebafbe99c85dc9b/t/5aa60e298165f533f6462e58/1520832089983/The+Year+in+Elections+2017.pdf>.

⁵⁵ 2010 Constitution, Preamble.

⁵⁶ This is not the first time Madagascar has drawn international concern due to political instability. Following the 2009 coup led by Rajoelina, the country was suspended from the U.S. African Growth and Opportunity Act (AGOA), resulting in substantial job losses and economic setbacks. See Danielle Resnick, "Back to the Brink? Madagascar's Polarizing Presidential Elections," *Brookings*, November 13, 2023, <https://www.brookings.edu/articles/back-to-the-brink-madagascars-polarizing-presidential-elections/>. International observers' concerns over Madagascar's 2023 election highlight risks that extend beyond democratic legitimacy, directly affecting the country's attractiveness to foreign investors. As Rogneda I. Vasilyeva and Oleg S. Mariev, 'Determinants of Foreign Direct Investment in Developed and Developing Countries: Impact of Political Stability', *Economy of Regions* 17, no. 4 (2021): 1390–1404, finds that political stability—especially in developing countries—is a key determinant for foreign direct investment (FDI) from developed economies. Persistent institutional uncertainty and electoral controversies in Madagascar may therefore undermine investor confidence, limiting the country's potential to attract much-needed capital and stalling economic development.

⁵⁷ See World Bank, 'The Urgency of Reforms: Structural Transformation and Better Governance At the Heart of the Strategy to Reduce Poverty', *Systematic Country Diagnostic Update for Madagascar*, April 2022, <https://documents1.worldbank.org/curated/en/551231652117328109/pdf/Madagascar-Systematic-Country-Diagnostic-The-Urgency-of-Reforms-Structural-Transformation-and-Better-Governance-at-the-Heart-of-the-Strategy-to-Reduce-Poverty.pdf>.

Therefore, the legal challenges surrounding President Rajoelina's dual nationality and the institutional responses to these challenges revealed significant weaknesses in Madagascar's democratic framework. The reluctance of key institutions to address fundamental legal questions, coupled with the suppression of political dissent, undermined the legitimacy of the electoral process and highlighted the urgent need for institutional reforms to strengthen the rule of law and democratic accountability in the country. These institutional shortcomings set the stage for a deeply polarised election campaign, in which growing distrust in state mechanisms led the opposition to adopt drastic measures.



Figure 3: Protest of the “Collectif des 11 Candidats”

Source: Agence Malagasy de Presse⁵⁸

⁵⁸ La Rédaction, “Ici C’est 13 Mai! (Jour 3),” *Agence Malagasy De Presse*, October 5, 2023, <https://www.agencemalagasydepresse.com/politique/ici-cest-13-mai-jour-3/>.

Post-Election Challenges and its Legal Implications

The confirmation of President Andry Rajoelina's re-election on 2 December 2023 by HCC marked a contentious conclusion to a heavily disputed electoral process. While the CENI reported that Rajoelina had won an outright majority with 60.78% of the vote (see Figure 4), the legal and political aftermath underscored deep-seated concerns about constitutional integrity, procedural fairness, and the impartiality of democratic institutions. This outcome was officially validated by the HCC in accordance with its constitutional role: "The HCC shall proclaim the official result of presidential elections".⁵⁹ This duty is reinforced by the electoral framework: "The HCC shall proclaim the official results of the presidential election within nine (9) days following the publication of provisional results".⁶⁰

TENDANCES GENERALES PRESIDENTIELLE 2023 PREMIER TOUR					
Résultats publiés le 20 novembre à 11h40					
Inscrits : 6 117 134					
Votants : 2 633 328					
Blancs : 70 273					
Nuls : 62 961					
Suffrages exprimés : 2 500 094					
BV reçus : 13 915/27 375 (50,83%)					
Taux de participation : 43,05%					
N°	Noms des candidats	Partis	Voix obtenues	%	
1	Tahina RAZAFINJOELINA	FTT	38 572	1,54%	
2	Hajo Herivelona ANDRIANAINARIVELO	MMM	42 999	1,72%	
3	Andry Nirina RAJOELINA	TGV	1 519 439	60,78%	
4	Iarovana Roland RATSIRAKA	MTS	36 169	1,45%	
5	Marc RAVALOMANANA	TIM	308 366	12,33%	
6	Auguste Richard PARAINA	Tsara Tahafina	13 746	0,55%	
7	Andry Tsiherizo RAOBELINA	ARB	15 009	0,60%	
8	Jean Brunelle RAZAFINTSIANDRAOFA	APM	28 132	1,13%	
9	Lalaina Harlianto RATSIRAHONANA	Fihavanantsika	16 024	0,64%	
10	Hery Martial RAJAONARIMAMPINANINA	HVM	141 808	5,67%	
11	Sendrison Daniela RADERANIRINA	Fy-M	22 096	0,88%	
12	Jean-Jacques RATSJETISON	FMI Malagasy	7 162	0,29%	
13	Siteny Thierry RANDRIANASOLONIAIKO	IAD - PSD RPSD Vaovao	310 572	12,42%	

Sources : CENI Madagascar
(Chiffres recopiés tel que publié)

Figure 4: First Round Result of 2023 Presidential Election

⁵⁹ 2010 Constitution, Article 116.

⁶⁰ Malagasy Electoral Law, Article 61

Source: CENI Madagascar as edited and published by 2424.MG⁶¹

Central to the post-election controversy was the judiciary's handling of legal petitions filed by the opposition coalition, the *Collectif des 11 Candidats*. These petitions alleged violations of constitutional and electoral norms, including the misuse of public resources, manipulation of the electoral register, and procedural irregularities during the voting process. The HCC, however, summarily dismissed these submissions, citing insufficient evidence without addressing the underlying constitutional questions—particularly those surrounding Rajoelina's contested nationality status and its implications for eligibility under the provision stating: "Any candidate for the office of President of the Republic must be of Malagasy nationality".⁶² The opposition's legal challenge relied on the nationality code's rule that: "A Malagasy citizen of full age who voluntarily acquires a foreign nationality loses Malagasy nationality".⁶³ The court's reluctance to examine the substantive legality of the candidacy weakened perceptions of judicial independence and accountability.⁶⁴ Yet the Constitution affirms that "The HCC shall rule on the regularity of the election of the President of the Republic",⁶⁵ a duty which arguably includes assessing candidate eligibility. This is supported by the electoral law, which states: "The HCC is competent to hear any request or challenge relating to the acts that constitute the preliminaries of electoral operations and those concerning the conduct of the vote".⁶⁶

First, the HCC refusal to adjudicate the nationality issue constituted not just an omission, but a profound distortion of constitutionalism itself. Constitutionalism requires not only the existence of rules but the unwavering application of those rules by all state institutions, particularly by the judiciary entrusted with their guardianship. When the apex court declines to apply clear constitutional requirements—such as the stipulation that presidential candidates must hold Malagasy nationality—it transforms the Constitution into a pliable political tool

⁶¹ 2424.mg, "ELECTION PRÉSIDENTIELLE - Tendances Générales Des Résultats Publiés Par La Ceni Ce Lundi 20 Novembre À 11h40 | 2424.mg - L'Actualité À Madagascar En Temps Réel," 2424.mg - L'actualité À Madagascar En Temps Réel, November 20, 2023, <https://2424.mg/news/election-presidentielle-tendances-generales-des-resultats-publies-par-la-ceni-ce-lundi-20-novembre-a-11h40/>.

⁶² 2010 Constitution, Article 46.

⁶³ Malagasy Code of Nationality, Article 42.

⁶⁴ See, *cp.*, Zoll and Wortham, 'Judicial Independence and Accountability: Withstanding Political Stress in Poland'.

⁶⁵ 2010 Constitution, Article 116.

⁶⁶ Malagasy Electoral Law, Article 65.

rather than a binding legal framework. This kind of institutional evasion undermines legal certainty and departs from the core of legal positivism, which insists that legal validity must derive from objectively and formally enacted norms. Such a precedent permits constitutional norms to be reshaped by political expediency, thereby eroding both the authority of the Constitution and the democratic values it is meant to preserve.⁶⁷

Second, the presence of a dual national at the helm of the Malagasy state raises significant sovereignty concerns. Under French nationality law, a naturalised citizen swears allegiance to the French Republic and accepts civic obligations to the French state. This poses a risk of divided loyalty, particularly in matters of national interest involving both states. The unresolved dispute over the Îles Éparses – territories claimed by Madagascar but administered by France – provides a concrete example.⁶⁸ During the 5th Summit of Commission of Indian Ocean (COI) held Antananarivo on 25 April 2025, where French President Emmanuel Macron was present, Rajoelina remained silent on the issue, despite prior commitments to seek the restitution of the islands. This silence stirred public criticism and raised questions about whether Rajoelina's French nationality muted his advocacy for Malagasy sovereignty. The failure to address such matters not only weakens Madagascar's diplomatic stance but calls into question the constitutionally enshrined role of the President as "the guarantor of national unity and of national independence".⁶⁹

⁶⁷ See, *cp.*, Grażyna Skąpska, 'Abuse of the Constitution as a Means of Political Change: Sociological Reflections on the Crisis of Constitutionalism in Poland', *Polish Sociological Review* 208 (2019): 421–38.

⁶⁸ The Îles Éparses dispute between Madagascar and France centres on a group of small islands in the Mozambique Channel – namely, Europa, Bassas da India, Juan de Nova, and the Glorieuses – which were administered as part of Madagascar during the colonial period but were unilaterally retained by France just before Madagascar's independence in 1960. This separation was contested by Madagascar and condemned by the United Nations General Assembly in Resolutions 34/91 (1979) and 35/123 (1980), which called on France to enter negotiations for the return of the islands and to cease actions infringing on Madagascar's sovereignty. Despite these resolutions, France has maintained control over the islands, citing environmental conservation efforts, such as President Emmanuel Macron's 2019 declaration of Grande Glorieuse as a national nature reserve. From Madagascar's perspective, the islands lie within its Exclusive Economic Zone (EEZ) as defined by the United Nations Convention on the Law of the Sea (UNCLOS), granting it rights to the surrounding marine resources. The continued French administration of the Îles Éparses is viewed by Madagascar as a vestige of colonialism and a violation of its territorial integrity, fuelling ongoing diplomatic tensions and calls for restitution. See Fanny Pigeaud, 'Îles Éparses, cet archipel dans l'océan Indien que la France ne veut pas lâcher', in *L'Empire qui ne veut pas mourir*, Documents (H.C.) (Paris: Le Seuil, 2021), 891–99. Vonintsoa Rafaly, 'Un Panorama Juridique Sur Le Statut Des Îles Éparses Du Canal Du Mozambique', *Revue Juridique de l'Océan Indien*, no. 29 (2020): 519–48, <https://hal.univ-reunion.fr/hal-03327619/document>.

⁶⁹ 2010 Constitution, Article 45.

Third, the credibility of the judiciary itself suffered a significant blow due to its unwillingness to engage in meaningful constitutional adjudication. A cornerstone of constitutional democracy is the existence of an independent judiciary capable of holding the executive accountable to the law. In this case, the HCC's blanket dismissal of opposition claims without public reasoning or clarification on legal ambiguities reflects a breach of its constitutional obligations. As per the Constitution, "The decisions of the HCC shall be reasoned; they shall not be subject to any appeal. They shall be binding on all public authorities as well as on administrative and judicial authorities".⁷⁰ The absence of detailed justification for its rulings fostered perceptions of institutional partiality and undermined public trust in judicial impartiality.⁷¹

Fourth, the events of the 2023 election have established a precedent for the selective and politically motivated enforcement of constitutional norms. By allowing a candidate with a potentially compromised eligibility to contest and win the presidency, state institutions signalled that legal norms may be subject to discretionary application. This undermines both the horizontal accountability expected among institutions and the vertical accountability of institutions to the people. It jeopardises the function of constitutional law as a system of binding rules and instead suggests that constitutional compliance is contingent upon political interests. In such a system, legal protections become unreliable, and the framework of checks and balances is rendered hollow.⁷²

⁷⁰ 2010 Constitution, Article 120.

⁷¹ The judicial behaviour described in this paragraph mirrors a broader phenomenon observed in illiberal democracies, where constitutional courts—originally designed to function as guardians of democratic order and legal limits on power—gradually abdicate their role under political pressure. As the analysis of Hungary, Poland, and Turkey reveals, illiberal regimes often prioritise capturing constitutional courts precisely because of their potential to obstruct authoritarian ambitions. In the case of Madagascar, the HCC refusal to substantively adjudicate a pivotal constitutional question regarding presidential eligibility, coupled with its failure to provide transparent and reasoned justifications, aligns disturbingly with the pattern of illiberal abuse outlined in comparative studies. When courts refrain from exercising constitutional review on matters that threaten the democratic order, they not only fail in their primary mandate but actively facilitate the erosion of constitutionalism by validating executive dominance. This dynamic illustrates how institutional design alone is insufficient to safeguard democracy—judicial culture, independence, and the willingness to confront power are equally essential to preserving the rule of law. See Pablo Castillo-Ortiz, 'The Illiberal Abuse of Constitutional Courts in Europe', *European Constitutional Law Review* 15, no. 1 (8 March 2019): 48–72.

⁷² The HCC handling of President Rajoelina's eligibility in Madagascar's 2023 election risks setting a dangerous precedent that could undermine the future of constitutionalism in the country. Justice Clarence Thomas's view in *Gamble v. United States* offers a cautionary contrast—he affirms that while

Finally, the cumulative effect of these failings is a dramatic decline in public trust in democratic institutions. The low voter turnout, mass boycott by opposition candidates, and widespread post-election protests reveal a profound crisis of legitimacy. Constitutional democracy is not sustained merely by electoral procedures but by the population's belief in the fairness, transparency, and credibility of those processes. When the highest judicial body appears to shield the incumbent from constitutional scrutiny, and when legal ambiguities are left unresolved, citizens lose faith in both the process and the institutions tasked with safeguarding it. This disillusionment fosters political disengagement, weakens civic culture, and emboldens authoritarian tendencies. To rebuild this trust, Madagascar must commit to meaningful legal reform, ensure clarity in eligibility criteria for public office, and strengthen institutional mechanisms to safeguard constitutionalism and the rule of law.⁷³

precedent may be provisionally followed, it must give way when it is shown to be demonstrably erroneous, especially where constitutional text is clear. In Madagascar, the Court failed to engage with such scrutiny, allowing a politically sensitive issue—dual nationality and presidential eligibility—to pass without substantive adjudication. This abdication opens the door for future candidates to invoke the Rajoelina case as justification for ignoring or bending constitutional requirements, thereby converting what should have been a one-time controversy into a long-term weakening of the constitutional order. If flawed decisions are left unchallenged and absorbed into institutional memory without correction, they gain unjustified legitimacy, allowing constitutional violations to become standard political practice—precisely the risk Thomas warns against when precedent is not interrogated with rigour and fidelity to the constitutional text. *See Gamble v. United States*, 139 S. Ct. 1960, 1986 (2019) (Thomas, J., concurring). *See also*, Richard M. Re, 'Precedent as Permission', *Texas Law Review* 99, no. 5 (2021): 915–17.

⁷³ The deterioration of public trust in Madagascar's democratic institutions, as reflected in the aftermath of the 2023 election, echoes the critical insights of both T.F. Tanny and A. C. Al-Hossienie, 'Trust in Government: Factors Affecting Public Trust and Distrust', *Jahangirnagar Journal of Administrative Studies, Department of Public Administration* 12, no. June (2019): 49–63 and Eri Bertsou, 'Rethinking Political Distrust', *European Political Science Review* 11, no. 2 (17 May 2019): 213–30 regarding the foundations and fragility of political trust. Tanny and Al-Hossienie underscore that trust arises when governments deliver on public expectations through ethical governance, effective policy, and inclusive institutions—elements notably absent in Madagascar's electoral process, where legal institutions appeared complicit in shielding the incumbent. Bertsou, meanwhile, warns that persistent exposure to untrustworthy political actors, without credible mechanisms for replacement or reform, corrodes democratic legitimacy and fosters widespread cynicism. This is precisely the risk Madagascar faces: the erosion of institutional accountability and the normalisation of distrust as a rational response to systemic failure. When judicial and electoral bodies fail to serve as neutral arbiters and enablers of democratic norms, distrust ceases to be functional dissent and becomes a permanent feature of political culture. Unless this cycle is disrupted through structural reform and a renewed commitment to constitutional accountability, Madagascar risks deeper democratic backsliding, with lasting consequences for political engagement and institutional resilience.

Conclusion

The 2023 presidential election in Madagascar has revealed significant shortcomings in the country's constitutional architecture and the rule of law, particularly through the judiciary's handling of a high-profile eligibility controversy. The HCC decision to validate President Andry Rajoelina's candidacy—despite evidence of his acquisition of French nationality and the unambiguous provisions of both the Constitution and the Code of Nationality—exposed the fragility of constitutional enforcement when placed under political pressure. The Court's refusal to engage with the substance of the nationality issue, even though it lies at the heart of electoral legality, undermined its constitutional duty to safeguard the regularity and integrity of the election. The consequences of this institutional failure are far-reaching: it set a dangerous precedent for future candidates to exploit legal ambiguity, weakened the normative authority of the Constitution, eroded judicial credibility, and sparked renewed concerns over national sovereignty in unresolved territorial disputes. Most critically, the episode has undermined public trust in democratic institutions, confirming that constitutionalism in Madagascar remains vulnerable to manipulation and selective enforcement, particularly when constitutional interpretation is subordinated to political expediency.

To restore the integrity of constitutional governance, Madagascar should urgently adopt a reform agenda focused on legal precision, institutional accountability, and democratic resilience. First, constitutional and nationality provisions relating to eligibility for public office—particularly concerning dual nationality—should be revised to remove ambiguities and ensure enforceability. Second, the independence of the HCC should be strengthened through transparent appointments, security of tenure, and procedural obligations requiring reasoned decisions in politically sensitive cases. Third, the electoral framework should be overhauled to ensure that bodies such as the CENI strictly verify all candidacy requirements, including nationality documents. Fourth, civic education campaigns should be implemented to promote public understanding of constitutional rights and electoral processes. Finally, institutions should be held to a higher standard of constitutional accountability, including the judiciary's obligation to act as a check on executive overreach. Without such reforms, Madagascar risks the continued erosion of democratic norms, and the recurrence of legitimacy crises in future electoral cycles.

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