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Gerzso, Thalia (2026) Judicial capture in the authoritarian eco-system: Strategies, conditions, and pathway to resistance. Research Report. The authoritarian ecosystem .

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THE AUTHORITARIAN ECOSYSTEM

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Judicial capture in the authoritarian eco-system: Strategies, conditions, and pathway to resistance

Thalia Gerzso

06

2026



Foreign, Commonwealth
& Development Office



Political Studies
Association

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This paper is published as part of “The Authoritarian Ecosystem” collection of policy papers, a joint knowledge building initiative of the UK Political Studies Association (PSA) Specialist Group on Autocracy and Regime Change (ARC), and WFD. The papers have been researched, written and peer-reviewed in the second half of 2025 and early 2026. They are co-published by UK PSA ARC and WFD in 2026.

The research has been made possible through WFD’s Grant-in-Aid funding received from the UK’s Foreign, Commonwealth and Development Office (FCDO) and has received support from the Political Studies Association Excellence and Impact Fund.

The views expressed in this paper are those of the author, and not necessarily those of or endorsed by the institutions mentioned in the paper, nor of UK PSA ARC, WFD or the UK Government / FCDO.

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Introduction to the papers

Authoritarianism is on the rise globally. It is estimated that 74% of the world's population now live in authoritarian regimes and that many countries are currently experiencing a decline in their levels of democracy, including the United States of America, among others (Nord et al., 2026).

These developments have profound global implications. Many authoritarian regimes have already become more assertive on the global stage and are actively reshaping a wide array of elements of international politics, spanning international organisations, public opinion, and culture. Thus, the rise of authoritarian regimes poses a challenge to societies across the globe and to democratic governments and policymakers. Understanding how authoritarianism sustains itself, and what can be done about it, has therefore never been more urgent.

This paper is part of a collection of policy briefs that brings together some of the leading academics and practitioners involved in research and work on authoritarian regimes. While authoritarian regimes are primarily characterised by the executive's means of accessing power (Geddes, Wright, and Frantz, 2018), the toolbox of autocracies spans a wide web of practices, actors, and institutions to ensure their hold on power domestically and with effects internationally. We have, therefore, termed this network the authoritarian ecosystem, in an effort to bring together the important components of modern authoritarian rule. Authoritarian rule is sustained not by leaders alone but by the interlocking network of institutions, actors, incentives, and norms that make it possible. The contributions of this collection show that while unfair elections are the defining feature of authoritarian regimes, the nature of the authoritarian eco-system goes well beyond that and connects different actors, institutions, and levels.

The contributions gathered in this collection were selected to reflect both the breadth of the authoritarian eco-system and the diversity of regional and institutional contexts in which it operates. Authors were invited to ground their analysis in current research while orienting their conclusions toward actionable recommendations for democratic policymakers, civil society actors, and international organisations. Each brief is intended to stand alone as a resource for practitioners while also forming part of a cumulative and coherent analytical framework. Together, the briefs provide a comprehensive picture of the authoritarian eco-system and the challenges it poses for policymakers across the globe. While there is no 'one-size-fits-all' approach in dealing with autocracies, all briefs provide detailed policy recommendations that may serve as guidance for stakeholders.

The policy briefs are jointly published by the UK Political Studies Association (PSA) Specialist Group on Autocracy and Regime Change (ARC) and Westminster Foundation for Democracy (WFD).

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Executive summary

Courts have become central actors in political and constitutional decision-making, making them key targets for autocrats seeking to consolidate power. Judicial capture rarely occurs through overt repression; instead, autocrats rely on incremental institutional strategies such as controlling judicial appointments and tenure, exerting financial pressure, fragmenting court systems, and restricting access to justice. These strategies are effective because they raise the costs of judicial independence while preserving an appearance of legality that limits domestic and international backlash. Judicial capture is not inevitable. Courts often show a greater capacity to resist authoritarian pressure than other institutions, especially when they are institutionally insulated from executive influence and supported by a mobilised civil society and legal community. Preventing judicial capture and strengthening judicial resistance requires a comprehensive approach that combines holistic judicial design, capacity-building, strategic litigation, and engagement with international and regional judicial frameworks.

Introduction

In recent decades, courts have increasingly been called upon to adjudicate a wide range of political issues, addressing matters that were once the responsibility of the legislature or other governmental institutions (Hirschl 2011). Now courts are asked to resolve a wide range of issues from adjudicating electoral disputes to regulating reproductive rights. The expansion of the courts' prerogative and scrutiny has important implications for democracy, as courts' decisions can either entrench democratic principles or undermine them.

Because of this power, incumbents have increasingly turned to the courts to strengthen their position. For instance, in 2019, President Museveni challenged the constitutionality of the age limit preventing him from running at the 2021 presidential election before the Supreme Court. Similarly, President Lungu used the courts to bypass the presidential term limit imposed by the Zambian constitution in 2020. Capturing the judiciary has proved to be an effective strategy for autocrats. By working through judicial channels, they can tighten control over state institutions, maintain elite cohesion, limit internal dissent, and even attract foreign investment by giving courts prerogatives to enforce property rights and provide security guarantees to investors (Moustafa 2017). Most importantly, court rulings provide an aura of legality and legitimacy, helping autocrats hide the anti-democratic nature of their actions (Gloppen et al., 2023). In 2012, Senegal's President Abdoulaye Wade relied on the constitutional court to approve his bid for a third term, despite the constitution's clear two-term limit. Wade's use of the court was strategic: it allowed him to present a legal justification for running again, making his actions appear less like an attack on democracy and more subtle than directly abolishing presidential term limits.

In the context of democratic backsliding and the widespread autocratisation observed worldwide, this instrumentalisation of courts deserves our attention. If courts have now become central pillars of authoritarian ecosystems and key sites of democratic contestation, it is imperative to understand not only how autocrats have captured judiciaries but also how courts have resisted repeated assaults on their independence. This policy brief addresses these two core questions by drawing on empirical evidence from various contexts and by issuing recommendations aimed at preventing judicial capture and supporting judicial resistance. By showing how autocrats weaponise judiciaries, the brief identifies both preventive and reactive strategies that stakeholders can adopt to make courts more resilient against these continued attacks, and makes policy recommendations to facilitate the enactment of these strategies.

Mechanisms of judicial capture

Conventional wisdom often describes authoritarian ecosystems as highly repressive environments where autocrats rely mainly on force and violence to secure cooperation. In 2001, regime supporters stormed the Zimbabwean Supreme Court, and police later arrested several high-profile judges in their homes. Autocrats, however, do not always rely on such forceful crackdowns to subdue the judiciary (Hatchard et al., 2004). Scholars have demonstrated that autocrats have increasingly relied on strategies that leverage institutional channels to assert control over the

judiciary (Moustafa 2017; Gloppen et al., 2023). This reliance on institutional strategies is not accidental; these approaches are effective for two main reasons. First, they impose constraints that raise the costs of judicial independence (Helmke, 2002). Judges are far less likely to assert themselves when doing so carries significant professional, financial, or personal risks. Second, institutional manipulations are often subtle and difficult to detect, which helps autocrats avoid backlash from domestic constituencies and international observers. This section outlines the different institutional pathways autocrats have used to capture judiciaries.

Appointments

One of the most common ways autocrats capture courts is by controlling how judges are appointed (Haggard and Kaufman, 2021). This strategy is effective because it allows leaders to fill courts with judges whose views align with the regime (Hatchard et al., 2004). Appointment systems vary from one country to another: some give presidents the power to appoint judges, while others rely on internal selection processes within the judiciary. Because of this variation, scholars have tried to understand which appointment systems make it easier for autocrats to capture the courts.

Presidential appointments often pose the greatest risk to judicial independence. When presidents choose judges directly, they gain wide discretion to select individuals who support (or will not challenge) the regime. Even when presidents do not explicitly appoint loyalists, this system can still create a sense of obligation. Judges may feel they owe their careers to the executive, making them less willing to issue decisions that go against the government. In Pakistan, for example, the direct appointment of judges under the Ayub and Zia regimes (1958-1988) strengthened executive control over the judiciary and created a culture of fear and compliance. As a result, the courts often helped legitimise undemocratic practices. When General Zia seized power in a military coup in 1977, the Supreme Court was asked to assess the legality of the takeover. Instead of challenging it, the Court provided a legal justification for the coup, helping to normalise the regime's unconstitutional actions (Kureshi, 2021).

Should constitutional drafters allocate this appointment prerogative to other branches of power, such as the legislature, or to internal bodies, such as judicial service commissions? Evidence is mixed. If studies have found that appointments made by judicial commissions are correlated with higher judicial independence (Garoupa and Ginsburg, 2009), others have shown that this relationship is contingent on the composition or design of these bodies. For instance, in Hungary, the executive introduced the National Judicial Office (NJO) in 2012 to administer the courts. Although this institutional setup appeared to promote independence, the government retained full control over the NJO and used it to capture the courts and appoint supporters of the ruling regime (Hanelt and Vincze, 2024). In other words, delegating appointment powers to other bodies has little impact on judicial independence if autocrats already control those bodies from within.

Security of tenure

Security of tenure is equally important, especially in contexts where autocrats seek to weaken an assertive judiciary. When judges cannot be easily removed, it becomes harder for autocrats to purge those who are committed to democratic principles and the rule of law and replace them with

more compliant, pro-regime judges. Protecting judges from arbitrary dismissal gives them the confidence to decide cases based on the law and their own judgment, rather than simply deferring to the regime out of fear of losing their positions (Ríos-Figueroa, 2016). Importantly, security of tenure goes beyond prohibiting presidents from firing judges; autocrats (and aspiring autocrats) often find inventive ways to bypass these formal protections. One common tactic is to change the retirement age in order to remove senior and well-established judges. In Poland, for example, the Law and Justice Party (PiS) used its parliamentary majority to lower the compulsory retirement age for judges in 2017, resulting in the removal of 40 per cent of Supreme Court justices, including the Court's president (Bakke and Sitter, 2022).

Financial independence

In addition to controlling who can sit on the bench, autocrats can also capture courts by undermining their financial independence. Ruling regimes commonly rely on two strategies to do this. The first is to starve the judiciary of resources by withholding the funding needed for courts to function effectively (Gloppen et al., 2023). Underfunded courts face growing case backlogs, which reduce access to justice and the ability to organise training and other capacity-building activities. After the Kenyan Supreme Court annulled President Kenyatta's election in 2017, for example, Kenyatta, who won the rerun, responded by sharply cutting the judiciary's budget. Many observers saw this as an attempt to pressure the courts, especially as several corruption cases involving regime allies were pending, and as a way to weaken the off-bench activities that had helped strengthen judicial independence (Reuters, 2019).

The second strategy used to undermine financial independence works in the opposite direction. Instead of starving the judiciary, ruling regimes provide financial benefits to create incentives for compliance. In some cases, governments increase judicial salaries or offer additional compensation when courts are asked to rule on politically sensitive cases (Gloppen et al., 2023). In others, autocrats rely on outright corruption, bribing judges to secure favourable rulings. These practices mirror the first strategy: rather than weakening courts through financial deprivation, autocrats use targeted financial rewards to shape judicial behaviour and ensure loyalty (Hatchard et al., 2004). In 2019, for example, a Malawian businessman offered judges sitting on the Constitutional Court a large sum of money in an attempt to persuade them to validate the president's election despite widespread evidence of electoral fraud (Masina, 2021).

Courts' institutional design

Autocrats can also capture courts by manipulating their functioning and organisation. Research shows that they often fragment the judiciary to weaken it, granting special powers to certain tribunals. In other words, instead of maintaining a unified court system that handles all petitions and case types, autocrats create a fragmented system in which specific courts are given particular powers. This allows them to channel sensitive cases to bodies they can more easily control. Often, autocrats fully control the appointment of judges who sit on these benches. These courts may also be required to follow special procedural rules or apply laws that are not commonly used elsewhere in the legal system.

During their autocratic periods, Italy, Greece, and Portugal all created special constitutional tribunals with jurisdiction over political and constitutional cases. While these regimes allowed ordinary courts to retain some independence, they heavily controlled the constitutional tribunals and used them to target political opponents (Toharia, 1975). Defendants brought before these special courts had no access to due process and did not receive fair trials (Magalhães et al., 2006). This strategy is particularly effective because it can be difficult to detect. While the judiciary as a whole may appear to retain a degree of autonomy, these specialised courts are tasked with executing the regime's most politically motivated actions, allowing autocrats to undermine judicial independence without drawing broad scrutiny.

Access to justice

Finally, autocrats can capture courts by preventing them from becoming sites of democratic contestation. One way to do this is by restricting who is permitted to bring a case before the court (Moustafa, 2017). In Senegal, for example, civil society groups cannot file complaints before the Constitutional Court during electoral disputes on the grounds that they are not parties to the contest. Only electoral candidates or electoral management bodies may submit petitions to the Court. This significantly limits accountability, as civil society actors are unable to challenge or document electoral irregularities through judicial channels. In addition to narrowing who can file a case, ruling regimes can also restrict the types of cases courts are allowed to hear. Up until 1994, the Institutional Revolutionary Party (PRI) barred the court from adjudicating political cases, such as electoral matters or constitutional cases (Magaloni, 2003). Such limitations on access to justice severely weaken courts, which remain among the few institutions capable of constraining executive power.

To conclude, judicial capture is rarely achieved through spectacular actions. Empirical evidence shows that courts become embedded in authoritarian ecosystems through gradual and incremental weakening, driven by a range of institutional strategies. By manipulating the functioning, composition, and organisation of courts, autocrats have often succeeded in curbing judiciaries that once served as important checks on executive power. The strategies outlined in this section are not exhaustive, nor do they always lead to judicial capture. Many well-established democracies, for example, rely on executive judicial appointments without undermining judicial independence. It is when these institutional strategies accumulate, thus creating multiple channels through which the executive can influence the judiciary, that they become dangerous, eroding judicial autonomy and enabling authoritarian consolidation.

Pathways to judicial resistance

Despite the many strategies autocrats use to capture courts, these efforts are not always successful. In fact, new data suggest that courts are the institutions most likely to resist attacks, more so than other bodies such as legislatures (Gerzso et al., 2026). As a result, researchers have sought to understand the conditions under which courts can resist attacks on their independence. Because autocratisation is often a gradual process, strategies of judicial resistance vary depending on the stage at which they are applied. This brief, therefore, distinguishes between preventive measures that help stop courts from being captured in the first place and reactive measures that allow courts to resist once the executive has already become dominant and controls key institutional channels.

Preventive measures

Institutional design

Constitutional and legal drafters can help prevent judicial capture during periods of autocratisation by designing judiciaries that are insulated from executive influence. As discussed in Section 1, autocrats often exert control through judicial appointments, removal processes, and the internal functioning of courts. By designing or reforming judicial systems in which the executive branch has neither direct nor indirect influence over these channels, policymakers can strengthen judicial resilience. Reforming a single channel, however, is not sufficient. Constitutional and legal drafters must adopt a holistic approach that considers courts' composition and functioning as an integrated system (Melton and Ginsburg, 2014). Failing to do so risks creating points of entry that autocrats can later exploit to undermine judicial independence.

The 2010 Kenyan Constitution illustrates the benefits of adopting such a holistic approach. After decades of close alignment with the executive and criticism for its role in the electoral violence of 2007–2008, the judiciary underwent a major overhaul. The president lost the power to appoint and remove judges, and a Judicial Service Commission now oversees these processes. Appointment procedures are public, and interviews are televised, allowing civil society and the broader public to monitor them. The structure of the judiciary was also reorganised. The Attorney General lost constitutional oversight powers, and a new court was created to strengthen institutional accountability and add an additional layer of review. This institutional redesign has helped the Kenyan judiciary resist repeated executive pressure, particularly during election periods and in other politically sensitive cases (Gerzso, 2023).

Fostering a judicial culture of independence

Empirical evidence repeatedly shows that ideology is a key factor shaping judicial behaviour. Judges do not operate in a vacuum. Alongside the facts of a case and the applicable law, judges' personal beliefs and attitudes influence how they decide cases. For example, research on the United States Supreme Court shows that justices' votes closely align with their policy preferences, which helps explain why judicial appointments have become highly politicised (Segal and Cover,

1989). Existing research found that evangelical Justices have issued far more conservative rulings on societal issues than their peers (Songer and Tabrizi, 1999).

Importantly, judges' policy preferences and political attitudes are not fixed or determined solely by their personal backgrounds. Studies show that socialisation within and beyond the judiciary can shape how judges understand their role in a democratic system. Through education, training, and professional interaction, judicial systems can foster a culture that values democracy and the rule of law (Hilbink, 2012). Such a culture can encourage judges to act when democratic principles come under threat. Comparative evidence illustrates this point. In Spain, judges opposed the Franco regime despite facing high levels of intimidation and pressure. In contrast, in Chile, the judiciary remained largely deferential to the executive, even though judges enjoyed greater formal freedom. Hilbink links this variation to differences in how judges understood their role and responsibilities. In Spain, changes in judges' education and training encouraged a new generation of judges to rethink the place of law and courts in public life and to take a stand in defence of democracy.

Reactive measures

Strategic litigation

Pro-democratic actors have relied on strategic litigation to push courts to enact broader societal change (Cebulak, 2024). Unlike traditional litigation, which seeks redress for a specific case or individual, strategic litigation uses individual cases to advance wider goals, such as the protection of democratic principles.¹ Legal practitioners engaged in strategic litigation typically share two key characteristics (Epp, 1998). First, they are repeat players with experience litigating the same types of issues. Over time, this allows them to develop a strong understanding of the legal arguments and jurisprudence that can persuade courts to revisit or depart from earlier rulings. Second, they are coordinated actors who collaborate and pool expertise to build the strongest possible cases.

The annulment of Kenya's 2017 presidential election on grounds of electoral fraud illustrates how strategic litigation can incentivise courts to protect democracy (Gerzso, 2023). Following the contested 2013 election, a network of lawyers, civil society organisations, and legal scholars systematically challenged electoral irregularities through the courts. They framed their petitions in ways that encouraged judges to revisit key jurisprudence. This sustained strategy helped courts develop new electoral jurisprudence, increased their confidence in adjudicating electoral disputes, and deepened their understanding of the electoral process and its key actors.

Capacity-building

Lack of capacity and institutional knowledge often works to autocrats' advantage. When judges do not coordinate and lack expertise in specific legal areas, courts are more likely to produce inconsistent rulings, arbitrary decisions, and weak professional oversight, as not all judges have the capacity to review and assess each other's work. For this reason, civil society actors have used capacity-building as a way to strengthen courts operating in authoritarian ecosystems.

In both Kenya and Malawi, domestic and international actors have encouraged courts to build expertise in adjudicating electoral disputes. Ahead of elections, judges meet to review cases from

previous electoral cycles, update each other on recent jurisprudence, and deepen their understanding of electoral processes. In both countries, these efforts have led judges to adopt more progressive approaches to admissible evidence and to the standards used to assess the integrity of elections in the landmark cases of 2017 and 2020, making these judiciaries among the most advanced on the continent in electoral matters (Gerzso, 2023).

International and regional safeguards

International and regional courts provide an additional layer of protection for judiciaries operating in authoritarian ecosystems (Ginsburg, 2019). First, they offer citizens an external avenue of review, as these courts can assess the legality of domestic judicial decisions. Second, because courts care about their professional reputation, external review creates incentives for domestic courts to uphold the rule of law rather than systematically collude with the executive branch. In Europe, for example, citizens and networks of lawyers have relied on the European Court of Justice to challenge and overturn authoritarian measures adopted in Hungary and Poland (Ploszka, 2024). Because European Union law prevails over domestic law, national courts have also been able to draw on EU legal frameworks to resist attacks on democracy and the rule of law (Blauberger, M. and Kelemen, R.D., 2017).

To conclude, autocrats are not always successful in co-opting courts. Judiciaries can resist attacks on their integrity when they are institutionally insulated from executive power and supported by a mobilised civil society. This evidence-based research shows that resisting autocratisation requires a comprehensive effort. Courts alone cannot succeed unless societal actors are actively invested in making them vehicles for positive democratic change.

Policy recommendations

Based on this comprehensive review of existing evidence-based research, I make the following policy recommendations:

Preventing judicial capture

Adopt a holistic approach to judicial design

Constitutional drafters should adopt a holistic approach to judicial reform that addresses appointments, tenure, court organisation, and financial autonomy together. Reforming a single institutional channel is insufficient, as autocrats often exploit remaining points of entry to influence courts. Judicial independence is strongest when no single actor, especially the executive, can exert direct or indirect control over these mechanisms.

Limit executive influence over judicial appointments and removals

Appointment and removal processes should be insulated from executive control through independent judicial councils with transparent procedures. Public hearings, published criteria, and civil society oversight can reduce opportunities for politically motivated nominations.

Strengthening judicial resistance

Invest in judicial capacity-building and coordination

Domestic and international partners should support capacity-building initiatives that strengthen judges' expertise in sensitive areas such as electoral law and constitutional review. Regular training, peer exchanges, and review of past jurisprudence can improve consistency, professionalism, and judicial confidence.

Support the development of a strong judicial culture

Judicial education and professional training should emphasise the role of courts in protecting democracy and the rule of law. Fostering a shared understanding of judicial responsibility can encourage judges to act collectively when democratic principles are under threat.

Empower external actors

Strengthen links to international and regional courts

States should maintain commitments to international and regional judicial bodies and comply with their rulings. These courts provide an additional layer of accountability and create reputational incentives for domestic courts to uphold the rule of law.

Support civil society and legal communities

Civil society organisations and legal networks play a crucial role in supporting judicial resistance. Donors should invest in organisations that monitor courts, document abuses, train legal professionals, and engage in coordinated litigation strategies.

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¹ It is important to note, however, that strategic litigation has also been used to undermine democratic principles.

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