



PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA

THE ANTHOLOGY



AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS
RÉSEAU AFRICAIN DE DROIT CONSTITUTIONNEL
REDE AFRICANA DE JURISTAS CONSTITUCIONALISTAS

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ANTHOLOGY EXECUTIVE SUMMARY

The African Network of Constitutional Lawyers (ANCL), with support and guidance from the National Democratic Institute (NDI), has compiled this anthology aimed at the development of a robust study on constitutional term limits across Africa and a series of seven policy papers under the broader objective of contributing to the promotion and protection of constitutional democracy in Africa through presidential term limits. This project aims to develop insights and proposed reforms towards the promotion and protection of term limits in Africa.

This anthology begins with an expansive review that synthesizes the key findings and insights in the body of literature and national and regional policy on term limits in Africa. *The State of Presidential Term Limits in Africa (1990-2022)* also includes a detailed tabular representation of the status of term limits in Africa, the various provisions across the continent and the extent to which various leaders have respected these limits. This is an innovative, useful and informative brief as it provides a detailed overview of the status of constitutional term limits on the continent for ease of reference alongside an indication of some of the theoretical underpinnings for the existence of term limits and the importance of respecting these in a democratic context. It also lays the foundation for the various policy papers that follow which delve into topical thematic areas on the promotion and protection of term limits in Africa. The study notes the incontrovertible and overwhelming evidence – from both the literature as well as survey indicators, such as those on economic performance, the state of civil and political rights, the state of freedom of the press, and the state of respect for the rule of law – that points to a causal link between prolonged stays in power, state fragility, weak institutions, bad governance, corruption, and feeble democratic consolidation.

The policy paper on *Protecting Presidential Term Limits in Africa* identifies and summarizes strategies adopted by African constitution makers to protect term limits and assesses their significance with a view to propose insights and ideas on how best to protect them at a national level, and therefore inform constitutional and legal reform debates occurring across the continent. Some of these strategies have included making them unamendable, establishing high thresholds for amendment, subjecting amendments affecting term limits to judicial review, and excluding incumbents from benefiting from changes affecting term limits. The numerous reasons why the apparent constraints that came with presidential term limits have not always been able to contain the prolongation of presidential terms can be summed up under the following points: the excessive concentration of powers in African presidents, sloppy drafting of the term limit provisions, weak constitutional foundation of multiparty democracy, and a number of external factors. In light of the above, it is therefore paramount for African countries to invent and devise comprehensive strategies towards ensuring the protection and effective implementation of presidential term limits, including but not limited to deliberate drafting of presidential term limits and their protection against change.

The paper on *Promoting Peaceful Political Transitions through Term Limits: Roles and Practices of the African Union (AU) and Regional Economic Communities (RECs)*, focuses on the role and practice of AU and RECs in promoting peaceful political transitions in Africa through term limits. It specifically assesses AU and RECs normative frameworks on term limits, provides a brief overview of the practice of AU and RECs, including on consequences of inconsistencies in the articulation and defending of relevant democratic standards on term limits, and outlines policy issues for consideration to improve the establishment of term limits as critical to peaceful alternation of power. The paper argues that presidential term limits are critical to

the aspiration for a peaceful, prosperous and integrated Africa that is characterized by good governance and democracy, and highlights several findings in this regard. It cautiously concludes however that, despite their noted importance and popular support, term limits are no magic wand to a democratic Africa, and they cannot wholly guarantee the achievement of continental aspirations. But without them, it is impossible to imagine the realization of the enduring vision of building a united Africa.

In *The Persistence and Perils of Winner-Take-All Politics in Africa*, we reflect on the concept of “winner-take-all” politics highlighting the ideological underpinnings of this dominant approach to politics on the continent and offering recommendations on how to mitigate the impact thereof on democracy and constitutionalism broadly, and on term limits specifically. This paper identifies winner-take-all politics in the contemporary period as a key domestic driver of the many conflicts that have characterized the continent's post-independence history. Its survival has not only degraded the quality of democratic governance across the continent, but has continued to endanger prospects for peace and stability and might explain, in part, some of the recent episodes of democratic backsliding in the region. This paper concludes that addressing Africa’s winner-take-all problem demands both intentionality and innovation, including an openness to comparative learning and borrowing, on the part of constitutional designers and reformers. Without addressing the scourge of winner-take-all politics, even the most robust presidential term limit provisions will remain not only insufficient but also vulnerable to reversal, either through incumbent elongation of tenure, or abrupt overthrows of government.

Nostalgia for the Myth of “Benevolent” Dictatorship and Challenges to Democratic Consolidation in Africa: A Synoptic Reflection, offers critical insights into the persistence of the notion of benevolent dictatorship as a justification for the negation of term limits in Africa. This paper considers the factors driving a resurgent nostalgia for benevolent autocracy, including in the form of support to coups d’état and life-presidencies, across Africa and asks whether dictators can really be benevolent and if the continent really needs them to ensure stability and/or prosper. The paper argues at its crux that Africa’s storied experimentation with benevolent dictatorships, whether in the form of one-party states, military regimes, or personal dictatorships following Africa’s independence, have mostly amounted to protracted economic failures, political instability, and social alienation. It leaves us to ponder on how Africans can re-engage and re-engineer African democracy to deliver more than just questionable periodic elections. What policy reflections can guide the continent to the path of reworking African democracy to deliver on the fundamental developmental aspirations of Africans in an era of broader global geopolitics riddled with the ideological uncertainties of increasing great power competition? Overall, while the idea of benevolent autocracy is a medicine much worse than the disease it has been prescribed to cure, the ensuring desire for stability and development is both legitimate and achievable, and promoters of constitutional democracy and term limits should center their advocacy on these material needs of society beyond the intrinsic values of democracy and human rights.

Delving into mechanisms of protecting term limits, the paper on *Promoting Presidential Term Limits in Africa: The Role of Traditional and Religious Leaders* analyses the contribution of traditional and religious leaders to the debate on term limits by drawing on experiences from some African countries. Traditional and religious leaders have consistently contributed to debates on term limits in Africa, but their role has not been systematically studied. Given the influence that these institutions tend to have over the population, it is important to, first, understand their contribution to the debate and, second, harness their positive contribution in support of constitutionalism. The paper finds that traditional and religious leaders have been key stakeholders in term limit debates in Africa. Nevertheless, their roles have not always been in favor of upholding constitutionalism. It is clear though that traditional and religious leaders tend to play a more positive role on the term limits debate where they have financial autonomy and where they join forces with other pro-democracy activists, among other factors. Given that term limits are set by law, it is also clear, that the law

itself will remain relevant in all debates on term limits. This in turn requires that those agitating against changes to term limits to be creative about their recourse to the law to safeguard constitutionalism.

The Role of African Women and Youth in Promoting and Maintaining Peaceful Alternation of Power through Term Limits draws our attention to the methods and strategies adopted from the margins towards the promotion and protection of term limits in Africa. It includes case studies on how women and the youth framed the issues, embarked on their initiatives, and the strategies they employed. It specifically looks at protests, campaigns and other strategies used by the youth and women in Sudan, Senegal, Burkina Faso, Uganda, and Zambia. It also examines the key insights derived from the case studies above and makes recommendations on how to enhance the role of women and the youth in promoting and defending regular alternation of power and presidential term limits. The paper finds that by forming strategic alliances, these groups have united around the common goal of preserving term limits. Based on the key insights gleaned from the country examples, the paper puts forward recommendations to empower women and youth in promoting and safeguarding regular alternation of power and presidential term limits in Africa. These recommendations aim to strengthen democracy and bring about positive changes in the social, economic, and political domains, with a particular focus on improving the lives of women and the youth.

The policy paper series also contains two country case studies that serve as illustrative examples of the various topical discussions highlighted above. In *Legal Mobilization Against a Third Term in Senegal*, we outline the key legal issues and arguments related to presidential term limits under the Senegalese Constitution. The paper argues, had the 2016 constitutional amendments clarified that any constitutional reforms would not reset the presidential term count, Senegal, and Africa, would have been saved from the political insecurity and even violence that accompanied the ambiguity related to President Macky Sall's desire to run for a third term. In view of the absence of such a provision, which created legal uncertainties, this paper provides a comprehensive exposition of the legal issues with a view to discipline, complement and enrich ongoing social and political mobilization around a possible third term. The paper also draws on African, sub-regional, and comparative norms and experiences on term limits. The paper concludes by providing that the debate on term limits in Senegal is a debate about the democratic standing and future of the country and has implications to its stability and the broader region. A key lesson for Senegal and Africa broadly is that constitution drafters should seek to avoid ambiguities, especially when it relates to presidential term limits, which have proved vulnerable to abuse. While Sall ultimately abandoned his third term drive, the arguments and points raised in the paper remain relevant and informative, as Senegal and other countries seek to strengthen the protection of democracy broadly and term limits specifically.

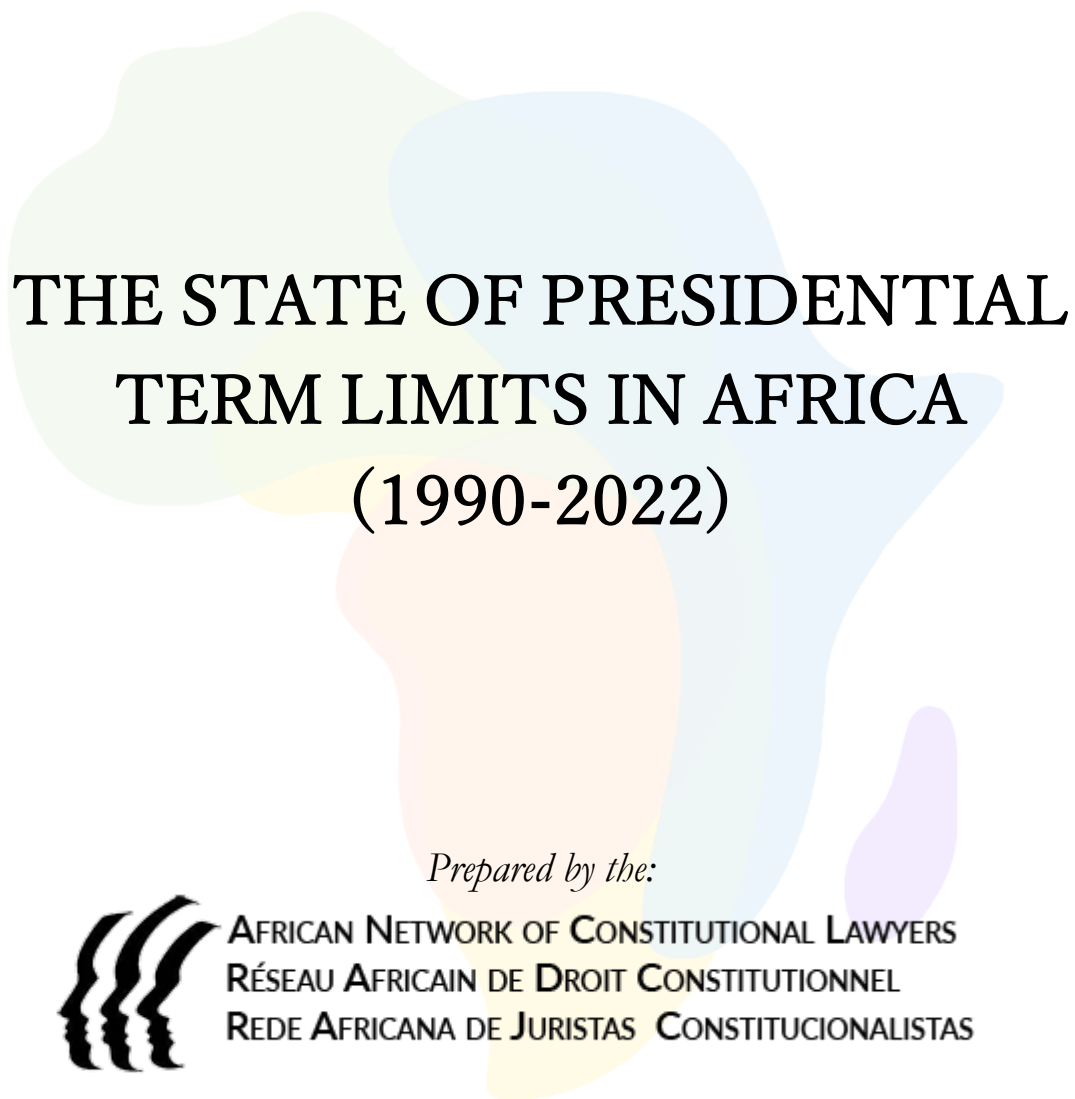
Finally, we consider the case of the Central African Republic in ***Protection and Promotion of Presidential Term Limits in Africa: Central African Republic (CAR)***. This paper provides context and background and identifies key lessons learned from the rejection of a series of four presidential decrees related to the establishment of a Constitution Drafting Committee and the appointment of its members by the Constitutional Court. It also makes policy recommendations on ways to promote and protect presidential term limits in CAR that may be replicated in other African countries. If implemented, the Court decision could set a ground-breaking example of constitutional democracy in the CAR and beyond. In recent years, the Constitutional Court's decisions have proven to be effective and conciliatory, consequently generating hopes for the establishment of constitutionalism and a peaceful alternation of powers in CAR. In this regard, domestic stakeholders should coalesce around a coalition of democrats to support the decision of the Constitutional Court. The AU and relevant regional mechanisms should support constitutionalism, including by putting CAR on the agenda and leaning on President Faustin-Archange Touadéra to respect the decision of the Court.

Following the finalization of the paper, Touadéra managed to force the resignation of the president of the Court, and subsequently organized a flawed referendum approving an ostensibly new constitution that principally abolished presidential term limits. This development represents not only a dangerous protraction of the political and security instability in the country, but also a failure, particularly from the African Union, to condemn abusive constitutional elongations of power, with the same fervor as it rejects military coups. Regardless of the developments, the paper provides important insights that will prove beneficial if and when the people of CAR seek the reinstatement of term limits. Notably, the criticality of a powerful constitutional court denying the cloak of legality and legitimacy to abusive constitutional changes is important, i.e., even when incumbent president get their way, they are forced to use illegal means.

The measures proposed above are no guarantee that presidential term limits would not be tampered with, but they could considerably reduce the risk of this happening. They offer the best prospects of curbing the risk of personalized power and the propensity for perpetual rule – and thereby supporting the continent’s progress in entrenching constitutionalism, democracy and respect for the rule of law broadly and term limits specifically. These series of papers together seek to inform, in addition to ongoing contestations around term limits, broader policy and intellectual reform debates at national, regional and international levels on how to establish, maintain and nurture democratic constitutionalism in Africa, which has been facing headwinds in the last decade, including through the promotion and protection of presidential term limits.

INCLUDED WITHIN THIS ANTHOLOGY

EXECUTIVE SUMMARY	1
THE STATE OF PRESIDENTIAL TERM LIMITS IN AFRICA (1990-2022)	4
CURRENT CONSTITUTIONAL TERM LIMITS PROVISIONS IN AFRICAN CONSTITUTIONS	58
POLICY BRIEF: OUR PAST, OUR PRESENT, OUR FUTURE	68
POLICY BRIEF: ROLES AND PRACTICES OF THE AU AND REGIONAL ECONOMIC COMMUNITIES	78
POLICY BRIEF: THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS.....	86
POLICY BRIEF: NOSTALGIA FOR THE MYTH OF “BENEVOLENT” DICTATORSHIP	95
POLICY BRIEF: THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA.....	106
POLICY BRIEF: THE ROLE OF AFRICAN WOMEN AND YOUTH	115
POLICY BRIEF: A CASE STUDY ON THE CENTRAL AFRICAN REPUBLIC	126
ANNEX: BIBLIOGRAPHY ON PRESIDENTIAL TERM LIMITS IN AFRICA	135



THE STATE OF PRESIDENTIAL TERM LIMITS IN AFRICA (1990-2022)

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Table of Contents

TABLE OF CONTENTS.....	8
ABBREVIATIONS.....	9
LIST OF TABLES.....	9
LIST OF ANNEXES.....	9
EXECUTIVE SUMMARY.....	10
1. INTRODUCTORY BACKGROUND.....	17
2. THE CURRENT STATUS OF PRESIDENTIAL TERM LIMITS IN AFRICAN CONSTITUTIONS.....	18
3. THE TREND IN COMPLIANCE WITH PRESIDENTIAL TERM LIMITS.....	22
4. ARGUMENTS FOR AND AGAINST PRESIDENTIAL TERM LIMITS.....	43
4.1 ARGUMENTS IN FAVOUR OF PRESIDENTIAL TERM LIMITS.....	43
4.2 ARGUMENTS AGAINST PRESIDENTIAL TERM LIMITS.....	44
5. THE NEXUS BETWEEN PRESIDENTIAL TERM LIMIT EVASION, CONSTITUTIONALISM, DEMOCRACY AND RESPECT FOR THE RULE OF LAW.....	46
6. THE ROLE OF CIVIL SOCIETY IN PROMOTING RESPECT FOR PRESIDENTIAL TERM LIMITS.....	48
7. THE ROLE OF THE AU, RECS AND INTERNATIONAL COMMUNITY IN PROMOTING RESPECT FOR PRESIDENTIAL TERM LIMITS.....	49
7.1 THE AU AND RECS.....	49
7.2 THE INTERNATIONAL COMMUNITY.....	51
8. CONCLUSION AND RECOMMENDATIONS.....	52
8.1 CONCLUSION.....	52
8.2 RECOMMENDATIONS.....	54
8.2.1 At national level.....	54
8.2.2 At the regional level.....	55
8.2.3 At the international level.....	56

Abbreviations

African Democracy Charter	African Charter on Democracy, Elections and Governance
African Commission	African Commission on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
AU	African Union
ECOWAS	Economic Community of West African States
RECs	Regional Economic Communities

List of Tables

Table 1. Number and Duration of Presidential Term Limits in Current African Constitutions	18
Table 2. Presidents who Respected Presidential Term Limit Provisions since 1990	21
Table 3. Presidents who Sought to Tamper with Presidential Term Limit Provisions since 1990	23
Table 4. African Presidents since 1990 and the Extent of Alternation of Power in their Countries	30

List of Annexes

Annex 1. Current Constitutional Term Limit Provisions in African Constitutions	
Annex 2. Bibliography on Presidential Term Limits in Africa (Including Cases, and relevant AU and RECs instruments)	

Executive summary

Introductory background

The introduction of presidential term limits in most post-1990 African constitutions was seen not only as a sign of commitment to entrenching a culture of constitutionalism, democracy and respect for the rule of law, but also as an attempt to avoid a recurrence of the military and one-party dictatorships of yesteryears. Unlike in the past, when presidents were changed almost always through assassinations or military coups, presidential term limits afford an opportunity for regular peaceful alternation of power. Accordingly, this study examines African countries' record of compliance since 1990 with the presidential term-limit provisions of their constitutions.

The results, as the report shows, are mixed. This is due to the ease with which African presidents have devised ways to prolong their stay in office, whether it be through creative interpretation of the language of term-limit provisions or through amendments to these provisions. Non-compliance with presidential term-limit provisions – or the outright evasion of them – threatens to compromise the gains that have been achieved thanks to these term limits. The critical issue for the study was thus to see how one could avert, or at least mitigate, the growing risk of entrenchment of autocracy under the guise of democracy, and in this way enhance the prospects for sustaining Africa's faltering strides towards constitutionalism and democracy, while, conversely, stemming the tide of democratic regression.

The study set out to answer six main questions:

1. What is the current status of presidential term-limit provisions in African constitutions?
2. What has the trend been in terms of compliance with or circumvention of these term limits? Why have certain countries not complied with them, and how has this come about?
3. What are the key arguments in favour of and against presidential term limits? Are they credible?
4. Is there a nexus between presidential term-limit evasion, constitutionalism, democracy and respect for the rule of law?
5. What has been the role of civil society in promoting respect for and protecting the integrity of presidential term limits?
6. How have the African Union (AU), Regional Economic Communities (RECs), and the wider international community helped or failed in promoting respect for and protection of the integrity of presidential term limits?

The study concludes with recommending various critical measures that stakeholders such as the broader public, civil society, the AU, RECs, and the international community should take to enhance respect for presidential term limits.

The status of presidential term-limit provisions in African constitutions

The study first examines the current status of presidential term-limit provisions in current African constitutions as at October 2022. It found that six countries have no presidential term-limit provisions, and that, in five other countries, they were ineffective because three of the countries are monarchies and the other two have parliamentary systems. However, the major problem in Africa today has less to do with the incorporation of presidential term-limit provisions than with their enforcement.

The trend in compliance with presidential term limits

While in many cases there has been compliance with the presidential term-limit provisions, in other instances amendments to these provisions, either through referendum, judicial interpretation, or simply delaying elections, have subverted their intended purpose. Four main causes of presidential term-limit evasion were identified:

- the intoxicating effect that excessive concentration of powers has on presidents;
- weak foundations for multipartyism and limited checks and balances, alongside lack of internal party democracy;
- sloppy craftsmanship of constitutional presidential term-limit provisions; and
- lack of strong external support from the international community.

Arguments for and against presidential term limits

Proponents of term limits contend that their main advantages include the following:

- Term limits enhance the prospects for democracy by ending the ‘president-for-life’ syndrome that resulted in incompetent and repressive leaders and dynasties in Africa.
- Term limits have the potential to protect democracy and democratic institutions by reducing the advantages that incumbents enjoy during elections or due to prolonged personal rule.
- Term limits can reduce barriers to entry into politics, facilitate the growth of a culture of political competition and tolerance for opponents, and thus enhance the prospects for political development and consolidation.
- Term limits provide an effective and legitimate means of dealing with one of the most intractable problems to have inhibited Africa’s development: that is, they enable bad leaders to be replaced before they can cause irreparable damage.
- Term limits provide a strong indication of a government’s commitment to promoting and consolidating democracy, good governance and respect for the rule of law by guaranteeing regular alternation in power.

Opponents of presidential term limits raise a number of counterarguments, all of which are indefensible and self-serving in the African context:

- Term limits undermine democracy because they deprive a country of the benefit of experienced people and deny voters the opportunity to re-elect their preferred leaders.
- Frequent changes of leadership can have a negative impact on the quality and continuity of a country's policies and create political uncertainty.
- Term limits unduly limit the human and political rights of incumbents and voters.
- Term limits are both a Western imposition and a display of double standards, given that the constitutions of many countries in the West do not themselves contain such limitations.

The nexus between presidential term-limit evasion, constitutionalism, democracy and respect for the rule of law

There is overwhelming evidence – from both the literature as well as survey indicators, such as those on economic performance, the state of civil and political rights, the state of freedom of the press, and the state of respect for the rule of law – that points to a causal link between prolonged stays in power, state fragility, weak institutions, bad governance, corruption, and feeble democratic consolidation. A number of findings support this conclusion:

- The ten longest-serving presidents on the continent, who have been in power for on average 17.5 years and counting, have removed presidential term limits from their constitutions. There is sufficient evidence to show that the removal of presidential term limits has virtually paved the way for pre-1990 life presidencies of the past to re-emerge.
- The removal or manipulation of presidential term limits facilitates the growth of political dynasties, which in turn are promoted by self-serving clientelist and patronage networks determined to protect their interests.
- The rule of law is undermined when presidents ignore presidential term limits or manipulate them.
- In many African countries, the removal – actual or attempted – of presidential term limits has led to violence, repression and the violation of the human rights of citizens protesting against the changes.
- The past decade has been marked by signs of a global democratic recession, with increased evidence of democratic deconsolidation and autocratization. The situation in Africa, however, is far worse. Governance indicators show that most of the African countries that have removed, distorted or ignored presidential term have not performed well in terms of democratic progress, respect for the rule of law and prospects for constitutionalism when compared to countries that have retained and respected these provisions. Moreover, countries that have maintained term limits and witnessed alternation of power on average perform better on issues of political stability and the fight against corruption.

The role of civil society in promoting respect for presidential term-limits

One of the positive developments of the post-1990 era is that many countries in Africa have seen the growth of a relatively vibrant, vigilant and enlightened civil society. In the four countries where serious attempts by incumbents to amend presidential term limits were repelled, this was due largely to resistance and mobilisation by civil society. The study found, however, that civil society has the potential to do even more.

The role of the AU, RECs and international community in promoting respect for presidential term limits

Although presidential term limits are ostensibly a matter of domestic constitutional policy and concern, it was noted that they do have wider implications for international peace and security. This explains why the AU and certain of its RECs, such as the Economic Community of West African States (ECOWAS), have developed an elaborate normative framework of binding and non-binding instruments to deal with arbitrary amendment of constitutions, including presidential term-limit provisions, in circumstances that amount to unconstitutional changes of government.

The AU has been unsuccessful, though, due to weak and inconsistent enforcement of its framework – a situation compounded by this framework’s vague scope of application and the lack of a strategy and mechanism for implementing it. Within the AU system, the African Commission on Human and Peoples’ Rights (the African Commission) and the African Court on Human and Peoples’ Rights (the African Court) provide opportunities for dealing with abuses of constitutional amendment processes.

As for the RECs, some have adopted their own normative frameworks to promote constitutionalism, democracy and respect for the rule of law. For example, in 2001 ECOWAS adopted the Protocol on Democracy and Good Governance. In regard to presidential term limits, ECOWAS has attempted on two occasions – in 2015 and again in 2021 – to impose a two-term limit for all presidents in the region, but the move was opposed and eventually blocked by certain of the member states. Debates on amending the Protocol to guarantee a two term limit on presidents continue.

While the AU and its RECs have been relatively timid in their reaction to violations of term limits on the continent, the response by the international community has scarcely been any stronger or less equivocal. The global trend in which Western governments, international institutions and donor agencies supported democracy-building initiatives on the continent has waned since the 1990s. First, Western post-9-11 security imperatives led to the prioritization of security over everything else; in some cases leading to increased support for certain repressive regimes in Africa. Secondly, the emergence of China and other non-traditional trading partners, such as India, Brazil and Russia, as alternative sources of foreign direct investment threaten to further undermine Africa’s fragile transition to democracy.

Conclusions and recommendations

Conclusions

Generally, arguments in favour of incorporating presidential term limits in African constitutions have won the day. The question is no longer whether or not they are needed but how best to promote their incorporation in all present-day constitutions and ensure strict respect for them. Six main conclusions can be drawn from developments since 1990.

1. Presidential term limit provisions have been removed, manipulated or ignored in the most autocratic states on the continent.
2. Since 1990, coups have been replaced by skilful manipulation of constitutions and other formal democracy-enhancing institutions, such as courts and election management bodies: this is now the most important means of coming to power and staying there.
3. With one exception, Abdoulaye Wade of Senegal in 2012, all presidents who exploited legal ambiguities or constitutional loopholes to 'legalise' their third-term eligibility through the courts, or simply removed the presidential term limits, went on to win re-election. As such, the argument that elections are the best way of limiting presidential terms is not borne out by the evidence to have emerged in Africa since 1990.
4. An examination of when term-limit provisions tend to be tampered with shows that this usually occurs just before incumbents are due to retire.
5. Due to the increasing indifference of not only the AU and RECs but also an increasingly fragmented international community in a multipolar world, the cost of circumventing or otherwise manipulating constitutions is very low.
6. It is now clear that presidential term-limit evasion is a manifestation of a historical continuity – the president-for-life syndrome of the pre-1990 era.

The question is: How could presidential term-limit provisions be made more effective, and the cost of circumventing them be made as high as that of staging a coup?

Recommendations

At the national level

All African governments should:

- constitutionally entrench a strict presidential two-term limit in their constitutions, or where this is already present, strengthen it;
- ensure that any proposals to amend this important provision undergo an inclusive, transparent and participatory process that involves thorough public scrutiny and an elaborate process of consultation of all key stakeholders;
- constitutionally entrench a principle that no amendments to presidential term limits should benefit the incumbent directly or indirectly;
- establish an independent, permanent constitutional review commission to review regularly the operation of the constitution and all democracy-enhancing institutions and make recommendations for change; and

- constitutionally entrench key democracy-enhancing institutions such as election management bodies, constituency demarcation bodies, public service commissions and courts.

Civil society organisations should:

- establish an inclusive constitution-monitoring committee that regularly reviews compliance with constitutional obligations;
- promote constitutional literacy on the basis that a vibrant, alert and enlightened civil society is crucial to defending the constitution and constitutionalism; and
- seek the formation of a coalition of democrats from all political forces, including ruling parties, to promote a tradition of regular alternation of power.

At regional level

The AU and RECs should be more proactive and take firm action in response to any threats of unconstitutional changes of government through unconstitutional retention of power. In particular, the AU should:

- raise the cost of term-limit evasion by adopting a firm, consistent, zero-tolerance stance towards all forms of unconstitutional change of government, including those that involve removing presidential term limits for the benefit of incumbent presidents;
- develop benchmarks and other guidelines for the implementation of the commitments and principles of its constitutionalism-promoting normative framework, particularly the African Charter;
- establish an AU Democracy Monitoring and Enforcement Commission to monitor and evaluate compliance with their obligations under the different normative instruments. This function could be played by an expanded African Governance Architecture;
- impose and consistently enforce a presidential two-term limit among member states;
- collaborate with the African Court and African Commission in the implementation of normative instruments, particularly the African Democracy Charter;
- increase the attraction of post-presidential tenure by establishing an advisory body of retired presidents who respected the prescribed term limits; and
- amend the Protocol on the Statute of the African Court of Justice and Human Rights to remove the blanket immunity from prosecution for crimes against humanity and genocide given to ‘serving heads of state’ and ‘senior government officials’ while they are in office.

To advance entrenchment and enforcement of presidential term limits, RECs should:

- emulate ECOWAS’s efforts to make two-term presidential term limits mandatory in their regions; and

- in accordance with the principle of subsidiarity and complementarity, collaborate proactively with the AU and other RECs to monitor and evaluate implementation of commitments and principles in AU normative instruments, including in particular any benchmarks and guidelines which the AU may develop.

At the international level

There are a number of measures that the international diplomatic and donor community should take to enhance the adoption and enforcement of presidential term limits in recognition of the risks that prolonged tenures pose to constitutionalism, democracy and political stability on the continent. These should include:

- using peer pressure as well as diplomatic avenues to discourage countries from evading presidential term limits and encouraging those who have removed them to reinstate them;
- increasing the cost of violating constitutional term limits by condemning such behaviour immediately and imposing targeted economic sanctions against all persons directly or indirectly involved in facilitating or participating in such violations;
- based on the example of the Mo Ibrahim Foundation, create a body that formally recognises and honours (including the possibility of awarding prizes), incumbents who retire in compliance with the constitutionally prescribed two-term limit; and
- taking every opportunity to initiate prosecution for crimes against humanity and genocide against any president and other senior officials who committed such crimes in the process of prolonging their stay in power or who used such term-prolongation to escape liability for these crimes.

Final conclusion

The measures proposed above are no guarantee that presidential term limits would not be tampered with, but they could considerably reduce the risk of this happening. They offer the best prospects of curbing the risk of personalised power and the propensity for perpetual rule – and thereby supporting the continent’s progress in entrenching constitutionalism, democracy and respect for the rule of law.

1. Introductory background

Post-1990 constitutional reforms across Africa saw the adoption of new or substantially revised constitutions replete with provisions designed to promote good governance, constitutionalism and respect for the rule of law. One of the most significant of these innovations was the introduction of presidential term limits.¹ The primary objective thereof was to end the culture of perpetual incumbency and ‘presidents for life’ which had facilitated the emergence of the continent’s numerous civilian and military dictatorships. Prior to the 1990 reforms, peaceful presidential alternations were rare in Africa. Presidents who managed to survive assassinations and military coups entrenched themselves in office by authoritarian and often harshly repressive means or by devising procedural defenses against being voted out of office. Unsurprisingly, of the more than 180 presidents who held power in Africa before 1990, less than 20 per cent of them relinquished power or retired voluntarily.

Presidential term limits have a historical lineage that dates to the middle of the 19th century and have long been regarded as one of the defining features of modern democracy. Their introduction in most post-1990 African constitutions was thus seen as a sign of commitment to entrenching and fostering a culture of constitutionalism, democracy and respect for the rule of law. Although the nature of presidential tenure restrictions varied from one country to another, their overriding objective was to ensure that no one person, regardless of his or her personal merits, could monopolize power.

As this study shows, however, the record of compliance with presidential term limits since 1990 has been mixed. The ease with which some African presidents have prolonged their stay in office by interpreting the wording of term-limit provisions in creative ways, amending these provisions, or simply ignoring them threatens to compromise the small gains that have been made as a result of these term-limit restrictions.

The critical issue for the study is thus to see how one could avert, or at least mitigate, the growing risk of entrenchment of autocracy under the guise of democracy, and in this way enhance the prospects for sustaining Africa’s faltering strides towards constitutionalism and democracy while, conversely, stemming the tide of democratic regression.

This key question raises several subsidiary questions, ones which this study sets out to investigate, with its focus falling on the evolution of presidential term limit provisions since 1990. These subsidiary questions are:

1. What is the current status of presidential term-limit provisions in African constitutions?
2. What has the trend been in terms of compliance with or circumvention of these term limits? Why have certain countries not complied with them, and how has this come about?
3. What are the key arguments in favour of and against presidential term limits? Are they credible?
4. Is there a nexus between presidential term-limit evasion, constitutionalism, democracy and respect for the rule of law?

¹ See Kristin McKie, ‘Presidential term limit contravention: Abolish, extend, fail, or respect’, (2019) 52(10) *Comparative Political Studies* 1500-1534, who in note 2 indicates that Egypt, Ghana, Nigeria, Rwanda, Somalia, the Republic of Congo, and Tunisia all briefly adopted term limits between independence and 1990 before these were repealed by military or one-party rulers.

5. What has been the role of civil society in promoting respect for and protecting the integrity of presidential term limits?
6. How have the African Union (AU), the Regional Economic Communities (RECs), and the wider international community helped or failed in promoting respect for and protection of the integrity of presidential term limits?

The study proceeds to address each question in turn, beginning with an examination of the current formulation and status of term-limit provisions in African constitutions. How many constitutions still have these term limits and what form do they take? The next section looks at trends in compliance with or circumvention of presidential term limits from 1990 to the present. In other words, what is the record of compliance and non-compliance?

The following section (section 4) considers how term limits have been evaded and why, and delves into some of the theoretical and practical arguments for and against presidential term-limit provisions. Section 5 then examines the possible impact that presidential-term evasion has on constitutionalism, democracy and respect for the rule of law, after which sections 5 and 6 consider the role that civil society, as well as the AU, RECs and the international community, could play in promoting adherence to such limits. The study concludes with recommendations as to how stakeholders could address the risks posed by the removal or subversion of presidential term limits.

2. The current status of presidential term limits in African constitutions

As noted, in the 1990s many African constitutions introduced presidential term limits in their new or revised constitutions, but at the time of this study there had been many changes, whether through the reformulation or removal of the restrictions contained in these provisions. Annex 1 presents the current constitutional formulation of presidential term limits provisions in African constitutions; in turn, Table 1 summarises the number of terms allowed in each constitution and the duration of each term.

Some caveats need to be noted in regard to these tables:

- Presidential term-limit provisions are common in presidential and semi-presidential systems, which are the main type of political regime found in Africa, but some also exist in parliamentary systems, where the president only serves as head of state and not head of government.² The study focuses on directly or indirectly elected presidents who act as heads of state and government. As such, this excludes Africa's three monarchies (Eswatini, Lesotho and Morocco), as well as parliamentary systems, such as Ethiopia and Mauritius, where presidents do not exercise executive authority; the study does include the parliamentary systems of Botswana and South Africa, where the presidents are both head of state and head of government.

² For an example of the latter, see article 70(4) of the Constitution of Ethiopia which imposes a two-term limit on the ceremonial president.

- The study pays only limited attention to countries, such as Libya, Sahrawi Arab Democratic Republic, Sudan, and South Sudan, which are in political turmoil.³

Table 1. Number and Duration of Presidential Terms in Current African Constitutions

Country	Constitutional term limit provision	Number of years per term	Maximum number of terms allowed	Whether amendable or unamendable
Algeria	Art. 92	5	2 (consecutive or discontinuous)	unamendable (Art. 234(9))
Angola	Art. 113	5	2 (consecutive or discontinuous)	amendable
Benin	Arts. 42 and 44	5 (+ age limit: 70 years old)	2 (consecutive or discontinuous)	amendable
Botswana	Sect. 34	5	2 (consecutive or discontinuous, a maximum of 10 years)	amendable*
Burkina Faso	Art. 37 / 38	5 (+ age limit: 75 years old)	2 (consecutive or discontinuous)	unamendable (Art. 165)
Burundi	Art. 97	7	2 (consecutive)	amendable
Cabo Verde	Arts. 126 and 134	5	2 (consecutive)	amendable
Cameroon	Art. 6	7	No limit	amendable
Central African Republic (CAR)	Art. 35	5	2 (consecutive)	unamendable Art. 153)
Chad	Art. 66	6	2 (consecutive or discontinuous)	amendable
Comoros	Art. 52	5	2 (consecutive)	amendable
Congo (Republic of Congo)	Art. 65	5	2 (consecutive or discontinuous)	amendable
Congo (Democratic Republic - DRC)	Art. 70	5	2 (consecutive or discontinuous)	unamendable (Art. 220)
Cote d'Ivoire	Art. 55	5	2 (consecutive or discontinuous)	amendable
Djibouti	Arts. 24 and. 23	5 (+ age limit: 75 years old)	No limit	amendable
Egypt	Art. 140	6	2 (consecutive)	Not very clear.
Equatorial Guinea	Art. 36	7	2 (consecutive)	amendable

³ For the reasons set out in the two caveats, the study excludes detailed analysis of the situation in the following 10 African countries: Morocco, Lesotho, Eswatini, Ethiopia, Libya, Sahrawi Arab Democratic Republic, Somalia, Sudan and South Sudan. However, for purposes of completeness, they are included in the tables, with the exception of Sahrawi Arab Democratic Republic, which has never had any document that could be referred to in any seriousness as a constitution.

Eritrea	Art. 41	5	2 (consecutive or discontinuous)	amendable.
Eswatini	Monarchy (no term limit)	Monarchy (no term limit)	Monarchy (no term limit)	Monarchy (no term limit)
Ethiopia	Parliamentary system of government.	Parliamentary system of government.	Parliamentary system of government.	Parliamentary system of government.
Gabon	Art. 9	7	No term limit	amendable
The Gambia	Art. 63	5	No term limit	amendable*
Ghana	Art. 66	4	2 (consecutive or discontinuous)	amendable*
Guinea-Bissau	Art. 66	5	2 (consecutive)	amendable
Guinea-Conakry	Art. 40	6	2 (consecutive or discontinuous)	unamendable (Art. 153)
Kenya	Arts. 136 and 142	5	2 (consecutive or discontinuous)	amendable*
Lesotho	Parliamentary system of government.	Parliamentary system of government.	Parliamentary system of government.	Parliamentary system of government.
Liberia	Art. 50	6	2 (consecutive or discontinuous)	amendable*
Libya	Transitional Constitutional Charter	Transitional Constitutional Charter	Transitional Constitutional Charter	Transitional Constitutional Charter
Madagascar	Art. 45	5	2 (consecutive or discontinuous)	unamendable (Art. 163)
Malawi	Art. 83	5	2 (consecutive)	amendable
Mali	Art. 30	5	2 (consecutive or discontinuous)	amendable
Mauritania	Arts. 26 and 28	5 (+ age limit: at most 75 years old)	2 (consecutive or discontinuous)	unamendable (Art. 99)
Mauritius	Parliamentary system of government.	Parliamentary system of government.	Parliamentary system of government.	Parliamentary system of government.
Morocco	Monarchy (no term limit)	Monarchy (no term limit)	Monarchy (no term limit)	Monarchy (no term limit)
Mozambique	Art. 146	5	2 (consecutive)	amendable
Namibia	Art. 29	5	2 (consecutive or discontinuous)	amendable
Niger	Art. 47	5	2 (consecutive or discontinuous)	unamendable (Art. 175)
Nigeria	Sects. 135 and 137	4	2 (consecutive or discontinuous)	amendable*

Rwanda	Art. 101	5	2 (consecutive or discontinuous)	amendable *
Sao Tome and Principe	Art. 79	5	2 (consecutive)	amendable
Senegal	Arts. 27 and 28	5 (+ age limit: at most 75 years old)	2 (consecutive)	unamendable (Art. 103)
Seychelles	Art. 52	5	2 (consecutive or discontinuous)	amendable
Sierra Leone	Art. 46	5	2 (consecutive or discontinuous)	amendable*
Somalia	Art. 91	4	No precision of term limit	amendable
South Africa	Art. 88	5	2 (consecutive or discontinuous)	amendable*
South Sudan	Art. 100	5	No precision of term limit	amendable
Sudan	Now in transition post Omar al Bashir	Now in transition post Omar al Bashir	Now in transition post Omar al Bashir	Now in transition post Omar al Bashir
Tanzania	Arts. 40 and 42	5	2 (consecutive or discontinuous)	amendable
Togo	Art. 59	5	2 (consecutive or discontinuous)	amendable
Tunisia	Arts. 89 and 90	5	2 (consecutive or discontinuous)	amendable
Uganda	Art. 105	5	2 (consecutive or discontinuous)	amendable
Zambia	Art. 106	5	2 (consecutive or discontinuous)	amendable
Zimbabwe	Sects. 91 and 95	5	2 (consecutive or discontinuous)	amendable*

* These are countries where the constitutions provide fairly elaborate and onerous procedures for amending its provisions, including the presidential term limits provisions.

With these caveats in mind, several observations can be made about the nature of provisions regulating presidential term limits in present-day African constitutions:

- Six countries – Cameroon, Djibouti, Eritrea, Gabon, The Gambia, Somalia, and South Sudan – have no presidential term-limit provisions. In Cameroon and Gabon, such provisions were removed in 2008 and 2003, respectively. It is important to note that some countries that removed term limits at some point have reinstated them, e.g., Togo and Uganda. Ethiopia and Mauritius have presidential term limits. Nevertheless, given that they are parliamentary systems executive power resides with the prime minister, who may be removed from office at any time by a vote of no-confidence in parliament. Although some parliamentary countries in other parts of the world have included term limits on the prime minister, this is not the case in Africa’s parliamentary systems, which has led to situations where prime ministers in Ethiopia and Mauritius have served more than two terms.
- Only the Republic of Congo has a three-term presidential limit, which was introduced after its two-term limit was removed opportunistically in 2015.
- The remainder of African countries have a two-term presidential limit. In some cases, as will be seen, it is not clear if the two-term limit is an absolute bar.
- There is considerable variation in the duration of presidential terms, which range from four,⁴ five,⁵ and six⁶ to seven⁷ years (See Table 1). However, the overwhelming majority have adopted a five-year presidential term.

3. The trend in compliance with presidential term limits

The major problem in Africa today has less to do with the incorporation of presidential term-limit provisions than with their enforcement. While in many cases there has been compliance with the presidential term-limit provisions, in other instances, amendments to these provisions have subverted their intended purpose

Table 2 provides an indication of the number of African presidents who have so far respected their constitutional term limits.

⁴ This applies to only three countries: Ghana, Nigeria and Somalia.

⁵ This is the case in an overwhelming majority of countries: Algeria, Angola, Benin, Botswana, Burkina Faso, Cabo Verde, Central African Republic, Comoros, Republic of Congo, the Gambia, DR Congo, Côte d’Ivoire, Djibouti, Guinea-Bissau, Kenya, Madagascar, Malawi, Mali, Mauritius, Mauritania, Mozambique, Namibia, Niger, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, South Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

⁶ The four countries that provide for this are Chad, Egypt, Guinea and Liberia.

⁷ The four countries that provide for this are Burundi, Cameroon, Equatorial Guinea and Gabon – all dictatorships.

Table 2. Presidents who have respected the presidential term limits provisions since 1990

Country	President	Year of the end of the presidential term	Observation
Benin	Mathieu Kérékou	2006 (2 terms)	Retired after serving 2 terms
	Thomas Boni Yayi	2016 (2 terms)	Retired after serving 2 terms
Botswana	Festus Mogae	2008 (2 terms)	Resigned and retired in 2008 one year before end of his second term, after serving 10 maximum years allowed by the constitution
	Seretse Khama Ian Khama	2018 (2 terms)	Resigned and retired in 2018, one year before end of his second term, after serving 10 maximum years allowed by the constitution
Cabo Verde	Antonio Mascarenhas Monteiro	2001 (2 terms)	Retired after serving 2 terms
	Pedro Pires	2011 (2 terms)	Retired after serving 2 terms
	Jorge Carlos Fonseca	2021 (2 terms)	Retired after serving 2 terms
Comoros	Azali Assoumani	2006 (1 term)	Retired after the one term limit imposed by the constitution
	Ahmed Abdallah Mohamed Sambi	2011 (1 term)	Retired after the one term limit imposed by the constitution
	Ikililou Dhoinine	2016 (1 term)	Retired after the one term limit imposed by the constitution
Ghana	Jerry Rawlings	2000 (2 terms)	Although he first came to power by coup, he was democratically elected in 1992. He thereafter retired after serving 2 terms.
	John Kufuor	2008 (2 terms)	Retired after serving 2 terms
Kenya	Daniel arap Moi	2002	President since 1978, retired after serving 2 nd term under the new dispensation.
	Mwai Kibaki	2013 (2 terms)	He retired after serving 2 terms
	Uhuru Kenyatta	2022 (2 terms)	He retired after serving 2 terms
Liberia	Ellen Johnson Sirleaf	2017 (2 terms)	She retired after serving 2 terms
Mali	Alpha Oumar Konaré	2002 (2 terms)	He retired after serving 2 terms
Mauritania	Mohamed Ould Abdel Azir	2019 (2 terms)	He was a former military leader who under the new dispensation retired after 2 terms in office
Mozambique	Joaquim Chissano	2004 (2 terms)	He retired after serving 2 terms
	Armando Guebuza	2015 (2 terms)	He retired after serving two terms
Namibia	Sam Nujoma	2005 (3 terms)	He retired after serving the third term that a special constitutional amendment has added.
	Hifikepunye Pohamba	2015 (2 terms)	He retired after serving 2 terms

Niger	Mahamadou Issoufou	2021 (2 terms)	He retired after serving 2 terms
Sao Tome and Principe	Miguel Trovoada	2001 (2 terms)	He retired after serving 2 terms
	Fradique de Menezes	2011 (2 terms)	He retired after serving 2 terms
Sierra Leone	Ahmad Tejan Kabbah	2007 (2 terms)	Elected in 1996, he was overthrown by a coup d'état in 1997. Reinstated by the ECOMOG, he was re-elected in 2002. He left power in 2007 at the end of the 2 nd term.
	Ernest Bai Koroma	2018 (2 terms)	He retired after serving 2 terms
South Africa	Thabo Mbeki	2008	Elected in 1999, he was re-elected in 2004 but was forced to resign in 2008 before the end of his 2 nd term.
	Jacob Zuma	2018	Elected in 2009 and re-elected in 2014, he was forced to resign amid corruption allegations in 2018 before the end of his 2 nd term.
Tanzania	Ali Hassan Mwinyi	1995 (2 terms)	He retired after serving 2 terms
	Benjamin Mkapa	2005 (2 terms)	He retired after serving 2 terms
	Jakaya Kikwete	2015 (2 terms)	He retired after serving 2 terms
Zambia	Frederick Chiluba	2002 (2 terms)	He retired after serving 2 terms
Total no. of countries: 17	Total no of Presidents: 33		

What Table 2, read in conjunction with Tables 3 and 4, show is that only 33 presidents of the 213 presidents (including interim presidents and presidents who died in office) who been in power since 1990, at one stage or another, have retired from office after serving their constitutionally restricted terms in office.⁸ However, it must be noted that in two cases, those of presidents Bakili Muluzi of Malawi and Olusegun Obasanjo of Nigeria, both incumbents retired only after trying unsuccessfully to amend their constitutions to prolong their stay in power. In South Africa, the second terms of presidents Thabo Mbeki and Jacob Zuma were cut short because they were recalled by their parties. Apart from such recalls, there are also cases where presidents either lost a second-term re-election bid (for example, John Dramani Mahama of Ghana, who lost re-election to President Nana Akufo-Ado, and Goodluck Jonathan of Nigeria who lost his second term re-election bid to Muhammadu Buhari), or died in office before the end of their constitutionally mandated two terms (for example, Levy Mwanawasa and Michael Sata, both of Zambia), or retired after serving only one term (for example, Nelson Mandela of South Africa) (See Table 4 below).

Table 3. Presidents who sought to tamper with presidential term limit provisions since 1990

⁸ It is important to note, as Table 4 shows, that the 213 presidents include many interim presidents as well as presidents who resigned or died in office.

Country	President	Means of overstay	Alleged reasons for not respecting the term limits	Successful / unsuccessful	Observations
Algeria	Abdelaziz Bouteflika	A November 2008 constitutional amendment removed the term limit provision.	He argued that the removal of the term limit will deepen democracy.	Successful	First elected in 1999, he was re-elected in 2004, 2009 and 2014. Popular demonstrations in 2018 discouraged him from running for a fifth term and under pressure from the army, he finally left power in April 2019. The term limits were reintroduced in the 2020 Constitution (art. 92).
Benin	Patrice Talon	An April 2017 draft constitutional amendment sought to change the presidential term to a single term of seven years.	Talon argued that this will strengthen democracy.	Unsuccessful	Parliament rejected the draft constitutional amendment
Burkina Faso	Blaise Compaoré	In January 1997 a constitutional amendment removed the two terms limits of 7 years each. An amendment of the constitution in April 2000 reintroduced the two terms limit and the 7-year term changed to a 5-year term.	No official reason was given for the 1997 change. The reintroduction of the term limit provision was due to social pressure to promote democratic alternation in power.	The 1997 and 2000 constitutional amendments were successful	President Compaoré took power in a coup in 1987. Officially elected in 1991 for 7 years, he was re-elected in 1998, and in 2005. His eligibility to contest was challenged but the Constitutional Court ruled in his favour. He was re-elected in 2010.
	Blaise Compaoré	In 2014 there was an attempted amendment to remove the term limit provision in the constitution	The argument was that Compaoré was the only one who is able to ensure political stability of the country.	Unsuccessful	Nationwide protest led to a popular insurrection. Compaoré resigned and went on exile
Burundi	Pierre Nkurunziza	A proposal to amend the Constitution was rejected by Parliament in 2014. Nevertheless, in 2015 the president decided to ignore the two terms limit and stand for re-election. The Constitutional Court validated his candidacy.	Nkurunziza argued that the two terms limit did not apply to him, because for the first term in 2005 he was elected by the Congress, not directly by universal suffrage.	Although unsuccessful in amending the constitution the dubious interpretation of the constitution by the Constitutional Court enabled Nkurunziza to stand for a third term.	The president was elected in 2005 by the Congress. He was re-elected in 2010 directly by universal suffrage. He won a third term in 2015, and left power in 2020. The 2020 constitution maintains term limits, but extends each term from five to seven years

Cameroon	Paul Biya	A 2008 constitutional amendment removed the term limits clause	The president argued that the term limits clause was undemocratic	Successful	In power since 1982, he won the 1984 election. He was re-elected in 1988, 1992, 1997, 2004, 2011 and 2018. The constitutional amendment of 2008 was very contested; riot broke out and the security forces killed more than 200 protesters.
Central African Republic	Faustin-Archange Touadéra	He proposed setting up of a new constitution drafting committee in August 2022	Touadéra is strongly suspected of having initiated this constitution drafting committee in order to run for a third term.	Unsuccessful (so far – as the President is seeking ways to force the retirement of the President of the Constitutional Court, presumably to re-table the constitutional amendment).	The project of drafting a new constitution was challenged by a coalition of civil society members, political opponents and intellectuals. The Constitutional Court invalidated the project in September 2022.
Chad	Idriss Déby	A 2005 constitutional amendment removed the term limits provisions in the constitution	The president alleged that the amendment was not meant to benefit him personally	Successful	Déby took power in a coup in 1990. He was elected in 1996, re-elected in 2001, 2006, 2011, 2016 and 2021. He died in April 2021, a few days after his fifth re-election.
Comoros	Azali Assoumani	The constitution was amended in 2018 through referendum.	The president was accused by the political opposition of amending the constitution to prolong his stay in power.	Successful	Assoumani was elected in 2002. In 2006 he left power. He was re-elected in 2016 and in 2019 he won a third term.
Côte d'Ivoire	Alassane Dramane Ouattara	Adoption of a new constitution through referendum in 2016. It sets two terms limit.	President Ouattara who had already served his two terms claimed that the new Constitution resets his term limit back to zero. The Constitutional Court validated his candidacy. Technically, he can run for a fourth term.	Successful	The political opposition jointly called for an 'active boycott' of the electoral process. There were popular demonstrations and security forces killed at least 30 protesters.

Congo-Brazzaville	Denis Sassou-Nguesso	Adoption of a new constitution in 2015 by referendum enabled him to stand for re-election for a third term.	The new constitution enabled him to stand for a third term.	Successful	President Nguesso led the country under the one-party system from 1979 to 1992. He came back to power in 1997 after the civil war. He was elected in 2002 and re-elected in 2009. In 2015, he undertook the adoption of a new constitution by referendum. Many protesters were killed by the security forces.
Democratic Republic of Congo	Joseph Kabila	In 2016, because the Constitution prevented him from running for a third term, he postponed indefinitely the presidential elections. The Constitutional Court also authorised him to stay in power until April 2018.	Kabila claimed that he could not organise elections in 2016 because of the lack of financial resources.	'Successful'	There were protests and security forces killed some protesters and the elections were eventually held in December 2018 after a two-year delay.
Djibouti	Ismail Guelleh	A 2010 constitutional amendment voted by Parliament removed the term limits provision	It was claimed that the change would foster national unity.	Successful	President Guelleh was elected in 1999. He was re-elected in 2005, 2011, 2016 and 2021 for a fifth term.
Eritrea	Isaias Afwerki	The president has never implemented the 1997 Constitution.	Absolute dictatorship; no elections.	'Successful'.	Afwerki is the president of Eritrea since 1993. He has never followed the constitution, and no election has been held
Gabon	Omar Bongo	A 2003 constitutional amendment removed the term limits provisions	No reason given for the change.	Successful	President Bongo was in power since 1967. The first competitive presidential elections were held in 1993. He was re-elected in 1998, and 2005. He died in 2009 while in power.
Guinea Conakry	Lassan Conté	A 2003 constitutional amendment removed the term limit clause	No special reason given	Successful	Conté came to power through a coup in 1984. He was elected in 1993 and re-elected in 1998. In 2003 a constitutional amendment enabled him to stand for re-election for a third term. He died in 2008. His last term was marked by coup attempts and popular protests that were brutally repressed.

	Alpha Condé	New constitution of 2020 adopted through referendum justified resetting of the term limits provision, although it maintains the term limits.	No special reason given	Successful	Alpha Condé was elected in 2010 and re-elected in 2015. At the end of his second term, a new constitution was adopted by referendum enabling him to run for a third term. Popular protests against the changes were violently suppressed, but he was deposed in a coup in 2021.
Malawi	Bakili Muluzi	Constitutional amendment initiated in 2002.	No special reason given.	Unsuccessful	Muluzi was elected in 1994 and re-elected in 1999. The constitutional amendment initiated in 2002 failed because of strong protests by civil society organizations, opposition parties and even of members of the ruling party.
Namibia	Sam Nujoma	A 1998 constitutional amendment enabled the president to stand for a third term.	His supporters claimed that Namibia had no alternative to Nujoma.	Successful	President Nujoma was elected as first president at the independence of Namibia in 1990. He was re-elected in 1994. With the 1998 constitutional amendment by the Parliament, he was re-elected in 1999 for a third term.
Niger	Mamadou Tanja	A new Constitution that removed the term limit provision was adopted in 2009.	President Tanja alleged that the third term is to 'complete some projects he had started'	Unsuccessful	Elected in 1999, re-elected in 2004. In 2009 he undertook a constitutional amendment to run for a third term. The Constitutional Court and the Parliament opposed the constitutional amendment. He dissolved the two institutions, orchestrated adoption of a new constitution via referendum, and won re-election. He was overthrown by a coup in 2010.
Nigeria	Olusegun Obasanjo	A constitutional amendment project was initiated in 2006	No special reason was given.	Unsuccessful	The president was elected in 1999 and re-elected in 2003. In 2006 he initiated a constitutional amendment. But civil society, Parliament and even members of his political party rejected it. Allegations of huge bribes given to parliamentarians to facilitate the vote of the amendment. Obasanjo left power at the end of his second term.
Rwanda	Paul Kagame	Constitutional amendment of 2015 adopted by the Parliament and	No special reason was given.	Successful	Kagame was first elected by parliament in 2000 and re-elected in 2003 and 2010. In 2015 he initiated a constitutional amendment that enabled him to

		<p>endorsed by a referendum.</p> <p>The coming into force of the amendment, which allows two term limits, is preceded by a ‘transitional presidential term of seven years (2017-2024).’</p>			stand for re-election in 2017, which he won. He has already announced his intention to run for the 2024 presidential election.
Senegal	Abdoulaye Wade	There were constitutional amendments of 2001 and 2008	President Wade argued that the term limit did not apply to him because it came into effect when he was in office and the Constitutional Council agreed with this interpretation.	Successful	Wade was elected in 2000. In 2001 he initiated a constitutional amendment to establish a five-year term. Re-elected in 2007, he re-established the seven-year term in 2008. He ran again for a third term in 2012, but was defeated by Macky Sall.
	Macky Sall	A constitutional amendment of 2016 approved in a referendum: established a five-year term.	Macky Sall was elected in 2012 for a seven-year term. He was re-elected in 2019 for five years. There is suspicion that he is considering that the 2016 constitutional amendment reset the clock and will enable him to run for a second five-year term.	Unknown	Many politicians and civil society organizations have already expressed their opposition to any eventual third term bid by Macky Sall.
South-Sudan	Salva Kiir	The constitution does not have term limit provisions. But in 2015 presidential elections were postponed. A law was passed by Parliament in July 2018 extending Salva Kiir’s term for three years.	The political crisis and civil war are the official reasons for postponing the elections.	‘Successful’	President Salva Kiir became president at independence in 2011. Presidential elections were supposed to be held in 2015, but have been postponed.

Sudan	Omar al-Bashir	Draft constitutional amendment of 2018	To enable president al-Bashir to run for a sixth term.	Unsuccessful	In power since 1989, al-Bashir was elected in 1996, and re-elected in 2000, 2011 and 2015. In 2018, he declared his intention to run for a 6 th term in the 2020 presidential elections. He planned to amend the constitution which sets the maximum number of terms at two. In 2019, in the wake of a large popular protest movement, the army deposed and arrested al-Bashir.
Togo	Gnassingbé Eyadema	A constitutional amendment of December 2002 approved by Parliament removed the term limits.	To enable Eyadema to stand for re-election in 2003.	Successful	In power since a 1967 coup, Eyadema was elected in 1972, and re-elected in 1979, 1986, 1993, 1998. He was re-elected in 2003. He died in office in 2005.
	Faure Gnassingbé	A constitutional amendment of 2019 re-established a two term limits.	To enable Faure to stand for re-election until 2025.	Successful	When the term limit was established, Faure had already spent 14 years in power. The new term limit clause applies to the 2020 elections. Faure was elected in 2020 for his first term. He can run for re-election in 2025.
Tunisia	Zine el-Abidine Ben Ali	A constitutional amendment of 2002 approved by referendum removed the term limit that has been introduced in 1998.	To enable Ben Ali to run for re-election until 2014.	Successful	Ben Ali, was ousted in 2011 after popular uprisings. The term limits were reinstated in the 2014 Constitution.
Uganda	Yoweri Museveni	A constitutional amendment of 2005 removed the term limit.	Museveni claimed that he was indispensable for Uganda's stability and prosperity	Successful	Museveni was in power since 1986. He is serving his 6 th term. The 2005 constitutional amendment was operated in a context of widespread intimidation, violence and bribery of the members of the parliament to approve the amendment. Term limits were reinstated in 2017, while age limits were removed to allow him to run again.
Zambia	Frederick Chiluba	He Attempted to amend the constitution in 2001	To enable Chiluba to run for a third term	Unsuccessful.	In spite of widespread intimidation, violence and bribery, the attempt failed because of opposition by civil society and even members of the president's party.

In contrast to Table 2, Table 3 shows that a majority of presidents sought to prolong their stay in power by tampering with or subverting the restraints imposed by presidential term limit provisions. Of these, 22 presidents in as many countries – compared to 33 presidents in 17 countries who have respected term limits - have succeeded to prolong their terms. Table 4 on the other hand shows the limited extent to which there has been alternation of power since 1990.

Table 4. African Presidents since 1990 and the extent of the alternation of power in their countries

Country	Presidents	Start and Length of stay in power	Manner of replacement
Algeria	Mohamed Boudiaf	January – June 1992 (5 months)	Interim president - assassinated
	Ali Kafi	1992 – 1994 (1 year 6 months)	Interim president
	Liamine Zéroual	1994-1999 (5 years)	Resignation
	Abdelaziz Bouteflika	1999 – 2019 (19 years)	Resignation – provoked by popular protests
	Abdelmadjid Tebboune	December 2019 - ...	Current President
Angola	José Eduardo dos Santos	1979 – 2017 (38 years)	Elections after he stepped down and nominated a successor
	Joao Lourenço	2017 - ...	Current president
Benin	Nicéphore Soglo	1991 – 1996 (5 years)	Elections
	Mathieu Kérékou	1996 – 2006 (10 years) (Before: 1980 – 1991 (11 years))	Term limits
	Thomas Yayi Boni	2006 – 2016 (10 years)	Term limits
	Patrice Talon	2016 - ...	Current president
Botswana	Ketumile Masire	1980 – 1998 (17 years)	Resignation
	Festus Mogae	1998 -2008 (9 years 11 months)	Resignation because of ten-year term limit
	Seretse Khama Ian Khama	2008 – 2018 (9 years 11 months)	Resignation because of ten-year term limit
	Mokgweetsi Masisi	2018 - ...	Current president
Burkina Faso	Blaise Compaoré	1987 – 2014 (27 years)	Popular insurrection and (soft) coup d'état
	Isaac Zida	1st - 21 November 2014 (20 days)	Interim president
	Michel Kafando	2014 – 2015 (1 year)	President of the transition
	Roch Marc Christian Kaboré	2015 – 2022 (6 years)	Military coup d'état
	Paul-Henri Damiba	31 January - 30 September 2022 (7 months as president of the transition)	Military coup d'état
	Ibrahim Traoré	30 September 2022 -	Coup leader and current president (interim president)

Burundi	Melchior Ndadaye	July – October 1993 (3 months)	Military coup d'état
	Cyprien Ntaryamira	February – April 1994 (2 months)	Death by assassination (in the same flight with president Habyarimana of Rwanda)
	Sylvestre Ntibantunganya	1994 – 1996 (2 years)	Interim president overthrown by military coup d'état
	Pierre Buyoya	1996 – 2003 (6 years)	Left the power according to the Arusha agreements
	Domitien Ndayizeye	2003 – 2005 (2 years, 3 months)	Elections
	Pierre Nkurunziza	2005 -2020 (14 years, 9 months)	Elections. Stepped down after third term.
	Evariste Ndayishimiye	2020 - ...	Current president
Cabo Verde	Antonio Mascarenhas Monteiro	1991 – 2001 (10 years)	Term limits
	Pedro Pires	2001 – 2011 (10 years)	Term limits
	Jorges Carlos Fonseca	2011 – 2021 (10 years)	Term limits
	José Maria Neves	2021 - ...	Current president
Cameroon	Paul Biya	1982 – ... (40 years)	Current president
Central African Republic (CAR)	André Kolingba	1981 – 1993 (12 years)	Elections
	Ange-Félix Patassé	1993 – 2003 (9 years)	Military coup d'état
	François Bozizé	2003 – 2013 (10 years)	Military coup d'état
	Michel Djotodia	2013 – 2014 (9 months)	Coup leader and President of transition
	Alexandre-Ferdinand N'Guendet	10 – 23 January 2014 (less than a month)	Interim president
	Catherine Samba-Panza	2014 – 2016 (2 years)	President of transition and elections
	Faustin-Archange Touadéra	2016 - ...	Current president
Chad	Idriss Déby Itno	1990 – 2021 (30 years, 4 months)	Death
	Mahamat Idriss Déby	April 2021 - ...	Current president of transition
Comoros	Said Mohamed Djohar	1989 – 1996 (6 years)	Elections
	Mohamed Taki Abdoukarim	1996 -1998 (2 years)	Death
	Tadjidine Ben Saïd Massoude	November 1998 – April 1999 (5 months)	Interim President and Military coup d'état
	Azali Assoumani	1999 – 2002 (2 years)	President of transition
	Hamadi Madi Boléro	January – May 2002 (4 months)	Interim President and Elections
	Azali Assoumani	2002 -2006 (5 years)	Term limits

	Ahmed Abdallah Mohamed Sambi	2006 – 2011 (5 years)	Term limits
	Ikililou Dhoinine	2011 – 2016 (5 years)	Term limits
	Azali Assoumani	2016 – ...	Current president
Congo (Republic of Congo)	Pascal Lissouba	1992 – 1997 (5 years)	Military coup d'état
	Denis Sassou-Nguesso	1997 - ... (24 years)	Current president
Congo (Democratic Republic)	Laurent-Désiré Kabila	1997 – 2001 (3 years)	Assassination
	Joseph Kabila Kabange	2001 – 2019 (18 years)	Term limits
	Félix Tshisekedi	2019 - ...	Current President
Cote d'Ivoire	Henri Konan Bédié	1993 – 1999 (6 years)	Military coup d'état
	Robert Guéi	December 1999 – October 2000 (10 months)	Interim president and Elections
	Laurent Gbagbo	2000 – 2011 (10 years)	Elections. Refused to step down after losing, and was forced to leave power
	Alassane Ouattara	2011 - ... (11 years)	Current President
Djibouti	Hassan Gouled Aptidon	1977 – 1999 (21 years)	Elections after he stepped down and nominated a successor
	Ismail Omar Guelleh	1999 - ... (23 years)	Current President
Egypt	Hosni Mubarak	1981 – 2011 (29 years)	Ousted by popular insurrection
	Mohamed Hussein Tantawi	February 2011 – June 2012 (1 year, 4 months)	Interim President
	Mohamed Morsi	2012 – 2013 (1 year)	Military coup d'état
	Adli Mansour	July 2013 – June 2014 (11 months)	Interim President
	Abdel Fattah al-Sissi	2014 - ... (8 years)	Current President
Equatorial Guinea	Teodoro Obiang Nguema Mbasogo	1979 - ... (43 years)	Current President
Eritrea	Isaias Afwerki	1993 - ... (28 years)	Current president
Eswatini	Monarchy	Monarchy	Monarchy
Ethiopia	Parliamentary system with a Prime Minister	Parliamentary system with a Prime Minister	Parliamentary system with a Prime Minister
Gabon	Omar Bongo	1967 – 2009 (41 years)	Death
	Rose Rogombé	June – October 2009 (4 months)	Interim President
	Ali Bongo	2009 - ... (12 years)	Current President
Gambia	Yahya Jammeh	1994 – 2017 (22 years)	Elections and forced to leave power after refusing to concede defeat

	Adama Barrow	2017 - ... (5 years)	Current President
Ghana	Jerry Rawlings	1981 – 2001 (19 years)	Term limits
	John Kufuor	2001 – 2009 (8 years)	Term limits
	John Atta Mills	2009 – 2012 (3 years)	Death
	John Dramani Mahama	2012 – 2017 (4 years)	Elections
	Nana Akufo-Addo	2017 - ... (5 years)	Current President
Guinea-Bissau	João Bernardo Vieira	1984 – 1999 (14 years, 11 months)	Civil War and Military coup d'état
	Ansumane Mané	7 – 14 May 1999 (7 days)	Left power to an interim president
	Malam Bacai Sanhá	May 1999 – February 2000 (9 months)	Interim president
	Kumba Ialá	2000 – 2003 (3 years)	Military coup d'état
	Verissimo Correia Seabra	14 – 28 September 2003 (14 days)	Left power to a president of transition
	Henrique Rosa	2003 – 2005 (2 years)	President of transition and Elections
	João Bernardo Vieira	2005 – 2009 (3 years)	Assassination
	Raimundo Pereira	Mars – September 2009 (6 months)	Elections
	Malam Bacai Sanhá	2009 – 2012 (2 years)	Death
	Raimundo Pereira	January – April 2012 (3 months)	Military coup d'état
	Mamadu Ture Kuruma	April – May 2012 (29 days)	Left power to a president of transition
	Manuel Serifo Nhamadjo	2012 – 2014 (2 years)	Elections
	José Mário Vaz	2014 – 2020 (5 years)	Elections
	Umaro Sissoco Embalo	2020 - ... 2 years	Current President
Guinea-Conakry	Lansana Conté	1984 – 2008 (24 years)	Natural Death / Military coup d'état
	Moussa Dadis Camara	2008 – 2010 (1 year)	Tentative of assassination and Exile
	Sékouba Konaté	January – December 2010 (11 months)	Interim President and Elections
	Alpha Condé	2010 – 2021 (10 years, 8 months)	Military coup d'état
	Mamadi Doumbouya	September 2021 - ... (1 year)	Current transition president
Kenya	Daniel arap Moi	1978 – 2002 (24 years)	Term limits
	Mwai Kibaki	2002 – 2013 (10 years)	Term limits
	Uhuru Kenyatta	2013 – 2022 (10 years)	Term limits
	William Ruto	2022 - ...	Current Present
Lesotho	Monarchy	Monarchy	Monarchy
Liberia	Charles Taylor	1997 – 2003 (6 years)	Forced resignation
	Moses Blah	August - October 2003 (2 months)	Interim President

	Gyude Bryant	2003 – 2006 (2 years)	President of transition and Elections
	Ellen Johnson Sirleaf	2006 -2018 (12 years)	Term limits
	George Weah	2018 - ... (4 years)	Current President
Libya	Mouammar Gadhafi	1969 – 2011 (41 years)	Popular insurrection and assassination
Madagascar	Albert Zafy	1993 – 1996 (3 years)	Impeached by Parliament
	Norbert Ratsirahonana	September 1996 – February 1997 (5 months)	Interim President and Elections
	Didier Ratsiraka	1997 – 2002 (5 years)	Highly contested elections and forced to leave power
	Marc Ravalomanana	2002 -2009 (7 years)	Protests and (soft) coup d'état
	Andry Rajoelina	2009 – 2014 (4 years, 10 months)	President of transition and stepped down because of African Union and SADC pressure
	Henry Rajaonarimampianina	2014 – 2018 (4 years)	Elections
	Andry Rajoelina	2019 - ... (3 years)	Current President
Malawi	Bakili Muluzi	1994 – 2004 (10 years)	Term limits
	Bingu wa Mutharika	2004 – 2012 (7 years 10 months)	Death
	Joyce Banda	2012 – 2014 (2 years)	Interim President and Elections
	Peter Mutharika	2014 – 2020 (6 years)	Elections
	Lazarus Chakwera	2020 - ... (2 years)	Current President
Mali	Amadou Toumani Touré	1991 – 1992 (1 year)	Interim President and Elections
	Alpha Oumar Konaré	1992 – 2002 (10 years)	Term limits
	Amadou Toumani Touré	2002 – 2012 (9 years)	Military coup d'état
	Amadou Haya Sanogo	February – August 2013 (6 months)	Agreement with ECOWAS
	Dioncounda Traoré	2012 – 2013 (1 year)	Interim President and Elections
	Ibrahim Boubacar Keïta	2013 – 2020 (6 years 11 months)	Military coup d'état
	Assimi Goïta	August – September 2020 (1 month)	President <i>de facto</i>
	Bah N'Daw	September 2020 – May 2021 (7 months)	President of transition and (soft) coup d'état
	Assimi Goïta	May 2021 - ... (1 year)	Current President of transition
Mauritania	Maaouiya Ould Sid'Ahmed Taya	1985 – 2005 (20 years)	Military coup d'état
	Ely Ould Mohamed Vall	2005 – 2007 (1 year, 8 months)	Elections
	Sidi Mohamed Ould Cheikh	2007 – 2008 (1 year)	Military coup d'état
	Mohamed Ould Abdel Aziz	2008 – 2009 (8 months)	Left power to an interim president and run for the next elections

	Ba Mamadou M'Baré	April – August 2009 (3 months)	Interim president and elections
	Mohamed Ould Abdel Azii	2009 – 2019 (9 years, 11 months)	Term limits
	Mohamed Ould Ghazouani	2019 - ... (3 years)	Current President
Morocco	Monarchy	Monarchy	Monarchy
Mozambique	Joaquim Chissano	1986 – 2005 (18 years)	Term limits
	Armando Guebuza	2005 – 2015 (10 years)	Term limits
	Filipe Nyusi	2015 - ... (7 months)	Current President
Namibia	Sam Nujoma	1990 – 2005 (15 years)	Term limits
	Hifikepunye Pohamba	2005 -2015 (10 years)	Term limits
	Hage Geingob	2015 - ... (7 years)	Current President
Niger	Mahamane Ousmane	1993 – 1996 (2 years, 9 months)	Military coup d'état
	Ibrahim Baré Maïnassara	1996 – 1999 (3 years)	Military coup d'état
	Daouda Malam Wanké	April – December 1999 (8 months)	Elections
	Mamadou Tandja	1999 – 2010 (10 years)	Military coup d'état
	Salou Djibo	2010 – 2011 (1 year)	Elections
	Mahamadou Issoufou	2011 – 2021 (10 years)	Term limits
	Mohamed Bazoum	2021 - ... (1 year)	Current President
Nigeria	Sani Abacha	1993 – 1998 (4 years)	Death
	Abdulsalami Abubakar	June 1998 – May 1999 (11 months)	Elections
	Olusegun Obasanjo	1999 – 2007 (8 years)	Term limits
	Umaru Yar'Adua	2007 – 2010 (2 years, 11 months)	Death
	Goodluck Jonathan	2010 – 2015 (5 years)	Elections
	Muhammadu Buhari	2015 - ... (7 years)	Current President
Rwanda	Pasteur Bizimungu	1994 – 2000 (5 years)	Interim President and Resignation
	Paul Kagame	2000 - ... (22 years)	Current President
Sao Tome and Principe	Miguel Trovoada	1991 – 2001 (10 years)	Term limits
	Fradique de Menezes	2001 – 2011 (10 years)	Term limits
	Manuel Pinto da Costa	2011 – 2016 (5 years)	Elections
	Evaristo Carvalho	2016 – 2021 (5 years)	Elections
	Carlos Vila Nova	2021 - ... (1 year)	Current President
Senegal	Abdou Diouf	1981 – 2000 (19 years)	Elections
	Abdoulaye Wade	2000 – 2012 (12 years)	Elections

	Macky Sall	2012 - ... (10 years)	Current President
Seychelles	France-Albert René	1977 – 2004 (26 years, 10 months)	Resignation
	James Michel	2004 – 2016 (12 months)	Resignation
	Danny Faure	2016 – 2020 (4 years)	Elections
	Wavel Ramkalawan	2020 - ... (2 years)	Current President
Sierra Leone	Joseph Saidu Momoh	1985 – 1992 (6 years)	Military coup d'état
	Valentine Strasser	1992 – 1996 (3 years)	Military coup d'état
	Julius Maada Bio	January – March 1996 (2 months)	Interim president and Elections
	Ahmad Tejan Kabbah	1996 – 2007 (11 years)	Term limits
	Ernest Bai Koroma	2007 – 2018 (10 years)	Term limits
	Julius Maada Bio	2018 - ... (4 years)	Current President
Somalia	Abdiqasim Salad Hassan	2000 – 2004 (4 years)	President of transition
	Abdullahi Yusuf Ahmed	2004 – 2008 (4 years)	President of transition
	Adan Mohamed Nuur Madobe	December 2008 – January 2009 (1 month)	Interim President
	Sharif Sheikh Ahmed	2009 – 2012 (3 years)	Elections
	Hassan Sheikh Mohamoud	2012 – 2017 (4 years)	Elections
	Mohamed Abdullahi Mohamed	2017 – 2022 (5 years)	Elections
	Hassan Sheikh Mohamoud	2022 - ...	Current President
South Africa	Nelson Mandela	1994 – 1999 (5 years)	Stepped down after serving one term
	Thabo Mbeki	1999 – 2008 (9 years)	Resignation
	Kgalema Motlanthe	September 2008 – May 2009 (7 months)	Interim President and Elections
	Jacob Zuma	2009 – 2018 (8 years)	Resignation
	Cyril Ramaphosa	2018 - ... (4 years)	Current President
South Sudan	Salva Kiir	2011 - ...	Current President
Sudan	Omar Hassan al-Bashir	1989 – 2019 (29 years)	Popular insurrection and Military coup d'état
	Abdel Fattah al-Burhan	2019 - ... (3 years)	President of transition
Tanzania	Benjamin Mkapa	1995 – 2005 (10 years)	Term limits
	Jakaya Kikwete	2005 – 2015 (10 years)	Term limits
	John Magufuli	2015 – 2021 (5 years)	Death
	Samia Suluhu	2021 - ... (1 year)	Current President

Togo	Gnassingbé Eyadéma	1967 – 2005 (37 years)	Death
	Faure Gnassingbé	2005 - ... (17 years)	Current President
Tunisia	Zine el-Abidine Ben Ali	1987 – 2011 (23 years)	Ousted by popular insurrection
	Fouad Mebazaa	January – December 2011 (10 months)	Interim President
	Moncef Marzouki	2011 – 2014 (3 years)	Elections
	Béji Caïd Essebsi	2014 – 2019 (4 years)	Death
	Mohamed Ennaceur	July – October 2019 (3 months)	Interim President and Elections
	Kaïs Saïed	2019 - ... (2 years)	Current President
Uganda	Yoweri Museveni	1986 - ... (36 years)	Current President
Zambia	Frederick Chiluba	1991 – 2002 (10 years)	Term limits
	Levy Mwanawasa	2002 – 2008 (6 years)	Death
	Rupiah Banda	2008 – 2011 (3 years)	Elections
	Michael Sata	2011 – 2014 (3 years)	Death
	Guy Scott	October 2014 – January 2015 (3 months)	Interim President and Elections
	Edgar Lungu	2015 – 2021 (6 years)	Elections
	Hakainde Hichilema	2021 - ... (1 year)	Current President
Zimbabwe	Robert Mugabe	1987 – 2017 (29 years)	Soft Military coup d'état and resignation
	Emmerson Mnangagwa	2017 - ... (4 years)	Current President

Incumbents have circumvented term-limit provisions in at least four main ways:

- First, there is a group of countries where the constitution was amended through parliament and senate or only the former. Such was the case with the constitutional amendments in Cameroon (2008), Gabon (2003), Djibouti (2010) and Namibia (1999).
- In a second group of countries, this was done either through the amendment of the constitution or the introduction of a new constitution followed by an approval at a referendum. Examples of this approach took place in Burkina Faso (1997), Chad (2005), Guinea (2001 and 2020), Niger (2009), Rwanda (2015) and Uganda (2005).
- A third method has been to use the courts to legalise or facilitate the circumvention of presidential term limits. Such was the case in Burundi (2015), Côte d'Ivoire (2020), the DR Congo (2016), Republic of Congo (2015) and Senegal (2012).
- A fourth approach is that used in Eritrea, where President Isaias Afwerki has never bothered to implement, or even pretend to follow, the country's 1997 constitution.

An examination of the nature of amendments made to the presidential term-limit provisions since 1990 reveals five main trends.⁹

- First, some of the amendments led to the formal extension of the presidential term from five to six years (Burundi [2018] and Chad [2018]) and five to seven years (Gabon [2003], and Rwanda [2016]); in other instances, there was an informal ad hoc extension, as in DR Congo (2016) and South Sudan (2015 and 2018).
- In a second group of countries, amendments served to increase the number of presidential terms. In the Comoros (2018), it increased from one to two presidential terms, whilst the Republic of Congo (2015) increased the number from two to three.
- Thirdly, in a number of countries where incumbents had reached, or were about to reach, the end of their constitutionally mandated term, the effect of the constitutional amendment was to reset the presidential term-limit clock and start anew uninhibited by the previous constitutional term limits. Whilst the new 2016 Constitution of Zambia in article 106(6)(b) failed to achieve this goal for former President Edgar Lungu, given that he lost the 2021 presidential elections,¹⁰ the effect of new constitutions, or of the constitutional amendments in Zimbabwe (2013), the Republic of Congo (2015), and Rwanda (2015), has been to reset the clock.
- The fourth category of countries are those where the presidential term limits were removed entirely from the constitution. This happened in Algeria (2008), Cameroon (2008) – which also increased each term from five to seven years, Chad (2005), Gabon (2003), Djibouti (2009), Guinea (2001), Niger (2009), Togo (2002), Tunisia (2002) and Uganda (2005). As we shall see, in certain of these countries the provisions were reinstated, sometimes opportunistically.
- An important category consists of those instances where the effect of the changes was to introduce or strengthen presidential term limits. For example, after they had become the norm, presidential term limits were introduced fairly late in the day in countries such as Côte d’Ivoire (2000), Egypt (2014), Equatorial Guinea (2011), DR Congo (2006) and Senegal (2001). However, it is worth noting that they were introduced in Equatorial Guinea two years after the re-election of the incumbent and were designed to apply only when he began a new mandate. This mandate took effect in 2016 and extends until 2023, enabling him to stand for a second term that would run from 2023 to 2030. Presidential term limits were re-introduced in Algeria (2016), Burkina Faso (2000), Chad (2018), Niger (2010) and Uganda (2017).
- Presidential term limits were slightly enhanced when the terms were shortened from seven to five years in Burkina Faso (2000), Côte d’Ivoire (2000), DR Congo (2006), Senegal (2001 and 2016) and Rwanda (2015); from six to five years in Central African Republic (2004), Mauritania (2006) and Zimbabwe (2013); and from six to four years in the Comoros (2001) and Egypt (2014). In Madagascar (2010) and Seychelles (2016), constitutional changes resulted in a reduction of the number of terms a person may serve from three to two.

⁹ See also Micha Wiebusch and Christina Murray, ‘Presidential term limits and the African Union’, (2019) 63 *Journal of African Law* 131-160.

¹⁰ Drafted under the influence of President Lungu, the new constitution was explicitly designed to change the definition of ‘presidential term’ in a manner which would ensure that Lungu qualified to contest the 2021 presidential elections, notwithstanding that, at that point, he had already served two terms and was eight months into what was technically his third term.

- In a few constitutions, the changes to the presidential term limits provisions tightened them and removed ambiguity, especially as to whether the restriction applies only to consecutive terms. Examples of such clear and unambiguous formulations appear in the constitutions of Algeria (2020), Benin (2019), Botswana (2016), Guinea-Bissau (1996), Niger (2017), Tanzania (2005), Tunisia (2014) and Zimbabwe (2017).

Although Tables 2 and 3 show that there is a marked increase in the number of African leaders who have left office due to term limits or electoral loss, rather than through coups, assassinations or other involuntary means, the record of compliance with presidential term limits is nonetheless far from positive.¹¹ There is still a high degree of non-compliance. What could explain non-compliance with presidential term-limit provisions?

From the prodigious literature on presidential term limits in Africa (See Annex 2), the main causes of this evasion can be summarised as follows:

- the intoxicating effect that excessive concentration of powers has on presidents;
- weak foundations for multipartyism and limited checks and balances;
- sloppy craftsmanship of constitutional presidential term-limit provisions; and
- lack of strong external support from the international community.¹²

The first serious problem is that African leaders are not only deified but often given, or allowed to arrogate to themselves, imperial powers, which they abuse regularly with impunity. The excessive concentration of powers in the president, combined with few effective checks against abuse, elevates him into an untouchable 'Big Man' whose party often controls parliament and thus places it under his control. His wide powers of appointment in both the public and semi-public sector, along with his total control of the country's resources, enable him to dispense patronage amongst his supporters. The non-political public service is in most countries a thing of the past, if it ever existed: presidential authority typically includes the power to appoint and dismiss public servants almost at will, as well as the power to create and abolish new offices if and when needed in order to reward supporters or sanction opponents. This also means that the president has thousands of people whose access to power and resources depend on him continuing, increasing the stakes of respecting term limits. Close allies therefore seek to strengthen and/or generate the delusion of grandeur and irreplaceability in the president, exacerbating the corruption and addictive influence of power.

Such excessive concentration of powers under modern African constitutions has merely transformed the hard-core hegemonic authoritarianism of the past into a soft-core authoritarianism cloaked with the veneer of legitimacy provided by routine sham elections with forgone conclusions. State employees now feel beholden to the incumbent rather than to the state and its institutions, and thus have no hesitation in adopting or

¹¹ Many other studies have come to a similar conclusion. For instance, see Rosalind Dixon and David Landau, 'Constitutional end games: Making presidential term limits stick', 71 *Hastings Law Journal* (2020), pp.359-418.

¹² These are discussed in Charles M. Fombad, 'Presidential term limits through constitutional amendments in Africa: Deconstructing legitimacy', in Grant Masterson and Melanie Meirotti (eds.), *Checks and balances: African constitutions and democracy in the 21st Century* (EISA 2017) 45-58.

supporting measures that would perpetuate a status quo in the survival of which they have a deeply personal stake.

It is therefore probably wishful thinking to expect politicians exposed to such powers and splendour to relinquish power voluntarily. No modern African leader better illustrates the intoxicating effect of absolute power on African leaders than President Museveni of Uganda. In 1986, shortly after he came to power, he declared that ‘no African head of state should be in power for more than 10 years.’ He reiterated this in his book, *What is Africa’s Problem?*, maintaining that the longer a president stays in office, the harder it is to remove him in a democratic manner.¹³ It is the same Museveni – a person who had no moral compunction in retorting to Obama’s appeal address to AU leaders in Addis Ababa in July 2015 by declaring that ‘nobody should be president for life’ – who went on to say, ‘For us in Uganda, we rejected this business of term limits. If I am in power because I am voted by the people, then I am there by the will of the people.’¹⁴

What was it that transformed a leader who rejected prolonged stays in power because he believed that incumbents should periodically be democratically removed into one who now holds that the ballot box, and not the term limit, is the answer? One simple answer lies in a combination of the indolence of the people and the dangerously addictive opium of absolute power. It is not only Museveni who was easily and quickly morphed into a repressive dictator; others who initially brandished their democratic credentials for all to see – such as Olusegun Obasanjo of Nigeria, Abdoulaye Wade of Senegal, and even South Africa’s Thabo Mbeki – engaged in escapades of their own to extend their presidential term-limits but failed.¹⁵

A second factor contributing to the disregard of presidential term-limit provisions is the sloppy manner in which some African constitutions have been drafted. Whilst many are well drafted,¹⁶ there are numerous examples of loosely worded provisions (see Annex 1). For example, some provisions are worded in such a way that it is not clear whether the specified two terms exclude the possibility of the incumbent’s contesting future elections after the term for which he is disqualified has ended.¹⁷ Incumbents have used malleable courts to creatively interpret legal ambiguities and constitutional loopholes to rule in their favour. President Nkurunziza’s third bid was made possible thanks to two potentially contradictory provisions in the 2005 Burundi Constitution, namely articles 96 and 302. This made it easy for him to intimidate the Constitutional Court into adopting an interpretation of the constitution favouring his position.¹⁸

¹³ See Yoweri Museveni, *What is Africa’s problem?* Minneapolis, University of Minnesota Press (2002).

¹⁴ See Vanguard, ‘Term limits: Africans not backward, Museveni replies [to] Obama’, <https://www.vanguardngr.com/2015/08/term-limits-africa-not-backward-museveni-replies-obama/>

¹⁵ It can be argued that Thabo Mbeki, when he fought to win a third term as the African National Congress (ANC) president at the party’s Polokwane congress of 2007, was seeking a third term because had he won, he would have automatically become the ANC’s presidential candidate. However, he would have had to overcome the two-term tenure limit in the South African Constitution and the two-thirds majority needed to amend the Constitution.

¹⁶ See, for example, the constitutions of Algeria, Benin, Botswana, Guinea-Bissau, Sierra Leone, Tanzania and Zimbabwe.

¹⁷ See the constitutions of Angola, Burundi, Egypt, Gambia and Senegal.

¹⁸ See ‘Senior judge flees rather than approve president’s candidacy’, <http://www.theguardian.com/world/2015/may/05/senior-burundi-judge-flees-rather-than-approve-presidents-candidacy>. It was widely reported that Judge Sylvere Nimpagaritse, the vice president of the Burundi Constitutional Court who refused to sign the judgement which he declared illegal, fled from the country. He said that the court’s judges had come under ‘enormous pressure and even death threats.’

A similarly clumsy formulation of the Senegalese Constitution of 2001 and the Burkina Faso Constitution of 2005 made it easy for President Abdoulaye Wade and Blaise Compaore, respectively, with the complicity of their constitutional courts, to attempt a third-term bid. Whilst Wade was, surprisingly for an African incumbent who had served two terms, thwarted by the voters at the polls, Blaise Compaore had an easy and more predictable victory. In Niger, a puppet constitutional court appointed by President Tandja in 2010 easily ratified the constitutional amendment which had been approved in a sham referendum.

Another example of obscure language that could be abused by an incumbent is the wording of the provisions stating that a term begins with inauguration and ends with the inauguration of the new president.¹⁹ For example, in DR Congo, President Joseph Kabila exploited loose wording in the 2005 Constitution, which allowed him to stay in power until his successor was elected, to delay elections for as long as possible. Some constitutional drafters have thought that the best way to protect term-limit provisions is to declare them unamendable (see the Constitutions of Algeria, Central African Republic, DR Congo, Madagascar, Niger and Senegal), but the constitutional courts in, for instance, the Republic of Congo (2015), and Guinea (2020) ignored this, ostensibly on grounds that existing limits on amendments do not apply to the making of new constitutions.

The requirement of specially weighted parliamentary majorities or referenda have not been sufficient to protect the removal of term limits by determined presidents. A sham referendum in the Republic of Congo in 2015, with a voter turnout of 5 per cent, shows that referenda, like election, can be manipulated easily by incumbents, and highlights how illusory such supposedly unamendable provisions are. By contrast, a strict interpretation by the Malawi High Court of ‘consecutive terms’ frustrated Bakili Muluzi’s third-term bid.

The fragility of presidential term-limit provisions also speaks eloquently to the weak multiparty foundation of modern African constitutions. Post-1990 constitution-drafters were naïve to assume that multiparty democracy, of which presidential-term limitation provisions are an important component, would flourish simply by dint of recognition of multipartyism. The rapid removal of term-limit provisions is a predictable result of the shallow foundations on which most African multiparty democracies are built. All too often, political parties on the continent are too weak, fragmented and self-serving to exert effective pressure on presidents to leave office. In most cases, members of the majority or dominant parties encourage presidents to stay in power as a means for them to retain their parliamentary seats or appointed positions.

Beyond the recognition of the right to form parties and participate in elections, certain fundamental political rights that are critical in a modern multiparty democracy are hardly recognised. The failure to constitutionally entrench the rights of all political parties in a manner which ensures them a level playing field, protects them from intimidation, and confers on them an enforceable right to free and fair elections has had numerous consequences. The control of the legislature by the executive in almost all African countries has effectively neutralised any checks and balances that could have been exercised by the legislature to prevent term-prolongation manoeuvres by presidents. In other words, the ability of the legislature in many countries to

¹⁹ See the constitutions of Angola, Cabo Verde, Central African Republic, Malawi, Republic of Congo, Togo, Tunisia and Uganda. Other examples of obscure wording can be seen in the constitutions of Equatorial Guinea and South Africa.

check against any actual or potential manipulation of the constitution by incumbents is almost nil because the presidents, through their dominant parties, are in control.

As the tables above show, parliamentarians (with rare exceptions such as what happened in Burundi 2014, Malawi in 2007, Nigeria in 2006 and Zambia in 2001) easily approved laws removing term limits. The progressive repeal of term limits has gone hand in hand with the increasing neutralisation of opposition parties and the undermining of the emergence of potentially credible leaders. Any serious political parties or leaders are either neutralised or co-opted into ruling parties through coalitions in which they share the spoils of power.

Finally, as explained below in section 7, at both a continental and global level there has been a lack of firm and decisive action to discourage African presidents from subverting the constitutional term limits provisions.

4. Arguments for and against presidential term limits

In spite of its long history, many African presidents and even some academics have questioned the legality, legitimacy and effectiveness of constitutionalising presidential term limits as a means of promoting and deepening democracy, constitutionalism and respect for the rule of law in Africa. There is thus a need to consider some of the major arguments for and against term limits.

4.1 Arguments in favour of presidential term limits

The first and probably most important argument in favour of term limits is that they enhance the prospects for democracy by ending the ‘presidents-for-life’ syndrome that had done nothing but uphold incompetent and repressive leaders and dynasties in Africa. According to this argument, term limits facilitate alternation of power at specified periods and prevent the high risk of one person’s accumulating power for a prolonged period. Prolonged stays in power with little prospect of their removal led many African leaders to lose touch with the grassroots and become corrupt, repressive and inefficient, a situation necessitating their forcible removal through coups.

The absence of any prospect of alternation of power led many African presidents to delude themselves about their self-worth, indispensability and irreplaceability, a self-delusion that grew the longer they stayed in power. For example, leaders such as Museveni of Uganda, Obasanjo of Nigeria, and Sam Nujoma of Namibia justified their efforts to manipulate presidential term limits provisions so as to prolong their stay in power by referring to their exceptional abilities and the need for them to complete their messianic missions.²⁰ However, impermanency in high office is a fundamental democratic principle. The regular alternation of power reduces the risk of accumulation and personalisation of power – a state of affairs that often leads to authoritarian rule.

Secondly, presidential term limits have the capacity to protect democracy and democratic institutions by reducing the advantages that an incumbent possesses in democratic elections and the risks of individual personal rule. This is because incumbents have greater access to state resources than non-incumbents, enjoy the support of the media and interest groups, control key democracy-enhancing institutions such as the election management body and the courts, and are able to rely on clientelist or patronage networks to ensure

²⁰ See further Charles M Fombad and Nathaniel Inegbedion, ‘Presidential term limits and their impact on constitutionalism in Africa’, in Charles M Fombad and Christina Murray (eds.), *Fostering constitutionalism in Africa* (PULP 2010)15-18.

their re-election.²¹ The longer the incumbent stays in power, the more entrenched these advantages become and the more difficult it is to have a free and fair election fought on a level playing field. It is therefore no surprise, as the tables above show and several other studies confirm, that the rate of incumbent re-election in Africa is very high. In other words, the longest serving presidents in Africa, based both on incumbency advantages, particularly the manner in which they have used this to manipulate the presidential term limits provisions are almost guaranteed re-election every time (See Table 3). A large body of scholarly evidence not only underscores the impact of incumbency advantage, but also indicates that this has been increasing over time.²²

Thirdly, term limits reduce the barriers of entry into politics, facilitate the process of developing a culture of political competition and tolerance for opponents, and thus enhance the prospects for political development and consolidation. They result in greater numbers of people being attracted into contests for office. Improved competition in the political market also improves the prospects for greater choice and satisfaction. By contrast, the absence of a clear mechanism that can ensure peaceful and orderly alternation of power and give others an opportunity to serve their country may breed frustration and force ambitious politicians, both within the ruling and opposition parties, to resort to violent or corrupt means to achieve their objectives.

Fourthly, presidential term limits provide the most effective and legitimate means to deal with one of the most intractable problems to have inhibited Africa's development and progress: bad leadership. On the one hand, term limits provide enough time for exceptional leaders to make their mark and create a solid foundation on which others can build; on the other, they guarantee the replacement of a bad leader. The sustainability of constitutional governance and democracy will thus depend not on the chance that a good leader is elected to office but rather the existence of an effective and entrenched constitutional mechanism for changing a leader.

Finally, presidential term limits are important for African countries given the continent's weak and fragile constitutional and democratic roots. In particular, the absence of a long culture, history and tradition of competitive politics has been aggravated by a history of conferring extensive powers on presidents or allowing them to arrogate such powers to themselves and use these to weaken key institutions that provide checks and balances, such as the judiciary and legislature, in order to perpetuate their rule. A government's introduction of presidential term limits provides a strong indication of its commitment to promoting democracy, good governance and respect for the rule of law by increasing the likelihood of alternation in power. Gracefully accepting defeat and giving up power, or giving up power at the end of a specified term, instils confidence amongst political actors that the rules of the game are respected by everyone and provides a solid foundation for making democracy the only game in town.

4.2 Arguments against presidential term limits

Opponents of presidential term limits, including the many African presidents who have removed these limits from their constitutions, have raised various counterarguments.

²¹ Acting out of self-interest, such networks of clientelist and patronage partnerships facilitated the growth of African dynasties.

²² For discussion of undue incumbent advantage, see Alexander Tabarrok, 'A survey, critique, and new defense of term limits', (1994) 14(2) *Cato Journal* 333-350. Rosalind Dixon and David Landau, (note 11) 365-369. See also Daniel Vencovsky, 'Presidential term limits in Africa', (2007) *Conflict Trends* 15-21.

One of the main objections to presidential term limits is that they undermine democracy by depriving the country of the benefit of experienced persons and voters of the opportunity to re-elect preferred leaders. Popular elections and referenda, it is argued, are better than term limits because they are an ideal means by which to choose leaders or replace incompetent leaders.²³

The reality, however, is that the quality of most African elections and referenda is poor. In most cases, especially when they concern presidents or the removal of presidential term limits, they are organised by powerful entrenched incumbents who manipulate the process to ensure that the outcome favours them. This is particularly so where the presidential term-limit provision is weakly entrenched and, as such, can easily be amended. For example, in several cases, presidential term limits have been removed or amended using procedures similar to those used in replacing or adopting ordinary legislation.²⁴

Secondly, it is argued that frequent changes of leaders can have a negative impact on the quality and continuity of a country's policies and bring about political instability. However, there is no empirical evidence to support such an argument because a leadership change after four or five years is almost a universal norm and has hardly threatened the stability of any country.

Thirdly, some have argued that presidential term limits unduly limit the human and political rights of incumbents and voters. But a review of international treaties and some national constitutions shows that re-election is not conceived as a human right and that presidential term limits provisions do not limit voters' rights – if they do, it is a self-imposed legitimate limitation.²⁵

Fourthly, some apologists for open terms point to the fact that Africa borrowed its constitutional systems from the major Western constitutional systems, most of which – with the major exception of France, the United States and a few others – do not have any term limits.²⁶ According to this school of thought, term limits are therefore an imposition and a display of double standards by the West and foreign donors.

This argument is unsatisfactory on several grounds. First, term limits have very strong historical roots that go as far back as Athenian democracy in the fifth century BC and are well grounded in classical liberal models of limited democratic government.²⁷ Secondly, most Western democracies have a culture of political accountability and tolerance that promotes power-sharing and ensures that leaders who stay in power for a

²³ See Fredline M Cormack-Hale and Mavis Zupork Dome, 'Support for elections weakens among Africans: Many see them as ineffective in holding leaders accountable', Afrobarometer Dispatch No. 425, 9 February 2021, <https://www.afrobarometer.org/wp-content/uploads/migrated/files/publications/Dispatches/ad425-support-for-elections-weakens-in-africa-afrobarometer-dispatch-7feb21.pdf>, who in their 2021 report – based on 11 countries surveyed regularly since 2008/2009 – point out that support for the belief that elections enable voters to remove leaders has dropped by 11 percentage points from 56 per cent to 45 per cent.

²⁴ For example, Cameroon in 2008, Djibouti in 2010, Gabon in 2003, Namibia in 1999 and Togo in 2002. By contrast, President Nkurunziza had to resort to intimidating and manipulating the Constitutional Court to enable him to succeed in his third-term bid because article 96 of the Constitution required amendments to receive at least 80 per cent approval in parliament to be adopted, which he could not manage.

²⁵ See European Commission for Democracy Through Law (Venice Commission), 'Report on term-limits. Part 1 – Presidents', [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)010-e), 16-21.

²⁶ Kristin McKie, 'The politics of Institutional Choice Across Sub-Saharan Africa: Presidential Term Limits', (2017) 52(1) *Studies in Comparative International Development* 436-456, points out that there is little evidence to show that the international community and donor pressure influenced the adoption of presidential term limits in post-1990 African constitutions.

²⁷ See AHM Jones, *Athenian Democracy* (Johns Hopkins University Press 1986) 105.

long time are the exception rather than the rule. For example, in the 1990s, pressure within the ruling Conservative Party forced Prime Minister Margaret Thatcher of Britain to resign after she had stayed in power for too long and was increasingly perceived as out of touch and aloof. Thus, even if many Western countries lack explicit or implicit presidential term limits, in practice there are in-built processes to ensure a regular and peaceful alternation of power. In addition, many of these European countries have established parliamentary systems of government, where the incumbent can be removed without reasons by parliament, i.e., in parliamentary systems the absence of term limits on the prime minister is counterbalanced by the absence of guaranteed terms as is the case in presidential terms.

5. The nexus between presidential term limit evasion, constitutionalism, democracy and respect for the rule of law

There is overwhelming evidence – from both the literature as well as survey indicators, such as those on economic performance, the state of civil and political rights, the state of freedom of the press, and the state of respect for the rule of law – that points to a causal link between prolonged stays in power, state fragility, weak institutions, bad governance, corruption, and feeble democratic consolidation.

As Table 4 shows, the ten longest-serving presidents in Africa have been in power for an average of 17.5 years. They are Teodoro Obiang Nguema Mbasogo of Equatorial Guinea (43 years); Paul Biya of Cameroon (40 years); Dennis Sassou Nguesso of Republic of Congo (38 years); Yoweri Museveni of Uganda (36 years); Isaias Afwerki of Eritrea (31 years); Ismail Guelleh of Djibouti (23 years); Paul Kagame of Rwanda (22); Faure Gnassingbe of Togo (17 years); Ali Bongo Odimba of Gabon (13 years); and Alassane Ouattara of Côte d'Ivoire (12 years). It is no surprise that Africa has six of the ten longest-serving leaders in the world.

A number of general observations can be made about the negative impact of these unduly prolonged stays in power and their effects on political alternation, political stability, democracy and constitutionalism.

The first point to note is the strong positive correlation between the existence of presidential term limits provisions and the tendency of presidents to voluntarily leave power as part of a peaceful democratic transition rather than through a military coup, as was the case before the 1990s. By contrast, seven of the longest-serving presidents have prolonged their stay in power and prevented peaceful alternation by either removing the presidential term limits provisions from their constitutions or tampering with them (these are the presidents of Cameroon, Djibouti, Gabon, Equatorial Guinea, Republic of Congo, Rwanda and Uganda). Their prolonged stay in power also shows that without presidential term limits, incumbents are almost always guaranteed to win any re-election contest. As noted earlier, a few incumbents (See Table 4) – such as John Mahama of Ghana in 2016, Goodluck Jonathan of Nigeria in 2015, and Edgar Lungu of Zambia in 2021 – lost their second term re-election bid, and only one, Abdoulaye Wade in 2012, lost his third-term bid. The removal of presidential term limits is therefore paving the way for the pre-1990 presidents-for-life of the past to re-emerge.

Secondly, the removal or manipulation of presidential term limits has facilitated the growth of dynasties, which in turn are promoted by self-serving clientelist and patronage networks determined to protect their interests. The emerging new culture of father-to-son succession began in 2001 when former president Joseph Kabila,

with the help of the military, replaced his assassinated father, Laurent Kabila, in the DR Congo.²⁸ In Togo, the army was instrumental in Faure Gnassingbe's replacing his deceased father, Gnassingbe Eyadema, in 2005 in disregard of the terms of the constitution. Gabon's Ali Bongo took over from his father, Omar Bongo, who had been in power for 42 years, in 2009, and is himself now preparing his own son, Nouredin Bongo Valentin, to take over.

In 2021, the army was again instrumental in replacing the late Chadian president Idriss Déby, in power for 31 years, with his son, General Mahamat Déby, as president. Equatorial Guinea's President Teodoro Obiang Nguema Mbasogo, in power for the last 43 years, appointed his son, Teodoro Nguema Obiang Mangue, whom he has been grooming as successor, as vice president in 2016. Similar dynastic successions are in the making. These include Paul Biya of Cameroon, in power for 40 years, who is planning to hand over to his son, Franck Biya. In Congo-Brazzaville, Denis Christel Sassou Nguesso, son of President Denis Sassou Nguesso, who has been in power for 37 years, is being prepared for succession. In Uganda, General Muhoozi Kainerugaba is being prepared to replace his father, Yoweri Museveni, who has been president for the last 36 years.

Thirdly, respect for the rule of law is undermined when presidents ignore presidential term limits or manipulate them. One of the hallmarks of the rule of law is the ability of the judiciary to decide matters objectively on the basis of the facts and the law and without external influence. In a number of countries, courts were coerced and manipulated by incumbents to contrive technical, sometimes implausible, interpretations of presidential term limits provisions to cover up their unconstitutional behaviour.

Fourthly, in most African countries, the actual or attempted removal of presidential term limits has led to violence, repression and violation of the human rights of citizens protesting against the changes. Micha Wiebusch and Christina Murray, in their 2019 study, give examples of how, in most countries, the manipulation of presidential term limits provisions resulted in various forms of instability, illegality and illegitimacy.²⁹ For instance, in Cameroon in 2008 and DR Congo in 2015, many innocent people peacefully protesting against the removal of presidential term-limit provisions lost their lives in police and military crackdowns. In Burkina Faso in 2014 and Zimbabwe in 2013, high-handed security-force interventions led to loss of life and damage to property.

The pre-1990 spectacle of military coups as the only means to replace leaders has been revived as a result of incumbents' removal of presidential term-limit provisions and thus of the only means of alternation of power. Post-1990 coups directly provoked by the removal of presidential term limits include the coup against President Mamadou Tandja of Niger in 2010 and Alpha Conde of Guinea in 2021. It was President Blaise Compaore's attempt to change the Constitution of Burkina Faso and prolong his stay in power in 2014 that led to the popular insurrection and coup that toppled his regime. This in turn led to a cycle of violence and political instability from which the country is still suffering today.

Finally, the past decade has been marked by signs of a global democratic recession, with increased evidence of democratic deconsolidation and autocratisation. The situation in Africa, however, is far worse. Governance

²⁸ See Issa Sikiti da Silva, 'The Rise of Africa's Political Dynasties', <https://www.newsafrica.net/248>, accessed 3 November 2022.

²⁹ See Micha Wiebusch and Christina Murray, 'Presidential term limits and the African Union,' (note 9) 144-146.

indicators show that most of the African countries that have removed, distorted or ignored presidential term have not performed well in terms of democratic progress, respect for the rule of law, prospects for constitutionalism and stability and corruption when compared to countries that have retained and respected these provisions.

For example, according to the Ibrahim Index of African Governance, the ten worst-performing countries in Africa between 2010 and 2019 (Republic of Congo, Libya, Chad, Sudan, DR Congo, Central African Republic, Equatorial Guinea, Eritrea, South Sudan and Somalia)³⁰ have seen very little alternation in political power. Freedom House's *Freedom in the World* survey shows that although the number of countries classified as 'free' and 'partly free' has increased considerably since 1990, the general scores not only show a downward spiral in the quality of freedom in most countries, but also, significantly, reveal that a number of them, such as Cameroon, Equatorial Guinea, Central African Republic, Niger and Zimbabwe, remained stuck in the 'not-free' category throughout the entire period. The same countries do not perform well in the World Justice Project Rule of Law Index, which provides an indication of how countries adhere to the rule of law in practice. The 2020 Index shows that the five top underperforming countries in Africa were Uganda, Zimbabwe, Mauritania, Cameroon and DR Congo.

At a time when democracy is under threat globally, all these indicators point to a consistently deepening autocratisation in those countries where the manipulation of presidential term-limit provisions has either closed or limited avenues for genuine democracy and political alternation. In view of the negative impact that amending constitutions to remove or distort presidential term limits has had, the question arises whether civil society and the international community have played any role in trying to arrest the situation.

6. The role of civil society in promoting respect for presidential term limits

One of the positive developments of the post-1990 era is that many countries in Africa have seen the growth of a relatively vibrant, vigilant and enlightened civil society. However, only a few liberal constitutions, such as the 2010 Kenyan, 1996 South African and 2013 Zimbabwean constitutions, in article 257, sections 74(5) and (6) and section 238(4), respectively, provide for an elaborate process of public consultation and active involvement of civil society in the constitutional amendment process. This gives civil society organisations the right both to monitor and play an active part in the constitutional amendment process.

By contrast, in most Francophone countries, civil society is not usually actively involved, and in general, as pointed out earlier, constitutional amendments can be made by following the process for adopting ordinary legislation, one in which the public is hardly involved. For example, the amendment to the presidential term-limit provision in the Cameroon Constitution was introduced on the eve of the last day of the parliamentary session, with ordinary citizens and civil society becoming aware of what had happened only after the law had been adopted.

In the four countries where attempts by incumbents to amend the constitution were successfully repelled – Burkina Faso (2014), Malawi (2002), Nigeria (2006) and Zambia (2001) – this was due largely to the strong

³⁰ Charles M Fombad, 'The state of governance in Africa', in Charles M Fombad, Assefa Fiseha and Nico Steytler (eds), *Contemporary governance challenges in the Horn of Africa*, (Routledge 2022) 13-56.

resistance by civil society made up of lawyers, religious bodies, traditional leaders, political parties and the media, who were able to mobilise the population. In cases where protests failed, this was usually because the population was caught unaware and incumbents were able to use the full repressive machinery of the state to crush the protesters, often at great cost to life and property.

Unlike the pre-1990 situation, there is evidence in many countries of an increasingly alert civil society committed to democratic ethics, good governance and respect for the rule of law. What is impressive is that in those countries where the constitutional amendments failed, most political parties, including members of ruling parties, were able to put aside their political differences and present a united front of opposition even in the face of well-orchestrated campaigns organised by incumbents and involving bribes (as in Nigeria in 2006) as well as intimidation, blackmail and violence (as in Burkina Faso in 2014 and Guinea in 2020).

What emerges from the cases where civil society successfully repelled the evasion of presidential term limits is that a resolute citizenry which is able to unite, mobilise, and articulate and protect its interests, and enable the formation of a coalition of democrats, including collaboration with members of ruling parties, to defeat attempts to override term limits. On the other hand, protests against manipulation of constitutions to prolong presidential terms have been less successful in Francophone countries such as Cameroon, Gabon and the Republic of Congo due to the weakness of civil society and restrictions on the media. Nevertheless, more could have been achieved if the international community had been prepared to act decisively against recalcitrant incumbent leaders with little regard for constitutional restraints.

7. The role of the AU, RECs and international community in promoting respect for presidential term limits

Presidential term limits may well be primarily a matter of domestic constitutional policy and concern, but they also have implications for international peace and security. Nothing better demonstrates the causal link between prolonged stays in power, term extensions, the conflicts this can provoke, and threats to international peace and security than the crisis arising from Nkurunziza's decision to ignore the term limits in the Burundian constitution in 2015. This resulted in numerous deaths and hundreds of thousands of refugees fleeing to neighbouring countries.

This section briefly highlights measures taken since 1990 by the AU, RECs and the international community at large to curb presidential term-limit evasion and the challenges that limited the effectiveness of these measures.

7.1 The AU and RECs

Since the AU replaced the Organisation of African Unity (OAU) in 2002, it has adopted several instruments designed to promote constitutionalism, good governance and respect for the rule of law. The most important of these instruments prohibiting unconstitutional changes of government, the African Charter on Democracy, Elections and Governance (the African Democracy Charter), defines such changes, in article 23(5), to include 'any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government'.

Breach of this provision is supposed to lead to sanctions. For example, the AU did bring enormous pressure to bear on Nkurunziza in 2015, but this did not alter the situation. Burundi, like a good number of other African countries, has not ratified the African Democracy Charter; nor have most of those who have ratified the Charter, domesticated it. The reality, as Table 3 shows, is that, the AU is still home to many aging autocrats or reluctant ‘democrats’ who either do not have term limits in their constitutions or have removed them. Generally, many studies have shown that the AU’s record in compelling states to respect their commitments under its various constitutionalism-building instruments has been inconsistent, erratic and unpredictable. Beyond setting laudable normative standards, there is a lack of a firm commitment as well as capacity and leverage to enforcing democratic principles within the AU.

The lack of a firm commitment to democratic principles within the AU is reflected in the decision to amend the Protocol on the Statute of the African Court of Justice and Human Rights in order to grant blanket immunity for ‘serving heads of state’ and ‘senior government officials’ while they are in office from prosecution for crimes against humanity and genocide.³¹ The potential implications of this are frightening. It means the AU would protect any African president who commits these international crimes not only from its own AU courts but also from the International Criminal Court (having decided that African countries should boycott it), provided that they stay in power and regardless of how they do so, including through manipulation of term limits.

In the final analysis, the AU has neither the means nor the will and credibility to restrain African leaders from seeking to prolong their stay in power. Whilst the organisation has, until recently, worked hard to disincentivise coups and other forms of unconstitutional changes of government, it has not done enough to eradicate their root causes through preventive measures. This has been aggravated by two serious normative flaws: first, the legal uncertainty over the meaning and scope of the concept of undemocratic changes of government; and secondly, the absence of an effective monitoring mechanism to ensure the full implementation of the African Democracy Charter and other instruments designed to promote constitutionalism, good governance and respect for the rule of law.

The mandate and practice of the African Peer Review Mechanism (APRM), a mutually agreed instrument voluntarily acceded to by AU member states, provides it with a basis for monitoring constitutional amendment processes. However, the fact that not all member states are parties to it – and that even those that are parties to it have not fully implemented its recommendations – limits its effectiveness. Moreover, although the African Democracy Charter requires member states to submit reports to the African Union Commission (particularly to the African Governance Architecture), this has effectively been absent, with Togo the only country to have submitted a report so far.

The African Commission on Human and Peoples’ Rights (the African Commission) and the African Court on Human and Peoples’ Rights (the African Court) provide opportunities for dealing with abuses of constitutional amendment processes based on the African Charter on Human and Peoples’ Rights in general

³¹ See ‘Leaders agree on immunity for themselves during expansion of the African Court’, <http://theglobalobservatory.org/2014/07/leaders-agree-immunity-expansion-african-court/>. At the 23rd Ordinary Summit of the AU, held on 26-27 June 2014 in Malabo, Equatorial Guinea, African leaders formalised an expansion of the African Court’s jurisdiction to include international crimes and, amongst other things, proclaimed their return to the internationally abandoned principle of immunity for serving heads of state or government and other senior officials from prosecution for the same crimes.

but more specifically the African Democracy Charter. Some of the disputes brought before these bodies either have been linked, directly or indirectly, to controversial tampering with presidential term limits, or have related more generally to non-compliance with prescribed processes for amending constitutions. For example, the African Commission sent a fact-finding mission to Burundi in 2015.³²

Article 34 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights allows member states, on ratifying the Protocol, to sign a declaration under article 5(3). This declaration gives individuals and NGOs with observer status before the African Commission the right to institute cases directly before it in accordance with article 34(6) of the Protocol. Until recently, 12 countries had signed this declaration but four have since withdrawn.³³

The effect of signing the declaration is that the review of compliance of constitutional amendments with the requirements laid down in the constitution may be performed at the supranational level by the African Court and the African Commission. A number of cases or complaints raising some of these issues have come before Africa's judicial or quasi-judicial supranational jurisdictions. For example, the African Commission has ruled on constitutional amendments to presidential eligibility rules³⁴ and the outlawing of political parties and removal of judicial remedies.³⁵ The African Court has also dealt with several cases on unconstitutional constitutional amendments.³⁶ Although recommendations, declarations and decisions by the African Court and African Commission that constitutional amendments are unconstitutional do not necessarily affect the validity of the amendments in the domestic sphere, they bring peer pressure to bear against abusive constitutional changes through the negative international publicity which is generated.

As for the RECs, some have adopted their own normative frameworks to promote constitutionalism, democracy and respect for the rule of law. For example, in 2001 ECOWAS adopted the Protocol on Democracy and Good Governance. In regard to presidential term limits, ECOWAS has attempted on two occasions to impose a two-term limit for all presidents in the region. The first attempt in 2015, was blocked by The Gambia and Togo. Another attempt in 2021 to re-introduce a two-term limit was opposed by Cote d'Ivoire, Senegal and Togo, all of whose leaders are yet to hand over power in line with the presidential two-term limits in their constitutions.

7.2 The international community

While the AU and RECs have been relatively timid in their reaction to violations of term limits on the continent, it may be argued that – with the exception of Robert Mugabe of Zimbabwe, who came under sustained international pressure for the Machiavellian tactics he used to prolong his stay in power – the West

³² See 'Report of the delegation of the African Commission on Human and Peoples' Rights on its fact-finding mission to Burundi, 7-13 December 2015', <https://www.achpr.org/news/viewdetail?id=198>.

³³ The eight countries that have signed are Burkina Faso, Malawi, Mali, Ghana, Tunisia, the Gambia, Niger and Guinea-Bissau. The four that have withdrawn are Benin, Côte d'Ivoire, Tanzania and Rwanda. See further the official website of the African Court at <https://www.african-court.org/wpafc/declarations/>.

³⁴ See *Legal Resources Foundation v Zambia* ACHPR 211/98, 7 May 2001 and *Mouvement Ivoirien des Droits Humains (MIDH) v Côte d'Ivoire* Communication No. 246/02 ACHPR 88, 29 July 2008.

³⁵ See *Lawyers for Human Rights v Swaziland* ACHPR 251/02, 11 May 2005.

³⁶ See, for example, *XYZ v Republic of Benin*, Application No. 010/2020, Judgment of 27 November 2020; and *Houngue Eric Noudenhouenoa v Republic of Benin*, Application No. 003/2020, Judgment of 4 December 2020.

has been complicit in the prolonged stay in power of several African leaders. For example, in spite of the ruthless methods used by leaders such as Kagame of Rwanda and Museveni of Uganda to prolong their stay in power, they have been subject at most only to mild criticism, other than which they continue to receive financial support from the West.

Indeed, the global post-1990 trend in which Western governments, international institutions and donor agencies supported democracy-building initiatives on the continent has waned. First, Western post-9-11 security imperatives led to increased support for certain repressive regimes, such as those of Museveni in Uganda, Paul Biya in Cameroon and the late Idriss Deby of Chad, which are threatened by elements of global terrorism. The so-called war on Islamic fundamentalist groups has often been used as a pretext for reducing the space for free speech through harsh suppression of all internal opposition.

Secondly, the emergence of China and other non-traditional trading partners, such as India, Brazil and Russia, as alternative sources of foreign diplomatic support and direct investment threaten to further undermine Africa's fragile transition to democracy. Unlike the West, Africa's new trading partners, with China taking the lead, ask no questions and have no qualms in supporting Africa's growing list of sit-tight presidents. As a result of the increasing threat that China poses, many Western countries are in turn starting to adopt a more tolerant attitude towards the revival of authoritarianism, which is implicit in African countries' disregard of presidential term limits.

8. Conclusion and recommendations

8.1 Conclusion

The literature generally shows that arguments in favour of incorporating presidential term limits in all African constitutions have won the day, both in scholarly debates and in practice. Indeed, even some presidents and countries that have at some point removed them have reinstated them. The question is no longer whether or not they are needed but how best to promote their incorporation in all present-day constitutions and ensure strict respect for them. Even where presidents are popular, there is no evidence to suggest that voters want them forever. Even if they did, the laws of nature cannot be ignored. Alternation is inevitable, and it is better that it be accomplished by voters rather than by incumbents through father-to-son successions or patronage networks that perpetuate their self-interest. If we look at the record from 1990 to date, a number of conclusions can be drawn.

Firstly, presidential term-limit provisions have been successfully removed, manipulated or ignored in autocratic states such as Cameroon, Burundi, Djibouti, Eritrea, Equatorial Guinea, Gabon, Republic of Congo, South Sudan, Sudan and Uganda, all of which have experienced personalised rule for prolonged periods. These are also countries with the poorest records of governance, constitutionalism, respect for the rule of law and respect for human rights on the continent.

Secondly, since 1990, coups d'état have been replaced by skilful manipulation of constitutions and other formal democracy-enhancing institutions, such as courts and election management bodies: this is now the

most important means of coming to power and staying there. Whilst the number of coups has decreased considerably – despite their recent resurgence - and more presidents than ever retire gracefully in accordance with constitutional term limits, the use of other illegal extraconstitutional means, such as violent repression, has become an increasingly common method of surreptitiously reviving the legacy of presidencies-for-life under the cloak of supposedly democratic elections.

Thirdly, with the exception, of President Abdoulaye Wade of Senegal in 2012, all presidents who exploited legal ambiguities or constitutional loopholes to ‘legalise’ their third (or more) terms eligibility through the courts, or simply removed the presidential term limits, went on to win re-election. As such, the argument that elections are the best way of limiting presidential terms is not borne out by the evidence to have emerged in Africa since 1990. On the contrary, the evidence points to the fact that, barring the few instances where incumbents have lost in their bid for a second term, most other incumbents organise elections to win. In short, the longer African leaders stay in power, the harder it is to remove them in a democratic manner.

Fourthly, a close examination of when presidential term limits provisions have been tampered with shows that this is usually done just before incumbents are due to retire. The evidence shows that Francophone African presidents are more prone than others to abrogating or otherwise tampering with constitutional term limits. For example, there is already suspicion that President Macky Sall, who defeated President Wade in 2012, may use the 2012 amendment to the Senegalese Constitution to re-set the clock and run for a third term. It is the ease with which constitutions can be amended in Francophone Africa that has made it possible for most of the leaders to prolong their stay in power. It is also worth adding that the continuous interference of the former colonial power, France, in protecting leaders who serve its interest has facilitated this policy. For example, the former Chadian president Idris Deby made the startling revelation that in 2002 France forced him to amend the constitution in order to run for an additional presidential term.³⁷

Fifthly, due to the increasing indifference or inability of not only the AU and RECs but also the international community, the cost of circumventing or otherwise manipulating constitutions is very low. Whilst coup leaders are sanctioned, no president so far has been sanctioned for violating the constitution to prolong his stay in power, yet both types of action lead to an unconstitutional change of government or, strictly speaking in the latter case, to an unconstitutional retention of power.

Sixthly, it is now clear that presidential term-limit evasion is a manifestation of a historical continuity – the president-for-life syndrome of the pre-1990 era. It is a sign of the resilience and creativity of African leaders who have quickly adapted themselves to the changing environment by adopting some of the formal and informal features of constitutionalism and democracy to disguise their repressive authoritarian systems.

The question is: How can presidential term-limit provisions be made more effective and the cost of circumventing them made as high as the cost for carrying out a coup?

³⁷*La France Est Intervenue Pour Changer La Constitution* (2017) <https://www.youtube.com/watch?v=NczOkkR71IQ>; Ésaïe Toingar, *Idriss Deby and the Darfur Conflict* (McFarland 2014) 150–151.

8.2 Recommendations

The evidence of the past three decades shows that presidential term-limit provisions in modern African constitutions are necessary not only to revive and sustain the faltering transition towards a culture of constitutionalism, democracy and respect for the rule of law but also to arrest the worrying signs of democratic back-sliding, which comes with the risk of political instability, worsening poverty and other ills. A number of measures need to be taken by key stakeholders at national, regional and international level.

8.2.1 At national level

Certain measures should be adopted at the level of government and by civil society.

All African governments should:

- constitutionally entrench a strict presidential two-term limit (with a maximum of six years for each term) in their constitutions. This must be formulated in clear and unambiguous language.
- ensure that any proposal to amend this important provision goes through an inclusive, transparent and participatory process that involves thorough public scrutiny and debate and an elaborate process of consultation with all key stakeholders. To enhance its legitimacy, it should be tabled before parliament, where it will need to be approved by at least 75 per cent of its members and subsequently a referendum in which a significant majority (say at least 80 per cent) of registered voters turn out to vote and the proposal is approved with a significant majority (say at least 65 per cent). Courts must be given the powers to review both the process and the substance of the amendment to ensure that it complies with the constitution. While a combination of these requirements does not currently exist – although some constitutions prohibit amendment of term limits, the proposed elaborate procedure is critical to limit the destabilising potential of term limit evasion.
- to avoid the use of ostensibly new constitutions to bypass (unamendable) presidential term provisions, constitution makers should specifically exclude even new constitutions from tampering with term limits, unless this is done in strict conformity with the elaborate amendment procedure outlined above.
- constitutionally entrench a principle that no amendments to presidential term limits should directly or indirectly benefit the incumbent.
- establish an independent permanent constitutional review commission in which representatives of the executive and legislative branch do not constitute more than 49 per cent of its composition. Its mandate should be to regularly review to operation of the constitution and all democracy-enhancing institutions and make recommendations for change.
- constitutionally entrench key democracy-enhancing institutions such as election management bodies, a public service commission, constituency demarcation bodies, and courts, with adequate measures put in place to ensure that they cannot be manipulated either via appointments or their emoluments by the executive or legislature.

Civil society organisations should:

- establish an inclusive constitution-monitoring committee that regularly reviews the level of compliance with constitutional obligations and make recommendations to both parliament and the permanent constitutional review commission. Where necessary, civil society organisation must be prepared to take legal action where there are any threats to the violation of the constitution.
- familiarise and promote constitutional literacy. A vibrant and enlightened civil society is crucial to defending the constitution and constitutionalism.
- seek the formation of a coalition of democrats from all political forces, including ruling parties, to promote a tradition of alternation of power, and broadly constitutionalism and political cooperation and deliberation.

8.2.2 At the regional level

The AU and RECs should be more proactive and take firm action in response to any threats of unconstitutional changes of government through unconstitutional retention of power in violation of their numerous normative instruments as well as national constitutions.³⁸

In particular, the AU should:

- raise the cost of term-limit evasion by adopting a firm, consistent, zero-tolerance stance towards all forms of unconstitutional change of government, including those that involve removing presidential term limits for the benefit of incumbent presidents, in line with articles 10(2) and 23(5) of the African Charter. It should strictly sanction all violations of this as provided for under articles 24-26 of the African Charter and article 7(1)(g) of the Protocol on the Establishment of the PSC of the AU (2002).
- develop benchmarks and other guidelines for the implementation of the commitments and principles of the African Democracy Charter, as provided for in article 44(2)(A)(a), including notably guidelines on democratic constitutional amendments in Africa. These benchmarks and guidelines should make it completely clear that unconstitutional changes of government include constitutional amendments that illegally prolong the tenure of incumbents as well as the tampering with elections.
- establish, in line with articles 18-22, an independent monitoring commission, such as an AU Democracy Monitoring and Enforcement Commission, to monitor and evaluate compliance by state parties with their obligations under normative instruments that aim to promote democracy and

³⁸ Specific reference is made to the following binding instruments: the Constitutive Act of the AU (2000); the Protocol on the Establishment of the PSC of the AU (2002); the African Charter on Human and Peoples' Rights (1981); and the African Charter on Democracy, Elections and Governance (2007); and the following non-binding instruments: the Algiers Declaration (1999); the Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (2000); the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) Solemn Declaration (2000); the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (2002); the Declaration on the Principles and Guidelines on Democratic Elections in Africa (2002); the African Peer Review Mechanism (APRM) (2003); AU (2010), Decision on the Prevention of Unconstitutional Changes of Government and Strengthening the Capacity of the African Union; the 50th Anniversary Solemn Declaration of 2013; Agenda 2063 -The Africa We Want of 2014; the Outcome of Accra Forum (2022); and the Declaration of Malabo (2022).

constitutionalism and prevent abusive changes to constitutions to prolong the tenure of incumbents. This function could also be played by an expanded African Governance Architecture.

- in line with the letter and spirit of its normative instruments, impose and consistently enforce a presidential two-term limit.
- in line with article 45 of the African Democracy Charter and through the AU Commission, collaborate with the African Court in the implementation of the African Charter. The AU should also encourage member states to make the declaration, based on article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, which empowers ordinary citizens and NGOs to approach the African Court to sanction any irregular constitutional amendments by a member state.
- enhance the effectiveness of the normative framework for promoting and protecting constitutionalism, democracy and the rule of law in Africa by redefining its relationship with RECs and basing it on cooperation and collaboration rather than subsidiarity.
- increase the attractions of post-presidential tenure by establishing an advisory body of retired presidents who respected the prescribed constitutional term limits. This prestigious body should meet at least once a year to discuss and advise on contemporary issues affecting the continent, including discussions on post-presidency privileges.
- amending the Protocol on the Statute of the African Court of Justice and Human Rights in order to remove the blanket immunity given to 'serving heads of state' and 'senior government officials' while they are in office from prosecution for crimes against humanity and genocide.

Action that needs to be taken by RECs

RECs can enhance the entrenchment and enforcement of presidential term limits by

- emulating the attempts by ECOWAS to make two-term presidential term limits mandatory in their regions; and
- in accordance with the principle complementarity between the AU and the RECs provided for in article 44(2)(B)(b) of the African Democracy Charter, adopt instruments giving effect to the provisions of the Charter, similar to the ECOWAS Democracy Protocol, and develop a mechanism to monitor and evaluate the implementation of the commitments and principles enshrined in the Charter, particularly any benchmarks and guidelines which the AU may develop.

8.2.3 At the international level

In recognition of the risk that prolonged tenure poses to constitutionalism, democracy and political stability on the continent, the international diplomatic and donor community should take a variety of measures to enhance the adoption and enforcement of presidential term limits. These include the following:

- using peer pressure to discourage presidents from evading presidential term limits and encouraging those who have removed them to reinstate them. This could take the form of proactive engagements, alongside with the AU and relevant REC, to secure public commitment of presidents who have started to serve their second terms, long before any rumours of term limit evasion emerge;
- increasing the cost of violating constitutional term limits by immediately condemning such behaviour and imposing targeted economic sanctions against all persons who were directly or indirectly involved in facilitating or participating in such violations;
- based on the example of the Mo Ibrahim Foundation, create a body that formally recognises and honours (including the possibility of awarding prizes), incumbents who retire in compliance with the constitutionally prescribed two- term limit;
- taking every opportunity to initiate prosecution for crimes against humanity and genocide against any president and other senior officials who committed such crimes in the process of prolonging their stay in power or who used such term-prolongation to escape liability for these crimes.

8.3 Final conclusion

The measures proposed above are no guarantee that presidential term limits would not be tampered with, but they could considerably reduce the risk of this happening. They offer the best prospects of curbing the risk of personalised power and the propensity for perpetual rule – and thereby supporting the continent’s progress in entrenching constitutionalism, democracy and respect for the rule of law, which are preconditions for political stability, equitable economic growth, and sustainable development.

Current Constitutional Term Limits Provisions in African Constitutions

Updated December 2022

Algeria

Constitution of 1996, as last amended in 2020

Article 92

The presidential term shall be **five (5) years**. No one may serve more than **two consecutive or discontinuous terms**. In the event a presidential term is interrupted because of resignation or any other reason, the term is considered complete.

Angola

Constitution of 2010

Article 113 (Term of office)

1. The term of office of the President of the Republic shall last for **five years**, beginning with their inauguration and ending with the inauguration of the new President elect.
2. Each citizen may serve up to **two terms of office** as President of the Republic.

Benin

Constitution of the Republic of Benin, 1990 as last amended in November 2019

Article 42

The President of the Republic is elected by direct universal suffrage for a mandate of five years, renewable one sole time. In no case, may one, in their life, exercise more than two mandates of President of the Republic.

Article 44

No one can be a candidate to the function of the President of the Republic or Vice President of the Republic if:

- [they] are not at least already 40 years old and at most already **70 years old** at the date of entering into [their] function;
- [they were] elected **two (02) times** as President of the Republic and exercised two mandates as such;

Botswana

Constitution of 1966 as amended in 2016

34. Tenure of office of President

1. The President shall, subject to the provisions of this section, hold office for **an aggregate period not exceeding 10 years** beginning from the date of his or her first assumption of office of President after the commencement of this Act.
3. The President shall cease to hold office of President at the expiry of the period prescribed under subsection (1) of this section, or when the person elected at the next election of President following a dissolution of Parliament assumes office.

Burkina Faso

Draft of the Constitution of the Fifth Republic of Burkina of 2017

Art. 59

The President of Faso is elected for a **five-year term**.

He is eligible for **re-election only once**.

In no case may anyone exercise more than two mandates as President of Faso, neither consecutively nor intermittently.

Art. 192

No draft or proposal for the revision of the Constitution is admissible when it calls into question:

... the number and length of presidential terms.

Burundi

Constitution of 2018

Article 97

The President of the Republic is elected by direct universal suffrage for a **renewable term of seven years**.
No one can hold more than **two consecutive terms**.

Cameroon

Constitution of 1996 as amended in 2008

Article 6.

(2) (new) The President of the Republic shall be elected for a **term of office of 7 (seven) years**. He shall be **eligible for re-election**.

Cabo Verde

Constitution of 1992 as amended in 2010

Article 126 (Mandate)

1. The President of the Republic shall be elected for a **period of five years**, which shall commence on the date of his or her assumption of office and terminate with the assumption of office of the new President-elect.

Article 134 (Non re-eligibility)

1. The President of the Republic may **not stand for a third term in the five years** immediately following the end of his or her second consecutive term.

Central African Republic (CAR)

Constitution of 2016

Article 35

The duration of the mandate of the President of the Republic is of **five (5) years**. The mandate is **renewable one sole time**.

In no case, may the President of the Republic exercise more than **two (02) consecutive mandates or extend it for whatever motive that may be**.

Chad

Constitution of 2018

Article 66

The President is elected by universal direct suffrage for a **term of six (6) years, renewable once**.

Comoros

Constitution of 2018

Article 52.

Each Island, through the elected candidate, carries out the presidency of the Union for a **mandate of five (5) years, renewable once**. In no case may an Island exercise more than **two (2) consecutive mandates**. The President of the Union is elected by universal direct majority suffrage in two rounds.

Congo (Brazzaville)

Constitution of 2015

Article 65

The President of the Republic is elected for a **mandate of five (5) years renewable two (2) times**.

The President of the Republic remains in [his] function until the end of his mandate which, excluding [a] case of force majeure recognized and declared by the Constitutional Court, must coincide with the effective taking of [his] function of his elected successor.

Côte d'Ivoire

Constitution of 2016 as amended in 2020

Article 55

The President of the Republic is elected for **five years** by direct universal suffrage. He may be re-elected only once. ...

Democratic Republic of the Congo

Constitution of 2005 as amended in 2011

Article 70

The President of the Republic is elected by direct universal suffrage for a mandate of **five years renewable a single time**. At the end of his mandate, the President of the Republic remains in [his] functions until the effective installation of the newly elected President.

Djibouti

Constitution of September 1992 as amended in 2010

Article 23[6]

Any candidate for the office of President of the Republic shall be (...) be at least forty years of age and **at most seventy five years** on the date of the official declaration of his candidacy.

Article 24

The President of the Republic shall be elected for **five years** by direct universal suffrage and majority vote in two rounds. He shall be **eligible for re-election** in the conditions provided for in Article 23.

Egypt

Constitution of 2014 as amended in 2019

Article 140:

The president shall be elected for **a period of six calendar years**, commencing from the day following the termination of the term of his predecessor. The president may not hold office for more than **two consecutive terms**. ...

Equatorial Guinea

Constitution of 1991 as amended in 2012

Article 36

1. The President of the Republic is elected for **a term of seven years** renewable with the possibility of being re-elected.
2. The mandate of the President of the Republic is **limited to two consecutive periods**, not being able to present himself for a third mandate until alternation is produced. ...

Eritrea

Constitution of 1997 (effectively suspended)

Article 41 Election and Term of Office of the President

2. The term of office of the President shall be **five years**, equal to the term of office of the National Assembly that elects him.
3. No person shall be elected to hold the office of President for more than **two terms**.
4. When the office of the President becomes vacant due to death or resignation of the incumbent or due to the reasons enumerated in Sub-Article 6 of this Article, the Chairperson of the National Assembly shall assume the office of the President. The Chairperson shall serve as acting President for not more than thirty days, pending the election of another President to serve the remaining term of his predecessor.
5. The term of office of the person elected to serve as President under Sub-Article 4 of this Article shall not be considered as a full term for purposes of Sub-Article 3 of this Article.

Eswatini

Constitution of 2005

A “constitutional” monarchy with no term limit provision

Ethiopia

Constitution of 1995

Article 70 Nomination and Appointment of the President (*who is a nominal head of state in a parliamentary system*)

4. The term of office of the President shall be **six years**. No person shall be elected President for more than **two terms**.³⁹

Gabon

Constitution of 1991 as amended in 2011 and as consolidated to Decision No. 219/CC of 14 November 2018

Article 9 [Amended by Law No. 1/94 of 18 March 1994; 1/97 of 22 April 1997; 13/2003 of 19 August 2003; 001/2018 of 12 January 2018]

The President of the Republic is elected **for seven (7) years** by direct universal suffrage. He is **re-eligible**. (...)

The Gambia

Constitution of 1996 as amended in 2018⁴⁰

Article 63. Tenure of office of President

(1) The term of office of an elected President shall, subject to subsection (3) and (6), be for a term of **five years**; and the person elected President shall before assuming office take the prescribed oaths.

(6) Where the life of the National Assembly is extended for any period in accordance with section 99(2), the term of office of the President shall be extended for the same period.

Ghana

Constitution of 1992 as amended in 1996

Article 66.

(1) A person elected as President shall, subject to clause (3) of this article, hold office for a **term of four years** beginning from the date on which he is sworn in as President.

(2) A person shall not be elected to hold office as President of Ghana for more than **two terms**.

Guinea-Bissau

Constitution of 1984 as amended in 1996

Article 66

1. The term for the President of the Republic is **five years**.

2. The President of the Republic **may not run for a third consecutive mandate, nor during the five years following his second mandate**.

3. If the President of the Republic resigns from office, he may not run in the next election, nor in those taking place within five years of his resignation.

³⁹ There is no term limit on the Prime Minister, who is the head of government.

⁴⁰ Note that the Gambia Draft Constitution of 2020 has an elaborate presidential term limit provision, which states as follows:

102. Term of office of President

1. Subject to subsection (3), the President shall hold office for a term of five years.

2. No person shall hold office as President for more than two terms of five years each, whether or not the terms are consecutive.

3. Where the life of the National Assembly is extended for any period in accordance with section 140 (2) and (3), the term of office of the President shall be extended for the same period.

4. Where the term of office of the President is extended in accordance with subsection (3), the Independent Boundaries and Electoral Commission shall appoint a new date for holding election for the office of President within the period specified in section 92 (2).

Guinea (Conakry)

Constitution of 2020

Article 40

The President of the Republic is elected by direct suffrage for a **term of six (6) years, renewable once**.

Kenya

Constitution of 2010

136. Election of the President

2. An election of the President shall be held

- a. on the same day as a general election of Members of Parliament, being the second Tuesday in August, in **every fifth year**; or
- b. in the circumstances contemplated in Article 146.

142. Term of office of President

- (1) The President shall hold office for a term beginning on the date on which the President was sworn in, and ending when the person next elected President in accordance with Article 136 (2) (a) is sworn in.
- (2) A person shall not hold office as President for more than **two terms**.

Lesotho

Lesotho's Constitution of 1993 as amended in 2018

Parliamentary monarchy system government – *There is no provision dealing with term limits.*⁴¹

Liberia

Constitution of 1986

Article 50

The president shall be elected by universal adult suffrage of registered voters in the Republic and shall hold office for a **term of six years** commencing at noon on the third working Monday in January of the year immediately following the elections. No person shall serve as President for more than **two terms**.

Libya

Constitutional Charter for the Transitional Stage of 2011⁴², *which serves as an incomplete transitional constitution*

Madagascar

Constitution of 2010

Article 45

The President of the Republic is the Head of State. He is elected by universal direct suffrage for a mandate of **five years renewable one sole time**.

Malawi

Constitution of 1994 as amended in 2017

83. Tenure of office

- (1) The President shall hold office for **five years** from the date that his or her oath of office is administered, but shall continue in office until his or her successor has been sworn in.
- (2) The First Vice-President and the Second Vice-President shall hold office from the date of the administration of the oath of office to them until the end of the President's term of office unless their office should come to an end sooner in accordance with the provisions of this Constitution.
- (3) The President, the First Vice-President and the Second Vice-President may serve in their respective capacities a **maximum of two consecutive terms**, but when a person is elected or appointed to fill a vacancy in the office of President

⁴¹ There are no term limits on the Prime Minister, who is the head of government.

⁴² There is no term limit provision.

or Vice-President, the period between that election or appointment and the next election of a President shall not be regarded as a term.

(4) Whenever there is a vacancy in the office of President, the First Vice-President shall assume that office for the remainder of the term and shall appoint another person to serve as First Vice-President for the remainder of the term.

Mali

Constitution of 1992

Article 30

The President of the Republic shall be elected for **five years** by direct universal suffrage, by election on a majority basis from two rounds of ballots. He may only **be elected once**.

Mauritania

Constitution of 1991 as amended in 2012

Article 26

The President of the Republic is elected for **five years** by universal direct suffrage.

Every citizen born Mauritanian enjoying their civil and political rights and at least forty (40) years old, and **at most seventy-five (75) years old**, at the date of the first round of the election [.] is eligible to the Presidency of the Republic.

Article 28

The President of the Republic is **re-eligible one sole time**.

Mauritius⁴³

Constitution of 1968 as amended in 2016

28. The President (*who serves as a largely ceremonial head of state*)

2. a. The President shall

i. be elected by the Assembly on a motion made by the Prime Minister and supported by the votes of a majority of all the members of the Assembly; and

ii. subject to this section and section 30, hold office for **a term of 5 years and shall be eligible for re-election**.

Morocco

Constitution of 2011 - *There is no term limit provision because the country is a constitutional monarchy⁴⁴*

Mozambique

Constitution of 11 June 2004, as amended in 2018

Article 146 Eligibility [Previously Art. 147]

3. The term of the office of the President of the Republic shall be **five years**.

4. The President of the Republic may be **re-elected only once**.

5. A President of the Republic who has been elected on two consecutive occasions may be a candidate for further presidential elections only five years after the end of his last term of office.

Namibia

Constitution of 1990 as amended in 2014

Article 29 Term of Office

(1) (a) The President's term of office shall be **five (5) years** unless he or she dies or resigns before the expiry of the said term or is removed from office.

(b) In the event of the dissolution of the National Assembly in the circumstances provided for under Article 57(1) hereof, the President's term of office shall also expire.

(3) A person shall hold office as President for not more than **two terms**.

⁴³ There are no term limits on the Prime Minister, who is head the government.

⁴⁴ There is no term limit on the prime minister, who is head of government.

Niger

Constitution of 2010 as amended in 2017

Article 47

The President of the Republic is elected by universal, free, direct, equal and secret suffrage for a **mandate of five (5) years, renewable one (1) sole time**.

In any case, no one may exercise more than two (2) presidential mandates or extend the mandate for any reason whatsoever.

Nigeria

Constitution of 1999

135.

(2) Subject to the provisions of subsection (1) of this section, the President shall vacate his office at the expiration of a period of **four years** commencing from the date, when –

(a) in the case of a person first elected as President under this Constitution, he took the Oath of Allegiance and the oath of office; and

(b) in any other case, the person last elected to that office under this Constitution took the Oath of Allegiance and oath of office or would, but for his death, have taken such Oaths.

(3) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of four years mentioned in subsection (2) of this section from time to time; but no such extension shall exceed a period of six months at any one time.

137.

A person shall not be qualified for election to the office of President if-
... he has been elected to such office at **any two previous elections**;

Rwanda

Constitution of 2003 as amended in 2015

Article 101: Term of office of the President of the Republic

The President of the Republic is elected for a **five (5) year term**. He or she **may be re-elected once**

São Tomé e Príncipe

Constitution of 1975 as amended in 2003

Article 79: Mandate

1. The President of the Republic is elected for **five years**.

3. **Re-election for a third consecutive term of office, or during the five-year period immediately following the end of the second consecutive mandate, is not permitted.**

4. If the President of the Republic resigns, he cannot run in the next elections, nor can he run during the five-year period immediately following his resignation.

Senegal

Constitution of 2001 as amended in May 2019

Article 27 [as amended in 2016]

The duration of the mandate of the President of the Republic is of **five years**. No one may exercise more than **two consecutive mandates**.

Article 28 [as amended in 2016]

Any candidate to the Presidency of the Republic must be exclusively of Senegalese nationality, enjoying his civil and political rights, [and] be thirty-five (35) years of age at least and **seventy-five (75) years at most** [on] the day of the ballot. He must know how to write, to read and to fluently speak the official language.

Seychelles

Constitution of 1993 as amended in 2017

52. 1. Subject to this article, a person elected as President shall hold office for **a term of five years** – ...
2. A person shall hold office as President under this Constitution for not more than **two terms**.

Sierra Leone

Constitution of 1991, as amended in 2013

46. Tenure of office of President, etc

1. No person shall hold office as President for more than **two terms of five years each whether or not the terms are consecutive**.

Somalia

Constitution of 2012

Article 91. Term of Office of the President of the Federal Republic of Somalia

The President of the Federal Republic of Somalia shall hold office for **a term of four (4) years**, starting from the day he takes the oath of the President of the Federal Republic of Somalia, in accordance with Article 96 of the Constitution.

Somaliland⁴⁵

Constitution of 2001

Article 88: Term of Office

1. The term of office of the President and the Vice-President is **5 years** beginning from the date that they are sworn into office.
2. No person may hold the office of President for more than **two terms**.

South Africa

Constitution of 1996 as amended in 2013

88. Term of office of President⁴⁶

- (1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.
- (2) No person may hold office as President for more than **two terms**, but when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.

South Sudan

Constitution of 2011 as amended in 2013

Article 100. Tenure of the Office of the President

- (1) The tenure of the office of the President of the Republic of South Sudan shall be **five years**.
- (2) Notwithstanding Article (1) above, **during the transitional/ period** the tenure of the office of the President of the Republic of South Sudan shall be **four years from July 9, 2011**.

Sudan

Constitution of 2019 (effectively a post Bashir transitional Charter).

⁴⁵ Note that Somaliland is not recognised as an independent state by the African Union or United Nations.

⁴⁶ South Africa effectively has a parliamentary system of government where the president is appointed by and can be removed anytime by parliament. So the president does not enjoy a guaranteed term of five years. In any case, no president can be elected president more than twice.

Tanzania

Constitution of 1977 as amended in 2005

Article 40. Eligibility for re-election

1. Subject to the other provisions of this Article, any person who holds office as President shall be eligible for re-election to that office.
2. **No person shall be elected more than twice** to hold the office of President.
3. A person who has been President of Zanzibar shall not be disqualified from being elected President of the United Republic for the reason only that he has once held office as President of Zanzibar.
4. Where the Vice-President holds the office of President in accordance with the provisions of Article 37(5) for less than three years, he shall be eligible to contest for the office of President for two terms, but where he occupies the office of President for three years or more, he shall be eligible to contest for the office of President for one term only.

Article 42. Time of assumption and term of office of President

2. Unless he sooner resigns or dies, the person elected as President, subject to the provisions contained in sub article (3), shall hold the office of President for a period of **five years** from the date on which he was elected President.
4. If the United Republic is at war and the President considers that it is not practicable to hold elections, the National Assembly may from time to time, pass a resolution extending the period of five years specified in sub article (2) of this Article save that no such extension shall exceed a period of six months at any one time.

Togo

Constitution of 1992, as amended in 2019

Article 59

The President of the Republic is elected by universal, free, direct, equal and secret suffrage for **a term of five (05) years renewable only once**. This provision can only be modified by referendum. The President of the Republic remains in office until the effective assumption of office of his elected successor.

Tunisia

Constitution of 2022

Article 90

The President of the Republic is elected for a **term of five years** during the last three months of the presidential term by universal, free, direct and secret suffrage, by an absolute majority of the votes cast.
Holding the position of the President of the Republic may not exceed **two complete successive or separate terms**.

Uganda

Constitution of 1995 as amended in 2017

Article 105. Tenure of office of President

1. A person elected President under this Constitution shall, subject to clause (3) of this article, hold office for **a term of five years**.
2. A person shall not hold office as President for more than **two terms**.
 - 2a. A bill for an Act of Parliament seeking **to amend this clause and clause (2)** of this article shall not be taken as passed unless-
 - a. it is supported **at the second and third reading in Parliament by not less than two thirds of all Members of Parliament**; and
 - b. has been referred to a decision of the people and **approved by them in a referendum**

Zambia

Constitution of 1991 as amended in 2016

Article 106: Tenure of office of President and vacancy

1. The term of office for a President is **five years** which shall run concurrently with the term of Parliament, except that the term of office of President shall expire when the President-elect assumes office in accordance with Article 105.
3. A person who has **twice held office** as President is not eligible for election as President.

2. A President shall hold office from the date the President-elect is sworn into office and ending on the date the next President-elect is sworn into office.
3. A person who has twice held office as President is not eligible for election as President.
4. The office of President becomes vacant if the President—
 - a. dies;
 - b. resigns by notice in writing to the Speaker of the National Assembly; or
 - c. otherwise ceases to hold office under Article 81,107 or 108.
5. When a vacancy occurs in the office of President, except under Article 81—
 - a. the Vice-President shall immediately assume the office of President; or
 - b. if the Vice-President is unable for a reason to assume the office of President, the Speaker shall perform the executive functions, except the power to—
 - i. make an appointment; or
 - ii. dissolve the National Assembly;
 and a presidential election shall be held within sixty days after the occurrence of the vacancy.
6. If the Vice-President assumes the office of President, in accordance with clause (5)(a), or a person is elected to the office of President as a result of an election held in accordance with clause 5(b), the Vice-President or the President-elect shall serve for the unexpired term of office and be deemed, for the purposes of clause (3)—
 - a. to have served a full term as President if, at the date on which the President assumed office, at least three years remain before the date of the next general election; or
 - b. not to have served a term of office as President if, at the date on which the President assumed office, less than three years remain before the date of the next general election.

Zimbabwe

Constitution of 2013 as amended through 2017

Article 91. Qualifications for election as President and Vice-President

....

2. A person is disqualified for election as President or Vice-President if he or she has already held office as President under this Constitution for **two terms, whether continuous or not**, and for the purpose of this subsection three or more years' service is deemed to be a full term.

Article 95. Term of office of President and Vice-Presidents

1. The term of office of the President or a Vice-President commences on the day he or she is sworn in and assumes office in terms of section 94(1)(a) or 94(3).
2. The term of office of the President or a Vice-President extends until—
 - a. he or she resigns or is removed from office; or
 - b. following an election, he or she is declared to be re-elected or a new President is declared to be elected; and, except as otherwise provided in this Constitution, their terms of office are **five years** and coterminous with the life of Parliament.

Article 328(7)

Notwithstanding any other provision of this section, an amendment to a term limit provision, the effect of which is to extend the length of time that a person may hold or occupy any public office, does not apply in relation to any person who held or occupied that office, or an equivalent office, at any time before the amendment.



PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
OUR PAST, OUR PRESENT, OUR FUTURE

The African Network of Constitutional Lawyers (ANCL) would like to acknowledge Dr Adem Kassie Abebe, Dr Elvis Fokala and Yvonne Anyango Oyieke in conceptualising and leading the development of the policy paper series on selected themes on the promotion of constitutionalism and regular alternation of power through term limits. The ANCL also recognises the support of Professor Serges Alain Djoyou, Dr Laura-Stella Enonchong, Vanja Karth, and Dr Azubike Onuoraoguno.

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1. Introduction

One-person rule by presidents and potentates who cling to power for years and even decades has been one of the most enduring obstacles to the advancement of democratic governance in Africa.¹ As a result, the constitutional entrenchment of presidential term limits was one of the major tools introduced during the post-1990 constitutional reforms to guard against one-person rule.² Presidential term limits were introduced in the hope of providing a solid basis for precluding personal and authoritarian rule by guaranteeing regular alternation of power.³

While the African public widely embraced term limits, these rules soon came under increasing attack from incumbent presidents seeking to extend their tenures.⁴ Only 33 of the 213 presidents who have been in power since 1990 have retired from office after serving their constitutionally restricted terms in office. Even among these 33, two of those presidents, namely Bakili Muluzi of Malawi and Olusegun Obasanjo of Nigeria, retired only after trying unsuccessfully to amend their constitutions to prolong their stay in power; the terms of Thabo Mbeki and Jacob Zuma were cut short after being recalled by their parties; some lost re-election for a second term such as Ghana’s John Dramani Mahama or Nigeria’s Goodluck Jonathan.⁵ Whereas only six countries in Africa (other than monarchies and parliamentary systems) do not currently have presidential term limits, many of these countries are yet to experience alternation of power through term limits.⁶ Indeed, despite notable progress recorded in the recent years with presidents in several countries such as the Democratic Republic of Congo (DRC), Mauritania, Niger, and Liberia abiding by term limits, Africa remains home to most of the top ten longest serving presidents in the world. The steady and progressive amendment of African constitutions to remove or evade term limits remains a major threat to the nascent transition to democracy and constitutional rule in the continent.⁷

In view of this, African countries have sought to safeguard against the continuous flouting of presidential term limits with impunity through ostensibly regular amendment procedures. Notably, African constitution makers have crafted different mechanisms to protect presidential term limits, from making them unamendable to establishing high thresholds for amendment to subjecting amendments affecting term limits to

judicial review to excluding incumbents from benefiting from changes affecting term limits. This paper identifies and summarizes these strategies and assesses their significance with a view to propose insights and ideas on how best to protect term limits. The paper focuses on protection of term limits at the national level. If nascent efforts to establish term limits at African and sub-regional levels, notably in West Africa, succeed, term limits will have an additional layer of protection.

2. Presidential Term Limits: An Overview

Term limits impose a maximum number of times a person is allowed to hold the same public office, setting a ceiling on the number of terms that any one individual can serve in (elected) public office, even if the voters are ready to re-elect them.⁸ Term limits were introduced as a tool to address the proclivity among African leaders for life presidencies.⁹ Since the early 1990s, when a breeze of democracy swept across the continent, at least 34 of Africa’s 54 countries established term limits on their presidents, usually giving them a maximum of two five-year tenures.¹⁰ However, the continent still holds the undesirable record of being home to more than half of the world’s longest-serving leaders as shown in the table below.¹¹ These aging leaders preside over an overwhelmingly young African population.

Country	President/King	Years in power (as of January 2023)
Equatorial Guinea	Teodoro Obiang	43 Years
Cameroon	Paul Biya	40 Years
Republic of Congo	Denis Sassou Nguese	38 Years
Uganda	Yoweri Museveni	36 years
Eswatini <small>(absolute monarchy)</small>	King Mswati III	36 Years
Eritrea	Isaias Afwerki	29 Years
Lesotho <small>(constitutional monarchy)</small>	King Letsie III	26 Years
Djibouti	Ismail Omar Guelleh	23 Years
Morocco <small>(constitutional monarchy)</small>	King Mohammed VI	23 Years
Rwanda	Paul Kagame	22 Years

Table 1: The top ten longest-serving Presidents/Kings in Africa in 2023¹²

Albeit no longer in office, the following African leaders also rank as some of the presidents who held office for the longest time: Libya's Ghaddafi ruled for nearly 42 years, before he was killed in 2011; Gabon's Omar Bongo died in 2009 after more than 41 years in power; Angola's Jose Eduardo dos Santos stepped down in 2017 after ruling for 38 years; Gnassingbe Eyadema of Togo ruled for 38 years from 1967 to his death in 2005; Zimbabwe's Robert Mugabe was forced out in November 2017 after 37 years at the helm, and Chad's Idriss Deby ruled for 31 years before his death in 2021.¹³

These long time leaders co-exist with the fact that, with few exceptions, large majorities of Africans support the idea of imposing a two-term limit on the exercise of presidential power; even in those countries that have never had term limits and those that have removed them in the past 15 years.¹⁴ Continuing efforts to evade term limits thus reveal a major disconnect between African leaders and African citizens on this issue, underlining the lingering legacy of big-man rule on the continent and highlighting the fragility of African democracies.¹⁵

Despite the widespread adoption and popularity of term limits in the early 1990s, and an increasing number of African countries have experienced alternations of power due to term limits, both new and old generations of African leaders continue to seek ways to remove these rules or to identify loopholes that would enable them to remain in power. Across the continent, presidents in more than 30 African countries have contemplated tempering with presidential term limits since 1998.¹⁶ Most recent illustrations are the successful attempts in Côte d'Ivoire and Guinea,¹⁷ although in Guinea the then incumbent president Alpha Condé was eventually ousted through a military coup. Campaigns to remove term limits faced large, often violent — and ultimately unsuccessful — protests in Côte d'Ivoire, Togo, Burundi, Guinea, the Republic of Congo, Uganda, and the Democratic Republic of Congo. Nevertheless, such protests, alongside the existence of well-organised ruling and opposition political parties, were instrumental in thwarting efforts to remove presidential term limits in Zambia (2000), Malawi (2002), and Nigeria (2006).¹⁸

Studies show that in the first six months of 2015 alone, the presidents of Burundi, Benin, the Democratic Republic of Congo, and Rwanda either personally or through their supporters expressed the intention to dispense with or

circumvent term limits in order to seek additional terms of office.¹⁹ In 2022, President Archange Touadera of the Central African Republic initiated an amendment arguably to scrap term limit and removed the President of the Constitutional Court after the Court declared the move unconstitutional.²⁰ Ugandan President Museveni has maintained his 42 year hold on power by circumventing, modifying or eliminating constitutional age and term limits.²¹ Further, Alpha Condé of Guinea and Alassane Ouattara of Côte d'Ivoire followed the well-trodden trail of holding on to power post the term-limits by Azali Assoumani of the Comoros, Paul Kagame of Rwanda, Paul Biya of Cameroon, Denis Sassou Nguesso of the Republic of Congo, and Ismail Guelleh of Djibouti, among others.²² Almost invariably, these leaders justify their next run by saying the people want them to stay on. However, Afrobarometer's 48,084 face-to-face interviews in 34 African countries between 2019 and 2021 indicate that leaders who stay for more than two terms are not a popular choice with the people.²³

In sum, many first-generation African leaders extended their terms by simply banning opposition parties and declaring themselves presidents for life. But more recent anti-term limit leaders often go through the motions of changing the rules through referenda or constitutional amendments passed through parliament.²⁴ In this regard, analyzing and assessing the mechanisms through which constitution makers have sought to protect term limit provisions against evasion through constitutional reform or change can provide a critical and comparative insight to the design of term limit and constitution amendment provisions across Africa.

3. Protecting Presidential Term Limits

The trends to evade term limits are not for want of protective mechanisms. In a bid to safeguard the constitutional clauses against abusive change, African countries have adopted mechanisms towards safeguarding self-serving amendment of constitutional provisions on presidential term limits. Studies show that most of the post-1990 substantially revised or new African constitutions endeavor in diverse ways to place some limits and restrictions on the power to amend the constitutional provisions on presidential term limits.²⁵ The restrictions either render these provisions unamendable or provide for stringent measures in amending provisions on presidential term limits. Some of the most current safeguard mechanisms include unamendability, stringent amendment

procedures, subjection of amendments to judicial review and ensuring that the amendment does not benefit the incumbent. Literature reveals that these safeguarding measures in the protection of presidential term limits have recorded some successes in several African countries as shown in the discussion below. This notwithstanding, some incumbents have equally devised strategies to by-pass these safeguards, completely flouting the provisions on presidential term limits.

Unamendable term limit provisions

One of the most common measures in the protection of presidential term limits in Africa is the entrenchment of the so-called “unamendable” or “eternity” clauses, providing that certain constitutional provisions may never be changed.²⁶ Several African constitutions include such clauses, declaring presidential term limits as unamendable. Constitutional provisions said to be “carved in marble” have mostly been the trait of Francophone African countries in a bid to guard against the unenviable trend of circumventing presidential term limits.²⁷ However, studies reveal that a number of non-Francophone countries have also entrenched presidential term limits clauses. Countries that have unamendable clauses on presidential term limits include Burkina Faso, Central African Republic, Benin, Niger, DRC, Madagascar, Guinea, Mauritania, Senegal, Algeria and Egypt.²⁸ The constitutional provisions adopted by these countries provide for the unamendability of both the number and duration of presidential term limits.²⁹ Some illustrations are worth highlighting given their peculiarities in serving as models.

Article 156 of the Constitution of Benin (1990, amended in 2019) highlights the constitutional clauses that cannot be amended. These clauses are those relating to the integrity of the territory, the republican form of government, and the secular nature of the state. While these provisions may also be found in the constitutions of other African French speaking countries, the Benin entrenchment model is made peculiar by the interpretative activism of its Constitutional Court. In the *Referendum Bill Review Case*,³⁰ the Constitutional Court of Benin expanded the corpus of unamendable provisions. In undertaking the constitutional review of a Referendum Bill, which made reference only to the three unamendable provisions expressly stated in article 156 of the Constitution, the Court ruled that three additional principles should be considered as non-amendable, which are the number of terms

of the president (two terms); the age of presidential candidates (between 40 and 70); and the nature of the political regime (presidential regime).³¹ The Court held that, while not expressly included in Article 156, these principles are inherent in the deliberations of the national conference that led to the adoption of the 1990 Constitution and therefore can only be amended through a similar process.³² The Court thus declared unconstitutional the draft bill seeking to hold a referendum with a view to amending the provisions of the Constitution without reflecting the three additional clauses.³³

Similar entrenched provisions are found in other constitutions. The 1991 Constitution of Burkina Faso as amended in 1997 entrenches the unamendability clause in Article 165 related to the republican form of the state, integrity of the territory, and multi-party system of government. The Constitution of Mali also prescribes in Article 118 that amendments cannot be pursued when they involve clauses relating to the integrity of the territory, the republican form and secular nature of the state as well as the multi-party system of government. Further, the Constitutional Court of Mali has ruled that an amendment bill cannot be said to be unconstitutional as long as it does not seek to change clauses on the republican nature of the state; integrity of the territory and secular nature of state.³⁴ On its part, the Algerian Constitution specifically makes presidential term limit unamendable under Article 243.

While unamendability constitutes a stringent protection against term extension, the restriction proved ineffective in some instances, e.g. in Niger under Mamadou Tanja (2009) and Algeria under Abdelaziz Bouteflika (repeatedly).³⁵ Further, unamendable provisions on presidential term limits were most recently manipulated in Guinea. Incumbents, have at times disregarded the limit altogether; or proceeded through bogus referendums to alter them; intimidation and bribery of parliamentarians, and violence against the electorate.³⁶ In many cases, incumbents have invoked the constituent power to make new constitutions, therefore disregarding the amendable clauses. Accordingly, the inclusion of specific provisions to regulate the making of new constitutions, and to also specifically protect term limit provisions even against purportedly new constitution making processes is critical.

Stringent amendment procedures

Another means of protecting presidential term limits has been the entrenchment of more onerous and stringent amendment procedures specifically for the relevant clauses. This mechanism involves special procedures that make constitutional amendment of term limit provisions particularly onerous. Such measures include higher majority thresholds, requirements of multiple readings in parliament, special timeframes to ensure full discussion of proposed amendments and special requirements for the publication of amendment proposals.³⁷

Further, more African countries have adopted referendums as a requirement for amending term limits, making the process more onerous.³⁸ Through referendums, the proposed amendments are circulated for public consultation before the final vote is taken.³⁹ Some countries have ensured that significant constitutional amendments are accompanied by public information, education programs and special processes that allow the views of citizens to be considered and deliberated upon.⁴⁰ In Rwanda and Sierra Leone, a referendum is now required to approve changes to presidential tenure, a requirement that was highlighted by the supporters of the amendment process undertaken in Rwanda in 2015.⁴¹

Being one of the most common measures in protecting presidential term limits in Africa, stringent amendment procedures have recorded successes in countries such as Malawi under President Bakili Muluzi and Burundi in 2015, where a proposed amendment failed to pass because it was short of one vote in parliament.⁴² Accordingly, incumbents have often managed to engineer the needed parliamentary and/or popular support to pass amendments to term limits, despite the more stringent the amendment requirement.

Subjection of amendments to judicial review

African countries have also resorted to judicial review in attempting to protect term limit against opportunistic tampering. The modus operandi of this protective mechanism is to subject any amendment of the relevant provisions to judicial review whereby courts are involved in adjudicating cases seeking to vet whether the proposed amendments are in abidance with the fundamental constitutional principles regarding term limits.⁴³ Contests over term limits have taken place in several domestic courts in African countries, some being successful and some not. Judicial review produced a positive outcome in Central African Republic (CAR) where

efforts by President Faustin-Archange Touadéra to circumvent the presidential term limit through amending the constitution were declared unconstitutional by the Constitutional Court. On 23 September 2022, the Court rejected as unconstitutional a series of presidential decrees related to the President's intention to replace the 2016 constitution with a new one, allowing him to review the currently unamendable presidential term limit.⁴⁴ The Court nullified the proposed amendment by ruling that the prerogatives vested in the Bureau and President of the National Assembly do not cloth them with power to repeal the Constitution.

Success stories of judicial review were recorded in some instances such as in Benin where the Constitutional Court protected presidential term limit in various decisions, including by declaring it unamendable such as in 2011.⁴⁵ In Malawi, the High Court upheld the presidential term limit by declaring that President Bakili Muluzi was ineligible to stand for election as he had already served for two terms.⁴⁶ However, this was not the case in Burundi when the Constitutional Court decided that although the Constitution provides for a two-term limit, President Pierre Nkurunziza's first term did not count because on that occasion he was not elected by the people of Burundi but by Parliament.⁴⁷ A similar scenario occurred in 2005 when the Constitutional Court of Burkina Faso ruled that the constitutional amendment stipulating a change to the term limit did not apply to the incumbent President Blaise Compaoré.⁴⁸

While judicial review has not always been successful in thwarting attempts by leaders to overturn presidential term limits, these successes are evidence that conducive circumstances such as the existence of unamendable clauses, independent judiciary and ease of access to courts by citizens are key in the protection of presidential term limits through judicial review.

Precluding incumbents from benefitting from amendments

In some instances, the means of deterrence from extending terms is to predetermine that the planned amendment will not benefit the incumbent president. This measure ensures that amendments to regulations such as extension of presidential term limits only enter into force for those who take up such affected offices/positions after the amendment is passed.⁴⁹ The mechanism is effective in circumstances whereby constitutional amendments are driven by individuals in

government for their own benefit especially with regard to the extension of presidential term limits.

In Africa, the only country whose constitution specifically precludes incumbents from benefitting from alterations of term limit provisions is the 2013 Constitution of Zimbabwe. Under article 328(7), “an amendment to a term-limit provision, the effect of which is to extend the length of time that a person may hold or occupy any public office, does not apply in relation to any person who held or occupied that office, or an equivalent office, at any time before the amendment”. Interestingly, the Constitution does not make this provision unamendable. Accordingly, incumbents seeking to extend their terms can first change this provision, and then the term limit provision. But they would need to submit any such proposed changes to the amendment procedure to a referendum, which can provide some level of protection. Accordingly, the potential effectiveness of a provision precluding incumbents from benefitting from changes to term limit provisions depends on their combination with other modes of protection, such as unamendability or stringent amendment procedures.

Successes and failures of mechanisms for the protection of presidential term limits

As discussed above, African countries have put in place mechanisms for the protection of presidential term limits such as unamendable clauses, stringent amendment procedures, subjection of amendments to judicial review as well as ensuring that amendments do not benefit the incumbent. Nevertheless, incumbents have devised strategies to circumvent presidential term limits notwithstanding the safeguarding measures. At face value it may seem that all these presidential term limit changes were undertaken through following the set procedure as entrenched in the various constitutions including through adoption by the requisite majorities, court processes and referendums. However, superficial compliance with constitutional requirements has masked constitutional manipulation, when powerful groups engineer constitutional change to serve their interests.⁵⁰ Studies show that incumbents and their political parties have ignored unamendable clauses and stringent amendment procedures within constitutions with impunity due to weak legislative arms of government. Further, judicial review has also proved ineffective in some instances due to the weak institutions and separation of powers between the executive and judiciary. While the adopted mechanisms

provided recourse in safeguarding against flouting of presidential term limits, practice shows that more often than not, these mechanisms have proved insufficient.

Those who have circumvented presidential limits have made use of political assassinations, detention of opposition politicians, suppression of protests, police and military brutality, restrictions on political participation rights, suppression of opposition parties, electoral fraud during a referendum, political corruption, disputable judicial and parliamentary independence, and questionable civil-military relations.⁵¹ Examples of such occurrences include banning of protests (Congo 2015); locking up of opposition members (Rwanda 2015); suspension of electronic communication channels (Congo 2015); harassment of journalists (Gabon 2003); bribery or intimidation of relevant decision makers, including referendum voters (Equatorial Guinea 2011); parliamentarians (Nigeria 2005) or judges (Burundi 2015).⁵² It can only be concluded that despite the adoption of safeguarding measures against flouting of presidential term limits, while corruption, abuse of power and an onslaught on constitutionalism continues, all the safeguarding measures will remain ineffective. Consolidation of rule of law and constitutionalism remain the key answers to this phenomenon that has seen constitutions being violated with impunity for the benefit of a few elites at the expense of the masses.

4. Why are Term Limits undermined?

While presidential term limits have been entrenched in the constitutions of African countries, the question that arises is why they are constantly being repealed in many countries. Further, it becomes questionable whether this is the will of the people or a contrived strategy by African leaders to hold on to life presidencies. Term limits have largely been repealed due to a combination of the indolence of the people and the ambition and delusion by those in power to exercise absolute power over the citizens.⁵³ The numerous reasons why the apparent constraints that came with presidential term limits have not always been able to contain the prolongation of presidential terms can be summed up under the following points: the excessive concentration of powers in African presidents, the sloppy drafting of the term limit provisions, the weak constitutional foundation of multiparty democracy, and a number of external factors.⁵⁴

First, African leaders are not only deified, often, they also arrogate to themselves imperial powers that they regularly abuse with impunity. The excessive concentration of powers in the president with few effective checks against abuse transforms him into an untouchable “Big Man”, whose party often controls parliament and, therefore, puts it under his control.⁵⁵ Such excessive concentration of powers under modern African constitutions has merely transformed the hard-core hegemonic authoritarianism of the past into a soft-core authoritarianism. State employees feel beholden to the incumbent rather than to the state and its institutions and therefore have no hesitation in adopting or supporting measures which will perpetuate the status quo in whose survival they have a stake.⁵⁶ In fact, in many cases, due to the high level of nepotism and corruption, high level officials consider their fates dependent on the continuity of the incumbent, and therefore hope and even encourage the incumbent to seek ways to circumvent term limit provisions. In fact, due to the high level of nepotism and corruption, many high-level officials are supporters of unlimited incumbency considering their fates dependent on the continuity of the incumbent, and therefore hope and even encourage the incumbent to seek ways to circumvent term limit provisions. As governance practices largely show, supporters are entertained by the president who assigns them benefits through patrimonial mechanisms.⁵⁷

A second factor that has contributed to the disregard of presidential term limit provisions has been the wording in the drafting of some African constitutions. Burundi’s President Nkurunziza’s third term bid was made possible because of two potentially contradictory provisions in the 2005 Burundi Constitution: articles 96 and 302.⁵⁸ This made it easy for him to intimidate and blackmail the Constitutional Court to adopt an absurd interpretation of the Constitution that favored his position.⁵⁹ A similar clumsy formulation of the Senegalese Constitution of 2001 made it easy for President Abdoulaye Wade, with the complicity of the Constitutional Council, to attempt a third term bid which was thwarted by the voters at the polls.⁶⁰ Neither specially weighted parliamentary majorities nor referenda have been enough to protect the removal of term limits by determined presidents. One solution proffered to protect term limit provisions is to declare them unamendable, as well as the model from Zimbabwe excluding incumbents from benefitting from changes to term limit provisions

Third, the fragility of presidential term limit provisions speaks eloquently to the weak multiparty foundation of modern African constitutions. Post-1990 constitution drafters were rather naïve to assume that multiparty democracy, of which presidential term limitation provisions are an important component, will grow and flourish just through the recognition of multipartyism.⁶¹ The rapid removal of term limits is a predictable result of the shallow foundation on which most African multiparty democracies are built. Beyond the recognition of the right to form parties and participate in elections, certain fundamental political rights, which are critical in a modern multiparty democracy, are hardly recognized. The failure to constitutionally entrench the rights of all political parties in a manner that will ensure a level playing field, protect them from intimidation and blackmail and confer on them an enforceable right to free and fair elections has had numerous consequences. The progressive repeal of term limits has come hand in hand with the increasing neutralization of opposition parties and the undermining of the rise of any potential credible leaders.⁶²

In light of the above, it is therefore paramount for African countries to invent and devise strategies towards ensuring the protection and effective implementation of presidential term limits.

5. Presidential Term Limits In Africa: The Way-Forward

As already highlighted, over the years African countries have undertaken constitutional reforms which saw them entrenching presidential term limits within their national constitutions. The term limits were mainly adopted as a means of guarding against prolonged stays in office by incumbents leading to authoritarian rule and bad governance. Further, the constitutional reforms also saw the entrenchment of safeguarding measures to protect term limits. As discussed above measures such as unamendable constitutions/clauses; stringent amendment procedures; subjection of amendments to judicial review and ensuring that amendments do not benefit the incumbent have been adopted in a bid to protect presidential term limits. However, notwithstanding such attempts, African countries have witnessed attempts and successful amendments to the constitutions whereby presidential term limits are extended or completely removed. It is against this background that this section considers

practices in protecting term limits against alteration or abolition. This paper proposes strengthening stringent amendment provisions, provisions on credible elections, strengthening the oversight role of supranational institutions and promoting citizen participation as strategies that can be adopted in protecting presidential term limits against abolition.

Firstly, the best ways to protect presidential term-limit provisions is not necessarily to declare them unamendable but rather to make it extremely difficult to amend them, alongside provisions excluding incumbents from benefitting from changes to term limit provisions.⁴⁷ Constitutions should also specifically regulate the process through which a new constitution may be adopted, and indicate that the rules on term limits are applicable even in cases where a new constitution is made. A better approach to the concept of unamendable provisions is to regulate and control strictly the way amendments can be made in such a way that the procedure is complex and protracted. Further, the provisions on referendums for the amendment of presidential limits should be strengthened so as to ensure that there is elaborate and adequate citizen consultation and that the changes reflect the free and fully expressed will of the people (e.g. in the form of high turnout provisions as well as requiring a supermajority support in referendums). Strictly enforceable and enforced term limits provide the best chance for Africa to have politicians who are democrats and not despots.

Secondly, there is need for strengthening constitutional provisions that confer the right to free, fair and regular elections.⁶³ This is paramount as elections are critical not only in electing presidents but also in determining whether or not presidential term limit provisions should be amended. Further, political rights which recognize the principle of fair competition and equality of treatment of all the parties should also be strengthened towards the protection of presidential term limits. This is critical as practice shows that without constitutional provisions that enshrine these principles, the right to vote is nothing but an illusion.

Thirdly, strengthening the oversight role of supranational institutions such as the African Union and other sub-regional organs such as the East African Community (EAC), Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) to play a

watchdog role in curbing the flouting of presidential term limits by member states is also key in protecting presidential term limits. In this regard, these organizations should adopt rigorous measures to engage and support countries undergoing constitution amendment and reform processes and as necessary sanctions for non-compliance. Of importance is for member states to also adopt measures in promoting compliance with the various instruments that regulate democracy and free and fair elections.

The role of the citizenry, civil society organizations, scholars and think tanks cannot be overemphasized in the protection of presidential term limits. While African countries have entrenched term limits within their constitutions, practice has shown a blatant disregard of the same by those in power. It is therefore the duty of the citizens to hold their leaders to account for the violations. Whereas positive outcomes may not be guaranteed, citizen participation remains critical for democracy and the attainment of the will of the people.

6. Conclusion

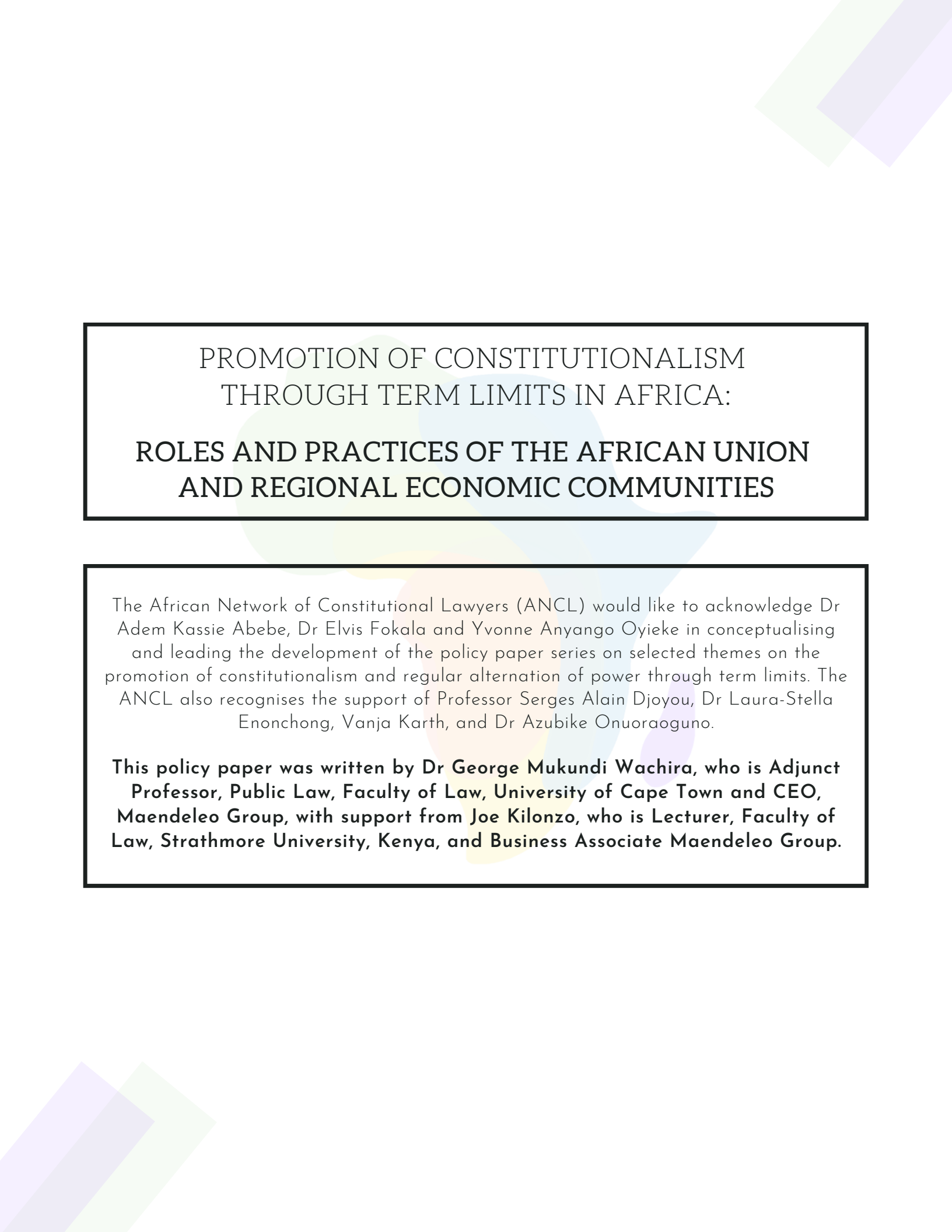
The strong support of ordinary Africans for presidential term limits debunks the claims of the continent's third-term advocates – especially sitting presidents – that their campaigns are driven by popular demand. The fact that a number of leaders have managed to circumvent term-limit rules to extend their tenure should not be interpreted to mean that Africans want a return to the era of presidents for life. Attempts by sitting African presidents to extend or remove term limits have led to conflicts – sometimes resolved by reaffirming term limits, but at other times leading either to prolonged political disorder or ostensible authoritarian stability. The future of presidential term limits on the continent is still evolving, as many countries contend with the difficulties of building democracy. What Africa does not need are strong men who want to rule for life, regardless of their competence; what it needs are strong institutions that entrench a culture of democracy that gives everybody a fair and equal opportunity to serve the country. It is therefore crucial that more radical reforms beyond merely entrenching presidential term limits are undertaken to arrest the creeping descent towards dictatorship backed by bogus elections orchestrated by despots.

⁴⁷ As above, 57.

In light of the above, this paper proposes a number of strategies towards the protection of presidential term limits. As already highlighted, one of the strategies that can be adopted by constitutional drafters in safeguarding against flouting of presidential term limits is through strengthening of stringent amendment clauses towards ensuring that beyond higher majority thresholds, amendments are subject to the genuine will of the people. Further, presidential term limits may be protected through strengthening the watchdog role of supranational institutions in guarding against the abolition of presidential term limits by incumbents and ensuring that credible elections are observed in members states. Lastly, citizen participation is also key in ensuring incumbent compliance with term limit provisions.

It goes without saying that the effectiveness of any of these recommendations will depend on the political landscape of the various countries. Nevertheless, while they may not be foolproof, they offer avenues that can be explored by African countries in protecting presidential term limits.

- ¹ CM Fombad ‘Presidential term limits through constitutional amendments in Africa’ in G Masterson & M Meirotti M (eds) *Checks and Balances: African Constitutions and Democracy in the 21st Century* (2017) 5.
- ² African Leadership Centre (2014), [The New Assault on Presidential Term Limits in Africa: Focus on Burundi](#) (accessed 8 February 2023).
- ³ B Dulani *African publics strongly support term limits, resist leaders’ efforts to extend their tenure* (2015) 1. Amendments were made as early as in the late 1990s such as in Namibia, and in the early 2000s as was the case in Guinea and Uganda.
- ⁴ As above.
- ⁵ For a comprehensive and recent count, see CM Fombad ‘The State of Presidential Term Limits in Africa, 1990 – 2022’ (unpublished, on file with author) 20-22.
- ⁶ K Eze ‘The Efficacy of Presidential Term Limits’ (2016) 2, [Discussion Paper THE EFFICACY OF PRESIDENTIAL TERM LIMITS Mandela Institute for Development Studies Youth Dialogue 3-4 August 2](#) (accessed 26 March 2023).
- ⁷ African Leadership Centre (n 2 above).
- ⁸ Eze (n 7 above) 7.
- ⁹ T M Makunya & K Appiagyei-Atua ‘Soldiers in Civilian Uniforms: The Role of the Military in the Pursuit of Third-Termism’ in A Adeola and M W. Mutua (eds) *The Palgrave Handbook of Democracy, Governance and Justice in Africa* (2022) 76.
- ¹⁰ Eze (n 7 above) 6.
- ¹¹ Fombad (n 1 above) 45.
- ¹² Accessed 09 February 2023.
- ¹³ Talk Africana [Top 10 Longest Serving Presidents in Africa, 2023](#) (accessed 09 February 2023).
- ¹⁴ Dulani (n 3 above) 1-2.
- ¹⁵ As above.
- ¹⁶ As above.
- ¹⁷ D Zoumènou [Third terms for presidents of Côte d’Ivoire and Guinea must be stopped - ISS Africa](#), *Institute for Security Studies* (2020), available at (accessed 04 March 2023).
- ¹⁸ [J Siegle & C Cook Circumvention of Term Limits Weakens Governance in Africa](#) (2020), (accessed 09 February 2023).
- ¹⁹ Dulani (n 3 above) 1.
- ²⁰ S Vohito ‘[Courts vs Incumbents: Guaranteeing Alternation of Power in the Central African Republic](#)’ *ConstitutionNet International IDEA*, (2022), available at (accessed 5 March 2023); M Butskhrikidze [President of Central African Republic orders removal of top judge from Constitutional Court - JURIST - News](#), *Jurist* (2022), (accessed 5 March 2023).
- ²¹ B Dulani [‘Long-serving African presidents say the people want them to stay on. Is that true?’](#) (2021), available at (accessed 09 February 2023).
- ²² As above.
- ²³ As above.
- ²⁴ Eze (n 7 above) 6.
- ²⁵ C M Fombad ‘Limits on the power to amend Constitutions: Recent trends in Africa and their potential impact on constitutionalism’ (2007) *University of Botswana Law Journal* 28.
- ²⁶ M Böckenförde *Constitutional Amendment Procedures International IDEA* (2017) 4.
- ²⁷ [F Deloche-Gaudez La Constitution Européenne: Que faut-il savoir \(2005\), chapter 14 207 - 222](#)
- ²⁸ M Wiebusch & C Murray ‘Presidential Term Limits and the African Union’ (2019) 63 *Journal of African Law* 142.
- ²⁹ As above, 141.
- ³⁰ Constitutional Court of Benin, Decision DCC 11-067 of 20 October 2011.
- ³¹ As above. See also, International IDEA & ConstitutionNet ‘Constitutional Court of Benin Decision DCC 11-067 of 20 October 2011’ (2016), available at [DCC 11-067 | ConstitutionNet](#) (accessed 10 March 2023).
- ³² DCC 11-067 of 20 October 2011.
- ³³ As above.
- ³⁴ Constitutional Court of Mali, Judgment No. 01 – 128 of 12 December 2001.
- ³⁵ Fombad (n 1 above) 47-50.
- ³⁶ As above.
- ³⁷ C M Fombad ‘Some perspectives on durability and change under modern African constitutions’ (2018) 11/2 *International Journal of Constitutional Law* 382.
- ³⁸ Böckenförde (n 27 above) 18.
- ³⁹ As above.
- ⁴⁰ Wiebusch & Murray (n 29 above) 143.
- ⁴¹ As above, 142.
- ⁴² Fombad (n 1 above) 60.
- ⁴³ Wiebusch & Murray (n 29 above) 144.
- ⁴⁴ Vohito (n 21 above).
- ⁴⁵ S H Adjolohoun ‘Made in courts’ democracies? Constitutional adjudication and politics in African constitutionalism’ in C M Fombad (ed) *Constitutional Adjudication in Africa* (2017) 273.
- ⁴⁶ State v Ex Parte Muluzi and Another [2009] MWHC 13 (16 May 2009).
- ⁴⁷ African Leadership Centre (n 2 above).
- ⁴⁸ C S Namakula ‘The Efficacy of Presidential Term Limits in Africa’ (2016) Mandela Institute for Development Studies Discussion Paper, available at [Discussion Paper THE EFFICACY OF PRESIDENTIAL TERM LIMITS IN AFRICA Mandela Institute for Development Studies Youth Dialogue 3](#) (accessed 27 March 2023) 20.
- ⁴⁹ Böckenförde (n 27 above) 19.
- ⁵⁰ ISS ‘Tampering with national constitutions is a threat to stability in Africa’ (2019), available at <https://reliefweb.int/report/world/tampering-national-constitutions-threat-stability-africa> (accessed 10 March 2023).
- ⁵¹ Wiebusch & Murray (n 29 above) 145.
- ⁵² As above.
- ⁵³ A Osei *et al* ‘Presidential Term Limits and Regime Types: When Do Leaders Respect Constitutional Norms?’ (2021) 55 *Africa Spectrum* 254.
- ⁵⁴ Fombad (n 1 above) 52.
- ⁵⁵ [Siegle & Cook](#) (n 19 above).
- ⁵⁶ As above.
- ⁵⁷ Eze (n 7 above) 13.
- ⁵⁸ Fombad (n 1 above) 53.
- ⁵⁹ African Leadership Centre (n 2 above).
- ⁶⁰ Fombad (n 1 above) 53.
- ⁶¹ [Siegle & Cook](#) (n 19 above).
- ⁶² Fombad (n 1 above) 53. See also Charles Fombad ‘Political party constitutionalization in Africa: Trends and prospects for deepening constitutionalism’ in Rosalind Dixon, Tom Ginsburg and Adem Abebe (eds) *Comparative constitutional law in Africa* (2022).
- ⁶³ Wiebusch & Murray (n 29 above) 157.



PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
**ROLES AND PRACTICES OF THE AFRICAN UNION
AND REGIONAL ECONOMIC COMMUNITIES**

The African Network of Constitutional Lawyers (ANCL) would like to acknowledge Dr Adem Kassie Abebe, Dr Elvis Fokala and Yvonne Anyango Oyieke in conceptualising and leading the development of the policy paper series on selected themes on the promotion of constitutionalism and regular alternation of power through term limits. The ANCL also recognises the support of Professor Serges Alain Djoyou, Dr Laura-Stella Enonchong, Vanja Karth, and Dr Azubike Onuoraoguno.

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1. Introduction

In the post-independence era, several African states experienced transfer of power through coup d'états.¹ Many post-independence founding political leaders were unceremoniously ousted by coups, or died in office because of natural causes, whereas transfer of power through elections was an exception.² However, from the early 1990s, partly due to a wave of democratisation and constitutionalism, institutions that uphold democracy have attained greater importance in constraining executive power and addressing undemocratic processes, as well as enabling peaceful transfers of power. The 1990s marked a period of significant transformation of political systems across Africa ranging from the introduction of a multi-party system of governance and the fall of many civilian and military dictators to respect for the rule of law and constitutionalism.³

Most notably, since the 1990s, an overwhelming majority of African states adopted presidential term limits in their constitutions as part of broader rules that sought to entrench transitions from personal and authoritarian rule to democratic governance.⁴ Although in some African states presidential term limits have been respected, there has also been a worrying trend to either circumvent or remove presidential term limits, and many African states are yet to see peaceful alternation of power.⁵ Combined with the weak institutionalisation of democratic governance in Africa, the trend to circumvent or remove term limits creates 'conditions that make it very difficult for the opposition to participate competitively in elections.'⁶ This circumvention of term limits and its consequences of incumbency advantage is inconsistent with AU and REC norms that seek to entrench democracy, good governance, and respect for human rights and the rule of law. It undermines AU's aspiration for a peaceful continent of 'good governance, democracy, respect for human rights, justice, and the rule of law' as articulated under AU's Agenda 2063.

The AU and some RECs has adopted various norms that address unconstitutional changes of government, arguably including the phenomenon of circumventing or removing presidential term limits. Although the AU has been active in addressing unconstitutional changes of government, particularly those arising from military coups, questions remain on why the 'AU is relatively passive' regarding circumvention or removal of presidential term limits by incumbents. While the norms are robust, AU's action or intervention among its member states following circumvention or removal of term limits by incumbents, has not been as proactive.⁷

This policy paper focuses on the role and practice of AU and RECs in promoting peaceful political transitions in Africa through term limits.

This policy paper includes five distinct sections:

1. Introduction
2. Why presidential term limits matter
3. Assessment of AU and RECs normative frameworks relative to term limits
4. A brief overview of the practice of AU and RECs, including on consequences of inconsistencies
5. Policy issues for consideration on improving the establishment of term limits as critical to peaceful alternation of power.

2. Do presidential term limits matter?

While constitutional limits have attained prominence in Africa since the 1990s as a tool against prolonged stays in power, with Tanzania witnessing the first ever peaceful transition of power due to term limits in 1995, they have been subject to intense contestations. This has reignited debate as to whether term limits are legitimate and matter. Why should the AU and RECs consider presidential term limits as critical to the aspiration for a peaceful, prosperous and integrated Africa that is characterised by good governance and democracy?

There are valid reasons why presidential term limits are critical to the realisation of good governance and democracy in line with AU Shared Values. First, presidential term limits enhance power alternation. In Africa, there is an empirically proven correlation between respect for presidential term limits and alternation of leadership.⁸ In various AU member states, such as Benin, Kenya, Ghana, Malawi, Mali, Nigeria, and Seychelles, presidential term limits have fostered unprecedented and smooth political transitions from ruling to opposition parties, and change of leadership within ruling parties in many states, such as Botswana, Mauritania, Mozambique, Niger, and Tanzania. For instance, President Uhuru Kenyatta's most recent hand over of instruments of power to William Ruto on 13 September 2022, despite the former having supported long time opposition leader Raila Odinga's candidacy, is a classic testimony to the importance of presidential term limits to good governance and democracy in the continent.⁹

Importantly, alternation of power has the potential to positively impact democratic consolidation. It leads to a

change of personalities and possibly introduction of new ideas, reforms and development strategies, some of which may raise hope for good governance, rule of law and development among citizens.¹⁰ Elections where incumbent presidents do not run have been useful to the removal of entrenched, corrupt, and authoritarian regimes from power, creating opportunities for increased political liberalisation and improved governance.¹¹ The defeat of KANU in Kenya in 2002 is an example.¹² Until the end of President Daniel Moi's term, and the non-incumbent elections in 2002, 'the reintroduction of multipartyism in Kenya had not resulted in an improvement in governance or civil liberties.'¹³

Second, term limits facilitate improved electoral processes. Restrictions on the number of times an incumbent may run for presidency facilitates electoral processes and prevents the emergence of 'electoral dictatorships' and pseudo-monarchs.¹⁴ Term limits regulate and shield the political environment from the excesses of the incumbent, and allow electoral processes to function.¹⁵ This is critical in Africa where elections are expected to perform at least three functions that are aligned with AU and RECs normative frameworks on governance and democracy.¹⁶ The functions include:¹⁷ i) helping the continent establish and sustain effective democratic institutions; ii) providing African citizens with an effective legal tool to limit and guard the government and enhance accountability; and iii) increase the ability of the people to change their government and elect new political leadership.

Third, presidential term limits lead to development of state institutions and levelling of the political playing field. Presidential term limits serve as incentives for incumbent leaders to develop equitable and effective institutions, which they will be subject to upon leaving office.¹⁸ Unlike a protracted stay in power, which creates personalisation of power and entrenchment of informal networks of patronage, presidential term limits make it harder to establish patronage networks and such networks also become less valuable.¹⁹ This creates a chance to build state institutions and levelling of the political playing ground which facilitates democratic development.²⁰ This is in line with the goal for creation of capable institutions and transformative leadership as outlined under aspiration 3 of the AU Agenda 2063.

While presidential term limits are critical to promotion of peaceful transitions and enhancement of democracy and good governance, several arguments have been made against imposition of term limits. First, term limits are said to constrain democratic choice of voters.²¹ In a democracy, it is argued, citizens should be free to elect whoever they want to

even in cases where a candidate has already exhausted their constitutional tenure.²²

Second, alternation of power through term limits is not always a guarantee of good governance and democracy.²³ There is no guarantee that the leader elected upon the end of term of the incumbent president will lead in a more democratic and transparent manner than his predecessor.²⁴ In some AU Member States, some alternations of power have resulted in bleak experiences.

Third, continuity of leadership may contribute to political stability in the short term while term limits risk instability. It is evident that presidential term limits have not successfully addressed rivalry over power succession in Africa.²⁵ In fact, attempts to evade term limits, successful or otherwise, have often generated political and even security instability.

However, a critical assessment shows that 'despite the inherently contentious and conflictual character of presidential term constraints, most conflicts emerged from circumstances of defiance of term limits. Struggles over the subject of term limits often characterised the people's resistance to efforts by leaders that sought to stretch the initial boundaries.'²⁶ Crucially, presidential term limits are very popular among Africans, and the overwhelming majority of African constitutions impose term limits.²⁷ Term limits not only represent the popular will, but also that countries with term limits are more likely to show better performance on key indicators of stability, rule of law, good governance and corruption.

3. AU and RECs Normative Frameworks Relative to Term Limits

The AU has laid down normative frameworks to address unconstitutional changes of government. The prohibition against unconstitutional changes of government became prominent in 2000 because of the Lome Declaration²⁸ where OAU Heads of State and Government undertook to unequivocally condemn and reject all forms of unconstitutional change of governments within the continent with specific reference to military coups. This was premised on the position that the peoples' will ought to be expressed through the ballot and not the bullet. Similarly, one of the core principles upon which the AU functions pursuant to the AU Constitutive Act is the condemnation and rejection of unconstitutional changes in government.²⁹ Based on this principle, the Constitutive Act provides for the suspension of governments that come to power through unconstitutional means from participation in the activities of the AU.³⁰

In addition, the African Charter on Democracy, Elections and Governance, 2007 (ACDEG) was established out of appreciation that unconstitutional changes of government contribute to insecurity, instability and violent conflicts.³¹ Hence, one of the underlying objectives of the ACDEG is to prohibit, reject and condemn unconstitutional changes of government bearing in mind that such transitions are outright threats to stability, peace, security and development within the continent.³² From this objective stems the obligation of AU member states to condemn and totally reject governments that have come into power through unconstitutional means and changes.³³ Further, the ACDEG obliges the AU to issue appropriate sanctions in response to conduct that amounts to illegal means of accessing or maintaining power, which includes the amendment or revision of constitutions or legal instruments which infringe on principles of democratic change of government.³⁴

However, there is no express articulation of constraints on extension or removal of presidential term limits. Indeed, attempts to include term limits in the ACDEG were rejected during the drafting process. In addition, attempts by ECOWAS to amend its Protocol on Democracy and Good Governance to include presidential term limits have so far been unsuccessful.³⁵ Nevertheless, it is possible to imply support for the establishment of presidential term limits and discouragement of, even prohibition against, removal of term limits from the provision of the ACDEG banning constitutional and legislative amendments that undermine democratic change of governments.

Indeed, recently, in March 2022, the participants of the AU Reflection Forum in Accra Ghana adopted the Declaration on Unconstitutional Changes of Government in Africa.³⁶ The Declaration includes an acknowledgement that the AU and RECs have made significant efforts in tackling unconstitutional changes of government through various measures as provided by AU/RECs frameworks, including sanctions and other punitive measures.³⁷ It also recognises that AU Member States have made efforts in promoting democracy and good governance by conducting free and fair elections as well as upholding presidential term limits provided in their respective constitutions.³⁸ It further acknowledges with regret the increased practice by incumbents to manipulate democratic processes to eliminate, modify or resist term limits in their laws.³⁹

On the premise of its normative frameworks, the AU has acted against unconstitutional changes of government through military coups, although at times it has shown serious

issues of inconsistency.⁴⁰ However, the AU has remained relatively passive regarding incumbents' manipulation of constitutions to circumvent or remove presidential term limits.⁴¹ As demonstrated in the next section of this paper, different incumbents have gotten away with constitutional amendments to facilitate the extension of their terms in office and are yet to face any condemnation or serious consequences from the AU. The AU has therefore not been actively condemning efforts to undertake constitutional amendments even when the constitutional structures do not allow for amendments that purport to interfere with the lawfully prescribed presidential tenure.⁴²

One of the challenges that may constrain AU from actively condemning presidential term extensions before elections is based on the overriding criteria upheld by the AU to recognize power transitions. The nature of the current framework mainly recognizes credible elections (free, fair and democratic) as the only scale upon which the validity of power alternation is weighed.⁴³ The resulting assumption that democratic election is the sole basis of the authority of representative governments has created a loophole that has been exploited by incumbents and also constrained active reaction or consequences from the AU.

Even so, under the ACDEG, amendments or revision of constitutionally entrenched term limit provisions could be recognized as unconstitutional changes to the extent that they are undertaken with underlying infringement of democratic principles of democratic change of government.⁴⁴ At a minimum, changes to term limit provisions should create a presumption of violation of democratic principles that should trigger AU and REC condemnation. In practice, despite reports of discreet AU engagement, the extent to which the AU has never publicly called out incumbents undertaking such unconstitutional changes has created the impression that term limit violations are not seen as constituting infringement of democratic principles. This uncertainty means that the ACDEG is not clear on the scope of principles of democratic change of government that it protects. The ambiguity in the provisions of the ACDEG has been taken advantage of by incumbents through arguments that the prohibitions against term limits ought not to apply retrospectively. For instance, incumbents in Burundi (2015), Senegal (2012), Burkina Faso (2014) and most recently in Guinea-Conakry (2020) and Cote d'Ivoire (2020) have invoked this argument to justify that the constitutional term limits did not apply retrospectively to their first terms in office.⁴⁵

While the AU has instruments prohibiting constitutional alterations that undermine democratic principles, most of the

RECs have not established similar specific normative frameworks. ECOWAS adopted a Protocol on Democracy and Good Governance, which bans changes to electoral rules six months before elections.⁴⁶ This arguably would apply to changes to presidential term limits, but does not preclude abusive and regressive changes prior to the six-month cut-off time. Nevertheless, the organisation has never invoked the Protocol to ban or reject presidential term removals. In fact, the region has had one of the highest concentrations of term limit alterations since the 1990s.⁴⁷ In recognition of the gap in its frameworks, ECOWAS sought to amend the Protocol to explicitly establish a two-term limit, which was defeated, most recently in 2022, when Senegal, Cote d'Ivoire and Togo reportedly blocked the move.⁴⁸ The process of review of the Protocol is ongoing.

Other RECs do not have robust democratic frameworks as ECOWAS. Nevertheless, RECs, as building blocks of the AU, are in principle expected to apply continental standards. Indeed, one of the key objectives of the Protocol on the Relations between the AU and RECs is the coordination and harmonisation of policies and establishment of a framework for the contribution of RECs to the realisation of the objectives of the AU Constitutive Act.⁴⁹ RECs also expected to align their policies, programmes and strategies with those of the AU.⁵⁰ Accordingly, the absence of specific sub-regional instruments does not provide excuses for REC's reluctance to admonish incumbents that temper with term limits. Indeed, the principle of subsidiarity that animates the Protocol on the Relations between the AU and RECs assumes a responsibility on the RECs to recognise, adapt and apply continental standards, including notably on ensuring respect for constitutionalism and democratic governance.

At the same time, in view of the reluctance of the AU to invoke the ACDEG and other instruments against term limits, the responses of the RECs regarding term limit evasion are not surprising. This must entail both legal and moral responsibilities on the AU to lead by example.

4. Practices of the AU and RECs on Term Limits

While the AU has adopted several normative instruments to address unconstitutional changes of governments, in practice the AU and RECs have been more active in addressing military coups as opposed to violation of presidential term limits by incumbents. An assessment of recent history shows that the AU and RECs are yet to enforce the framework against undemocratic extension of term limits and its impediments to peaceful political transition in the continent.⁵¹

So far, the AU remains silent on attempts by African presidents to seek third terms which effectively serves the interests of incumbents.⁵² Since ACDEG came into force in 2012, the AU is yet to invoke it to sanction unconstitutional change of government through removal or circumvention of term limits despite the proliferation of apparent third-termism in the continent.⁵³ An initial AU attempt to prevent term limit evasion against Burundi in 2014 failed because of resistance from some neighbouring states.

The AU's lack of reaction to the recent growing practice of undemocratic elimination of term limits has been interpreted as a cautious approach against interfering with the sovereignty of its member states and their power to determine their own affairs – such as constitutional amendments – without external intervention.⁵⁴ This could be attributed to the ostensibly democratic instruments that African incumbents have deployed to circumvent presidential term limits which include national referenda, constitutional amendments through national parliaments, and judicial interpretations from the courts.⁵⁵ For instance, Idris Deby of Chad, in 2005 used the mechanism of a referendum to delete constitutional provisions on term limits,⁵⁶ while Alpha Conde of Guinea-Conakry used a referendum in 2020 to adopt an ostensibly new constitution to reset the term count.⁵⁷ Other leaders have also explored the mechanism of parliamentary votes to effect amendments on term limits and extend their time in office. Some have sought the judicial declaration of the Constitutional Court to interpret the law with the effect of conferring another change to run for office.⁵⁸

An analysis of AU's approach towards tackling unconstitutional changes of government shows that AU has only sanctioned military coups, even though ACDEG requires the sanction of all forms of unconstitutional changes of government, including constitutional amendments undermining democratic principles.⁵⁹ So far, the AU has only led soft interventions against unconstitutional change of governments through extension of term limits. For instance, it refused to participate in Burundi's 2015 general elections after the then president resorted to courts to allow him to run for a third term following his failed effort to amend the constitution through parliament.⁶⁰

The AU has acknowledged the extension of term limits as a challenge to democracy in Africa as seen in the Accra Declaration of March 2022. However, the Declaration only appeals to member states to adhere to presidential term limits and organize free and fair elections.⁶¹ This approach is considerably weaker than the stronger interventions that the ACDEG provides for which include condemnation of such

action and imposition of sanctions and suspension of member states from participating in the activities of the Union. In addition to the AU's passive approach on the issue, talks of amending the ACDEG and the ECOWAS Protocol on Democracy and Good Governance to provide for outright prohibition against third termism have not gained political traction.⁶²

Efforts towards constitutional reforms purporting to extend presidential tenure through removal of term or age limits have encountered opposition from civil society organizations, trade unions, and citizens.⁶³ For instance, the October 2020 national elections in Guinea were marred with violent protests following the forceful insistence by the incumbent president to remain in power despite exhausting his term limits.⁶⁴ Similar protests in 2014 forced the then incumbent president of Burkina Faso out of power after he attempted to extend his constitutional mandate.⁶⁵ Several other AU member states have also experienced violent protests in opposition to distortion of term limit provisions resulting in instability in the respective countries.⁶⁶

Ongoing uncertainties around the intention of incumbents who are serving their second and last term in Senegal (which has elections in 2024) and the Central African Republic (election in 2025) on a possible third term are already causing confusion and political tension. Despite these consequences undermining continental peace, stability, integration and democratic progress, the AU and the respective RECs are yet to publicly discuss the developments, let alone engage the incumbents to discourage any desire to run for a third term.

Consequences of AU/RECs Inconsistencies

AU's inconsistency and practice towards circumvention or removal of presidential term limits has given way to undesirable outcomes across the continent that range from deterioration in stability, human right violations, political intimidation, undermining of democratic institutions and civil unrest. These consequences have a significant bearing on peace, stability, and integration in the continent. Elections following term limit alterations in various parts of the continent have also been marred with human rights violations and characterized with intimidation and violence. For instance, recently in the October 2020 elections in Guinea, it was reported that at least 20 people lost their lives in events following the violent disputes over the elections.⁶⁷ The circumstances surrounding the elections involved the quest by the incumbent president Alpha Conde to serve a third term despite exhausting the constitutionally prescribed two terms. In the same vein, the use of force to deal with protests in

opposition to constitutional reforms by the National Front for the Defense of the Constitution (NFDC) left many protestors wounded, arrested and killed.⁶⁸

Another outcome that automatically flows from the persisting unconstitutional change of governments through extension of term limits is the intimidation of the political opposition and entrenchment of personalised dictatorship. The impunity incidental to the extension of term limits has also driven incumbents into criminalizing the activities of opposition parties to the extent that makes their existence and persistence in the political space inconsequential to democracy. Indeed, only one incumbent president – Abdoulaye Wade of Senegal in 2012 - who altered presidential term limits has ever lost their term bid in elections in Africa.⁶⁹ Term limit alterations therefore signify the height of entrenchment of personalised power and dictatorship, and almost certainly entail rigging of elections – incumbents that run for a third term make sure they win them at whatever cost, by hook or by crook.

Democratic institutions that are key to peaceful political transitions have also suffered a blow in the face of the persisting unconstitutional government changes through extension of term limits. Incumbents have sought to aid their stay in power by interfering with and rendering ineffective institutions that are essential for holding the government accountable by preserving democracy while maintaining checks and balances. These have been achieved by engineering strong political support of the legislature, as well as interference with the independence of election management bodies, the judiciary and other state organs.

Democratic institutions play a critical role in expressing the will of the people. Even though the Lomé Declaration and subsequent AU/OAU frameworks intended that the people's will ought to be expressed through the ballot, incumbent presidents in Africa have found loopholes to influence democratic institutions and hence purport to express their individual interests through referenda, legislative changes and judicial declarations in the guise of the will of the people to extend their term limits.

Empirical evidence suggests that revision of constitutional term and age limits hinders peaceful alternation of power and has been the cause of turmoil in the affected countries.⁷⁰ What is apparent from the foregoing is that the AU and RECs inconsistent application of democratic principles comes at the cost of peaceful transition across various countries in the continent, and worsening insecurity and governance. The absence of peaceful transition results in conflicts whose effects are long-term and transnational in nature.⁷¹ This justifies the need for intervention on the issue at a

supranational level. While the prevailing AU and RECs frameworks impliedly prohibit the extension of term limits, the absence of an outright continental policy on the same has enabled African leaders to capitalize on these ambiguities and continue to fetter peaceful political transition. In short, term limit evasion has destabilising consequences and reinforces the personalisation of power and thriving of patrimonial and corrupt systems, rather than rule of law.

Therefore, it is important that the issue of presidential term limits be situated within the AU and REC's approach to entrenching constitutionalism and the rule of law, including their agreed role in enhancing and protecting these norms.⁷² This should be encouraged and supported by AU institutions including the Peace and Security Council, the African Peer Review Mechanism, the African Commission on Human and Peoples' Rights, and the African Court on Human and Peoples' Rights. Accordingly, all actors supporting the integration of the continent and implementation of the African Continental Free Trade Area must also support respect for term limits as necessary (but insufficient) preconditions for democratic governance, without which a peaceful, prosperous and integrated Africa will remain a pipe dream.

5. Policy Issues for Consideration

In view of their significance to the core African vision and aspiration, to improve the establishment of presidential term limits as a measure for peaceful political transitions in Africa, the AU and RECs should consider, among other measures, the following propositions:

- a. Elaborate and clarify a continental policy and guidance pursuant to the ACDEG and the Lomé Declaration prohibiting extension of term limits as violation of constitutionalism and AU Shared Values instruments on democratic governance. The ongoing effort to adopt a guideline on constitutional amendments provides a good opportunity to clearly state that tempering with term limits undermines democratic principles and is therefore inconsistent with African standards.
- b. Revisit the AU/RECs sanctions regime. Just like the case of military coups, the AU and RECs should adopt a more active, rigorous, and fierce sanctions regime to deter circumvention or removal of term limits by incumbents. The AU and RECs should send a strong signal to incumbents that manipulation of constitutions to circumvent or remove presidential term limits is a thing

of the past that can no longer be tolerated in the continent.

- c. Change the practice of having heads of state holding influential positions at the AU/RECs even when they are subject to a re-election in a year, or there are still pending election results. This will ensure that AU/RECs can take a strong position against any manipulation of constitutions or elections with undue influence.
- d. Harness the capacity of civil society organisations as champions for democracy and good governance in the continent. Civil society organisations across the continent have been protesting the circumvention or removal of term limits by incumbents,⁷³ and the AU and RECs should provide political support to them.
- e. Engage and involve African citizens in finding solutions to challenges posed by circumvention or removal of term limits. This is important considering that Afrobarometer data has shown that the majority of Africans support term limits.⁷⁴ The AU/RECs can rely on institutions and organs such as the African Governance Architecture and Economic Social and Cultural Council (ECOSOCC) as platforms for citizen engagement and popularisation of AU norms against unconstitutional changes of government.

In conclusion, term limits are no magic wand to a democratic Africa, and they cannot guarantee the achievement of continental aspirations. They may be insufficient, but without them, it is impossible to imagine the realisation of the enduring vision of building a united Africa.

PROTECTION AND PROMOTION OF PRESIDENTIAL TERM LIMITS IN AFRICA:
ROLES AND PRACTICES OF THE AFRICAN UNION AND REGIONAL ECONOMIC COMMUNITIES

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PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

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PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

I. Introduction

The practice of imposing term limits for holders of elective offices is of considerable antiquity. Evidence of term limits has been found in ancient Greece and also the Roman Republic.¹ In Africa, however, the prominence of presidential term limits is traceable to the constitution-making that accompanied the third wave of democratisation in the 1990s.² Nevertheless, before 1990, presidential term limits were present, for example, in the constitutions of South Africa (1961), Comoros (1978), Tanzania (1984), Liberia (1986) and Tunisia (1959 as amended in 1988).³ The iteration of presidential term limits during the third wave, however, posited them as a fundamental tenet of democracy and constitutionalism meant to safeguard against authoritarianism. This was on the assumption that term limits represented the will of the populace. Little or no effort, however, was invested in critically interrogating the autochthony of such constitutional visions and institutions.⁴

Although presidential term limits have been embraced across Africa, developments from the end of the 1990s have revealed a mixed picture with incumbent opposition to the limits among the most prominent responses. This opposition has taken the form of a total repudiation of term limits or modification of the limits to facilitate extension of tenure by incumbents. In reality, constitutional changes affecting presidential term limits have been very polarising in Africa. As correctly noted by Mangala, developments in Africa, in relation to presidential term limits, remain a never-ending debate.⁵ While these debates routinely ensnare various sections of society, this paper's focus is on the role of traditional and religious leaders on this debate. By drawing on experiences from some African countries, the paper analyses the contribution of traditional and religious leaders to the debate on term limits.

II. Still under contest? Presidential term limits in Africa

The generation of African leaders that assumed office immediately after independence, generally, enjoyed no limits on their tenure. Where limits to tenure existed, the same were quickly discarded. The result was that many first-generation African leaders were in office for very long periods of time. Examples of such leaders include Malawi's Hastings Banda, Cote d'Ivoire's Félix Houphouët-Boigny and Zimbabwe's Robert Mugabe. Presently, Africa still boasts some very long

serving presidents who have tampered with term limits to remain in office including Cameroon's Paul Biya, Congo's Denis Sassou Nguesso and Uganda's Yoweri Museveni.

As earlier alluded to, presidential term limits in Africa are most closely associated with the third wave of democratisation.⁶ To put this into perspective, 49 of the 64 African constitutions that were adopted in the two decades after 1990 included a presidential term limit.⁷ While there were variations regarding the length of each term or the maximum number of terms, most constitutions, typically, prescribed two terms as the maximum.⁸ Term limits were principally aimed at the presidency but some countries, for example, Botswana, Ghana and Tanzania adopted a model that also includes the office of the vice president.⁹

What facilitated the inclusion of term limits in African constitutions varies from country to country. In the majority of sub-Saharan African countries, the inclusion of presidential term limits was made possible because constitutions were negotiated under an inclusive environment where even the opposition had a voice.¹⁰ However, even in countries where incumbents had high level of control over the constitution-making process, such as Kenya, Ghana, Guinea and Burkina Faso, term limits were nevertheless included.¹¹ McKie argues that in situations where one party (particularly the one in power) has control over the writing of the constitution, presidential term limits are readily included where there is electoral uncertainty i.e. the party in power being unsure of its future ability to win elections.¹² In this context, presidential term limits are incorporated as a political insurance mechanism. Additionally, even in dominant party systems, term limits were adopted as means for ensuring circulation of power within the party, as was the case in Tanzania. In other instances, incumbents readily agreed to the inclusion of term limits as a tactic to buy time fully aware that they could subsequently muster the required majority to change the requirement, as was arguably the case with Togo under Gnassingbe Eyadema and the 1992 Constitution.¹³

The justifications for the inclusion of presidential term limits in constitutions are many but Mangala mentions four: promotion of rotation of leadership, reducing the likelihood of tyranny, improving participation in politics, and promoting efficiency and effectiveness.¹⁴ The first three justifications are often reflected in the reasons given by jurisdictions that were amongst the earliest to introduce term limits for elected office holders. Regarding the final justification, the argument is that

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

term limits allow other people to, periodically, come in with new ideas and that this promotes good governance. Despite the above, there are also arguments against term limits. For example, it is contended that term limits are undemocratic, they promote inefficiency, and reduce accountability.¹⁵ The democracy argument posits that an electorate should be allowed to return a candidate for as long as they maintain popular support. Considering these competing perspectives, it is unsurprising that contestation on term limits persists. Senegal and the Central African Republic offering offer current examples of such contestation. In the Central African Republic, President Faustin-Archange Touadera's re-election in 2021 ought to have been for a final term but proposals have been made to extend the two terms that the Constitution currently prescribes.¹⁶ In Senegal, the threat that President Macky Sall may seek a third term remains a distinct possibility, notwithstanding the unrest that it is generating, particularly given his reticence on the matter.¹⁷ Clearly, the last chapter in Africa's presidential term limits narrative is yet to be written.

In some countries, term limits have been tampered with for purposes of extending the maximum number of terms that an incumbent can serve, while in other countries the objective has been to completely remove the limits. The case of the Republic of Congo under Denis Sassou Nguesso is an example of a situation where the country's Constitution was amended to increase the limit of terms from two to three in 2015. In Uganda, however, the Constitution was amended in 2005 to completely remove presidential term limits. In other countries, tampering with the prescribed term limits was done by way of amending the law to permit re-election of an incumbent, as Paul Kagame did in Rwanda in 2015. In yet other countries, such tampering was achieved simply by the incumbent remaining in power beyond the prescribed period. The latter situation occurred in the Democratic Republic of the Congo (DRC) where Joseph Kabila used the Electoral Commission to suspend the holding of elections with the result that he remained in office for more than two years after the lapse of his final term.¹⁸ Another ploy favoured in tampering with term limits is 'constitutional revision that resets the countdown and discards the mandates already served'.¹⁹ It is this mechanism that Guinea's President Alpha Conde used to qualify himself to run for a third term in 2020.

Ultimately, however, term limits re-entered African constitutional discourse because of local initiatives aimed at curtailing the prevalence of unconstrained personal rule.²⁰ It is thus unsurprising that debates surrounding attempts at

tampering with terms limits draw a multitude of local actors representing various constituencies. These actors often include opposition political parties, civil society organisations, development partners, the media, trade unions, the academia, students, and traditional and religious leaders. While being mindful that debates on term limits affect many constituencies, the rest of this paper focuses on the role(s) of traditional and religious leaders in Africa.

III. Traditional and religious leaders and debates on presidential term limits in Africa

Traditional and religious leaders have played various roles in debates surrounding extension of term limits. The analysis herein focuses, first, on traditional leaders before dealing with religious leaders. This categorisation is merely for convenience of presentation as, in some countries, traditional and religious leaders have played similar roles and even acted in concert.

Traditional leaders

In some countries traditional leaders have come out openly in support of proposals for extending term limits. For example, in Malawi, some traditional leaders supported proposals to amend the Constitution to remove presidential term limits by Bakili Muluzi.²¹ Ironically, this support was galvanised notwithstanding the fact that some development partners had made efforts to familiarise traditional leaders with the proposed Open Terms Bill, which sought to remove term limits, in the hope that they would join the opposition against the Bill.²²

The support of Malawian traditional leaders to Muluzi's proposals for term extension was, largely, procured by the incumbent's provision of incentives; however, when looked at holistically, this support was not totally surprising.²³ Generally, traditional leaders in Malawi, despite their protestations, tend to be 'pro-government'. There are several possible explanations for this. For starters, the executive plays a significant role in the elevation or appointment of traditional leaders of a certain level. It is the President, for example, that appoints Paramount Chiefs, Senior Chiefs, Chiefs and Sub-Chiefs.²⁴ Incumbents in Malawi also deliberately cultivate the support of traditional leaders by, for example, appointing them into boards of statutory corporations.²⁵ In relation to the Open Terms Bill, as the debate on the proposal was ongoing, the government raised the stipends of traditional leaders by

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

25 per cent.²⁶ It is not farfetched to surmise that this may have made some traditional leaders to feel beholden to the government of the day thus guaranteeing their support for its proposals inclusive of those dealing with term limits.

The Republic of Congo is another country where traditional leaders supported proposals to amend the constitutional provision on term limits. In this case, when President Nguesso called for a National Dialogue on Constitutional Change, the opposition boycotted it alleging that the outcomes thereof were already decided.²⁷ Among the delegates invited to this Dialogue were traditional and religious leaders and representatives of political organisations, trade unions and civil society. The Dialogue was held in ‘a small town in the interior of the country, far from opposition strongholds’.²⁸ It is argued that the choice of venue for the Dialogue was deliberately chosen to exclude voices critical to the proposals by President Nguesso. By being part of the Dialogue, which recommended the removal of presidential term limits, especially in the face of a boycott by the opposition, it can fairly be concluded that traditional leaders provided a veneer of legitimacy to the incumbent’s proposals.

In some African countries, however, traditional leaders have openly opposed proposals for extending term limits. In Zambia, for example, when President Frederick Chiluba’s administration announced, in 2001, its intention of amending Zambia’s 1991 Constitution to remove presidential term limits, various pro-democracy groups came together under the ‘*Oasis Forum*’ to oppose the proposals. The pro-democracy groups included the Law Association of Zambia (LAZ), human rights and governance NGOs, and trade unions. Importantly, even traditional leaders joined what was a ‘broad-based movement to oppose constitutional reforms’ aimed at giving Chiluba a chance to seek a third term.²⁹ These developments from Zambia confirm that traditional leaders can rise against those in power for purposes of preventing the erosion of democratic values. Many factors may have contributed to the traditional leaders’ stand but one of them is certainly the strong statement that came from the *Oasis Forum* calling upon traditional leaders to uphold Zambia’s cultural values and to desist from being used as instruments for manipulation.³⁰

Burkina Faso is another country in which traditional leaders showed strong resolve to oppose calls for alteration of presidential term limits. While traditional leaders were, initially, amongst those that had helped Blaise Compaoré’s

regime by ‘lending support and helping to control and calm social movements’, when proposals were made, in 2014, to modify constitutionally prescribed presidential term limits, traditional leaders started distancing themselves from the regime.³¹ Some important chiefs joined religious institutions in explicitly opposing the proposals. It should not be ignored, however, that this occurred at a time when Compaoré’s regime was, generally, losing popular support and legitimacy as marked by mass protests and divisions even within Compaoré’s own political party. The lack of support, from traditional leaders, therefore, may have been part of the broader erosion of support for Compaoré’s regime.

Religious leaders

The position of religious leaders on term limit debates in Africa demonstrates similar ambivalence as that of traditional leaders. It cannot, therefore, be categorically said that religious leaders are consistently in favour or against proposed term limit extensions.

For example, in Burkina Faso, when President Compaoré proposed lifting the presidential term limit, Catholic bishops, joined by evangelical churches, stood against the proposed reform.³² Similarly, the Episcopal Conference of Uganda opposed the proposed reforms which were aimed at removing presidential term limits in the Constitution to allow President Museveni to seek a third term.³³

Equally in Zambia, churches were opposed to President Chiluba’s third term bid. Church leaders from the Christian Council of Zambia, the Evangelical Fellowship of Zambia, and the Zambia Episcopal Conference made it clear to Chiluba that his proposal was both unconstitutional and undemocratic and asked him to prioritise the rule of law over personal ambitions.³⁴ Zambian churches, as earlier pointed out, did not act alone but formed an alliance with other pro-democracy groups.

In Malawi, ‘mainstream’ churches, particularly the Catholic Church and the Presbyterian churches, also played a significant role in foiling Muluzi’s attempt at removing term limits. A year before Muluzi’s third term bid became public, these churches issued statements condemning the deteriorating governance situation in the country and expressly cautioned against the manipulation of the Constitution for purposes of permitting presidential term extension.³⁵ Later, when Muluzi’s ambitions became public

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

knowledge, the Catholic Commission for Justice and Peace urged Members of Parliament to reject the Open Terms Bill.³⁶ Further, the Church of Central Africa Presbyterian led the coming together of various civil society organisations (CSOs) and non-governmental organisations to form the Forum for the Defence of the Constitution (FDC).³⁷ The FDC held demonstrations and released statements to denounce Muluzi's proposal to remove term limits.³⁸ Also noteworthy were the efforts by the Public Affairs Committee (PAC), an umbrella body consisting of various faith-based organisations across different congregations and faiths, which was also influential in opposing the proposed reforms. Among other things, PAC organised public demonstrations and issued statements against the proposed constitutional amendment.

In the DRC, religious leaders assisted in negotiating President Joseph Kabila's departure from office. In this instance, the Electoral Commission was facing challenges to conduct elections and the Constitutional Court had ruled that Kabila would remain in office until elections were held and a new president assumed office. Consequently, an agreement had to be made with main opposition political parties to maintain peace and prevent political upheaval. After the opposition boycotted the first proposed dialogue, the Catholic church intervened and successfully mediated between the parties. The outcome of the mediation was that Kabila would remain in power for about a year and within that period, he would organise elections.³⁹ Although Kabila breached this agreement, by holding elections over a year after the lapse of this additional period, the involvement of the church, and the fact that Kabila did not participate in the subsequent elections, demonstrates the potency of the church's involvement, of course, in tandem with the other domestic and international forces, in thwarting any plans that Kabila may have had for a third term.

Many reasons could explain why religious leaders, particularly those of the 'traditional' or 'mainstream' churches, stand up against attempts at extending term limits. In many instances, it is the case that the very religious groups that oppose term limit extensions were also part of the forces that fought against autocratic regimes. For example, the churches that opposed term extension bids in Malawi and Zambia were also at the forefront of fighting authoritarian regimes in these countries. Having contributed towards the democratic transition, when they were faced with efforts that, in essence, sought to reverse what they had fought for, it is not surprising that they opposed such efforts.

In truth, however, the voices of religious leaders on term limits have not been uniformly against such proposals. Experiences from Malawi and Zambia reveal that the politics around term extension bids can breed suspicious churches and generate divisions amongst religious leaders. In Zambia, for example, Chiluba's third term bid coincided with the emergence of questionable religious organisations supporting his proposals. It is plausible that such organisations were created to benefit from the funds that Chiluba was distributing and to organise support for his third term campaign.⁴⁰ In Malawi, when Muluzi launched his Open Terms Bill, he was able to secure support from the smaller Pentecostal churches and not the 'traditional' churches. Notably, although PAC played a critical role in organising opposition to Muluzi's attempts at tampering with term limits, the organisation itself experienced fragmentation along religious lines.⁴¹ The fault lines in this case pitted the Christian section against the Muslim section. A possible explanation for the split is that the Muslim section of PAC supported Muluzi based on religious identity while the Christian section may have been opposed to the proposed term extension not simply due to reverence for the Constitution but also due to a reluctance to have another term by a Muslim president.⁴²

It is also worth highlighting that in term extension debates people, inclusive of religious leaders, sometimes choose sides for reasons unrelated to the promotion of constitutionalism. Nigeria presents an interesting example in this regard. For example, when Obasanjo launched a campaign for term extension in 2006, some opposed him simply because they considered that the proposal was against 'an unwritten agreement between political actors that after President Obasanjo's tenure of eight years, power would shift back to the north'.⁴³ Others, however, supported Obasanjo's proposal so that they could make some political gains, secure re-election, or be shielded from prosecution for corruption-related offences.⁴⁴

IV. Re-assessing the role of traditional and religious leaders: Some insights and recommendations

Traditional and religious leaders have consistently contributed to debates on term limits in Africa. Given the influence that these institutions tend to have over the population, it is important to, first, understand their contribution to the debate and, second, harness their positive contribution in support of constitutionalism. Ideally, this requires that, from the outset,

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

traditional and religious leaders should have a role in all constitution-making processes and, subsequently, be permitted to participate freely and in an informed manner in any constitution change processes.

Based on the available evidence, the role of traditional and religious leaders on the term extension debates in Africa remains ambivalent. How this constituency reacts to a proposed term extension, is informed by local circumstances including, the incumbent's relationship with key leadership of the traditional and religious institutions. What seems to be clear though is that where traditional and religious leaders have decided to oppose proposals for term extension, they tend to work in conjunction with like-minded groupings such as law societies, academia, the media, students and civil society organisations, generally. The contribution of traditional and religious leaders on the term limits debate, therefore, demonstrates that a proposed term limit extension is more likely to fail where its opponents have formed an alliance to fight the proposal together, i.e., their influence is most felt when they work in collaboration with other organizations.⁴⁵

Related to the above, it is also clear that the success or failure of term extension bids in Africa depends on the ability of stakeholders in the democratic process, including traditional and religious leaders, to pushback against any proposals aimed at diluting democratic values. The ability of traditional and religious leaders to effectively participate in resisting attempts at altering presidential term limits, however, is affected by several factors. The first is the nature of the relationship between such leaders and the political party in power. Where there are strong ties between traditional and religious leaders and the ruling party, their ability to oppose term extension bids is considerably diluted. For example, in Namibia and Uganda, the fact that 'pro-democracy movements had had a close and long association with the ruling parties', it has been argued, made it difficult for them to oppose Nujoma and Museveni's efforts at extending their tenure.⁴⁶

Financial autonomy is another critical factor in understanding the role of traditional and religious leaders on term extensions. Generally, where pro-democracy groups lack financial autonomy, they become vulnerable to being captured and may end up supporting term extension bids even when they undermine constitutionalism. Zambia and Malawi offer good examples in this regard. For example, in Zambia, when Chiluba launched his campaign to remove presidential term limits, he distributed money to solicit support for his agenda. Equally in Malawi, Muluzi offered material incentives to

traditional leaders to entice them to support his Open Terms Bill.

The law also plays a key role in shaping the involvement of religious and traditional leaders in debates on term extensions. A notable 'trick' by incumbents, regularly used to unsettle opponents of a term limit extension, is to alter certain laws and thereby make it difficult for the opponents to conduct their operations. Such alterations may include the banning of public demonstrations, making it harder to register or operate CSOs, and giving the government more control over CSOs. For example, in Zambia and Namibia laws were passed with the purpose of stopping public demonstrations against the proposed reforms. In Malawi and Uganda laws relating to operations and registration of CSOs were amended so that the government could have more control over CSOs.⁴⁷ The changes introduced in Uganda also restricted the holding of meetings by registered political parties, unregistered political groupings, and qualified political groups. This law was used to disrupt meetings and public rallies, many of which involved opposition groups voicing their discontent against the proposal to remove term limits.⁴⁸

Laws such as the ones described above have the effect of making it difficult for pro-democracy groups, including traditional and religious leaders, to effectively challenge term extension bids. Ironically, this scenario opens possibilities for judicial intervention. It is thus not uncommon for courts to be invited to rule on the legality of mechanisms adopted by incumbents to stifle opposition to term limit extensions. In this spirit, the High Court of Malawi annulled Muluzi's attempted ban on all public demonstrations.⁴⁹ Courts, therefore, are critical guardians of constitutions and can and should be approached to rule on the constitutionality of proposed changes to term limits.

However, courts cannot always be counted upon to defend term limits as was demonstrated in Senegal when, in 1998, President Diouf successfully abrogated term limits, but went on to lose the elections in 2000.⁵⁰ It is also notable that both Paul Kagame's changes to the Rwandese Constitution as well as Burundi's Pierre Nkurunziza's third term in 2015 were obtained with the acquiescence of courts.⁵¹ In truth, therefore, whether courts are in a position to enforce restrictions on term limits depends on contextual factors including their degree of formal and informal power and independence from the regime.⁵² Accordingly, traditional and religious leaders and other democratic forces should always consider courts only as

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

part of their multipronged strategy to promote and protect constitutionalism.

To ensure that traditional and religious leaders play a positive role on term limit debates in Africa, it is important to guarantee and promote fundamental freedoms and the idea of constitutionalism among them.⁵³ Key freedoms in this connection include access to information, freedom of expression, and freedom of association. Where such freedoms are guaranteed and protected, traditional and religious leaders, and any other actors, will have the space to freely canvass for their respective positions. Attempts at term limit manipulation are, therefore, more likely to fail in countries where the citizenry is free to voice their political preferences and the civil society is free to mobilise against politicians that try to manipulate the constitution.⁵⁴ Seeking to build, maintain and reinforce these conditions, therefore, requires closely working with traditional and religious leaders to ensure they stand for democratic constitutionalism when it matters.

be creative about their recourse to the law to safeguard constitutionalism.

V. Conclusion

In Africa, constitution-making during the third wave of democratisation emphatically delivered presidential term limits as part of the new governance structures. It is now clear that term limits enjoy popular support in Africa.⁵⁵ Africa's record with presidential term limits, however, reveals a mixed picture. In some countries term limits have been honoured while in others they have been completely abandoned while in other countries attempts at altering term limits have failed only due to the presence of a determined opposition. While the contestation on term limits is bound to persist, term limits will continue to be a factor for enabling regular alternation of power.⁵⁶ This in turn entails that attempts at tampering with term limits will keep re-surfacing.

Traditional and religious leaders have been key stakeholders in term limit debates in Africa even though their roles have not always been in favour of upholding constitutionalism. It is clear though that traditional and religious leaders tend to play a more positive role on the term limits debate where they have financial autonomy and where they join forces with other pro-democracy activists, among other factors. Given that term limits are set by law, it is also clear, that the law itself will remain relevant in all debates on term limits. This in turn requires that those agitating against changes to term limits to

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

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PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF TRADITIONAL AND RELIGIOUS LEADERS

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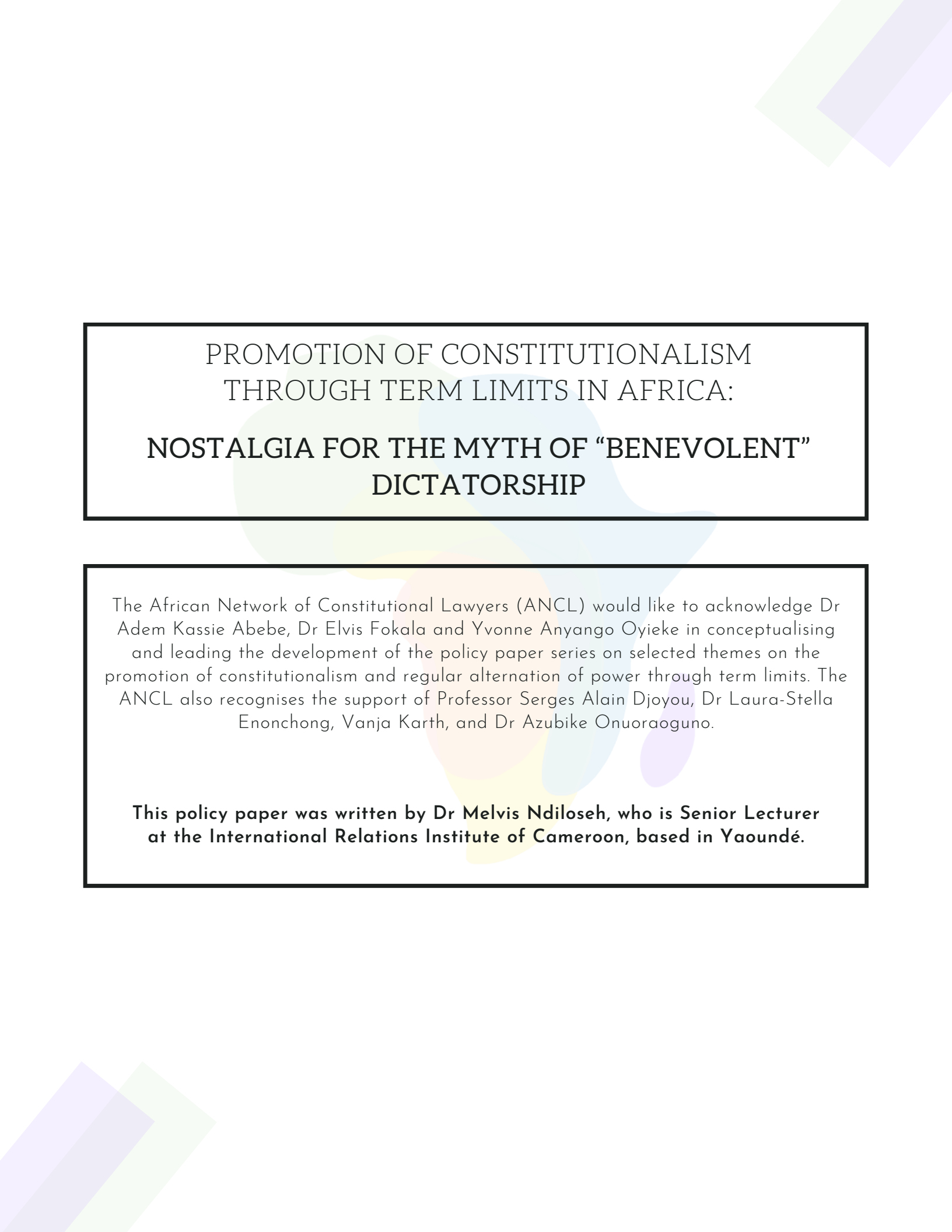
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PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
**NOSTALGIA FOR THE MYTH OF “BENEVOLENT”
DICTATORSHIP**

The African Network of Constitutional Lawyers (ANCL) would like to acknowledge Dr Adem Kassie Abebe, Dr Elvis Fokala and Yvonne Anyango Oyieke in conceptualising and leading the development of the policy paper series on selected themes on the promotion of constitutionalism and regular alternation of power through term limits. The ANCL also recognises the support of Professor Serges Alain Djoyou, Dr Laura-Stella Enonchong, Vanja Karth, and Dr Azubike Onuoraoguno.

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1. Introduction

The image of the strongman – an immensely powerful autocratic political leader at the helm of national leadership with the verve and authority to shake-up the destiny of a country often through personal benevolence or visionary leadership – seems to be recapturing some lost ground in African political and socio-economic imagination. Economist William Easterly defined “benevolent” autocrats as “leaders in non-democratic polities who receive credits for high growth”.¹ Against the backdrop of democratic setbacks experienced globally, and the broadly shared sense of disillusionment, even despair, with which most Africans have associated the performance of their elected governments, the reviving affinity for the benevolent dictator – an autocratic political force equipped with the ruthlessness to dispense away with the perceived inertia associated with the slow-functioning of democratic institutions and bureaucracies – seems somewhat understandable.

A key driver behind this growing preference for the autocratic alternative appears to be the legitimate impatience of citizens in the face of failed and corrupt elected leaders, popular yearnings for the realisation of longstanding developmental aspirations, and the growing perception of the efficiency, discipline, and ambition of some countries under benevolent autocratic leaderships.² As Thomas Friedman, *New York Times* columnist once asserted, the “one-party autocracy certainly has its drawbacks. But when it is led by a reasonably enlightened group of people, as China is today, it can also have great advantages. That one party can just impose the politically difficult but critically important policies needed to move a society forward in the 21st century”.³ Re-echoing the postulations of a segment of political theorists, Frank Fukuyama and Nancy Birdsall sum things up this way: “Leaders in both the developing and the developed world have marveled at China’s remarkable ability to bounce back after the [the post-2007 financial] crisis, a result of a tightly managed, top-down policymaking machine that could avoid the delays of a messy democratic process. In response, political leaders in the developing world now associate efficiency and capability with autocratic political systems”.⁴

In the African context, Van Standen, writing about the South African case, cites the findings of an Afrobarometer survey in which many South Africans indicated they “would accept a dictatorship provided the leader solves the country’s pressing issues”,⁵ corroborating a 2021 Afrobarometer polling in which 65% of South Africans expressed their willingness to give up on democracy “if a non-democratic government delivers”.⁶ Baliddawa documents the accentuation of a similar trend in Uganda, arguing that “Uganda no longer needs the so-called farce of multi-party democracy. What we are practicing right now is simply a fallacy that takes us nowhere except re-routing us to societal polarisation, inequitable growth, acrimony, destruction, and impoverishment...We need a benevolent dictator”.⁷

Adding to this, the somewhat impressive infrastructural and material gains achieved by countries, such as Rwanda under Paul Kagame who has presided over its remarkable transformation through implements of discipline, accountability, and sometimes coercive governance, appears to be amplifying a populist preference by Africans for effective governance regardless of whether this comes in the form of autocratic rule. Wanki bluntly sums up the contemporary African sentiment this way: “Africans remember the face of Rwanda in 1994 – an underdeveloped backwater simmering with colonially instigated discord and then they see Rwanda today, breaking human development records, at peace with itself and poised to claim the future. Africans want governance options that deliver bread and butter on their tables, peace in their backyards, and the promise of a better future for their children, whether this comes in the form of western modelled democracy, communist inspired developmentalism or benevolent African ‘strongmanism’”.⁸

Moreover, recent successful and attempted efforts to extend term limits, from Cote d’Ivoire to Guinea, the Central African Republic to Senegal, and the autocratization in Tunisia, have roots in a belief that incumbents should continue to sustain growth, or more accurately to reduce the chances of slide into weaker growth and/or instability. Similarly, military coups in Mali, Burkina Faso and Guinea have also emerged as antidote to the perceived failure of democracy, which is seen as unable

to ensure stability and security, tackle corruption and neo-patrimonialism and generate equitable growth.

In all cases, the perceived failure of African democracies to deliver concrete dividends in terms of developmental outcomes to impoverished and despondent masses across the continent appears to be firmly implicated in this worrying about-turn in the perception of the performances of democracies as a governance option. Whatever the roots, this represents a clear backsliding in the popular reverence accorded to democratic governance by Africans on the cusp of the rebirth of multiparty democracy across the continent in the 1990s.

Against this complex backdrop, this paper considers the factors driving the growing popular nostalgia for benevolent autocracy across Africa and asks whether the continent really needs them to ensure stability and/or prosper. If not, what can be done to reframe this narrative and refocus attention towards re-engaging and reconfiguring African democracies to deliver better for Africans? Parsing through historical and contemporary illustrations, the paper argues at its crux that Africa’s storied experimentation with benevolent dictatorships, whether in the form of one-party states, military regimes, or personal dictatorships following Africa’s independence, have mostly amounted to protracted economic failures, political instability, and social alienation. The much-acclaimed story of Rwanda’s impressive socio-economic transformation, for instance, appears to be an exception rather than the rule – a trajectory explained by a multiplicity of endogenous and exogenous considerations that fall outside the scope of this paper. And even in Rwanda, the jury is still out, and it is not clear if the country has the institutions to sustain the trajectory of ostensible progress in the ultimate absence of Kagame, i.e., even if one were to adopt the Rwandan story, the continuity of success may well hinge on the individual characters of Kagame and Rwanda’s context that would prove difficult to emulate elsewhere.

The paper is organised as follows: building on this introduction, *part two* briskly surveys the triggers behind the resurging populist affinity for benevolent dictators in Africa, contextualizing this within the remits of the failures of Africa’s democratically elected governments to deliver public goods (equitable social security, infrastructure, security/political

stability, and justice), and arouse national consciousness/buy-in around a common purpose/vision for their country’s sustainable rejuvenation. *Part three* then delves into the mechanics behind the emergence of benevolent autocrats in Africa (e.g., military coups, extension of presidential term limits etc.) depicting from historical illustrations the extent to which the urge for usurpation of power and consolidation often through coercive force leads to the prioritization of regime security over the human security of the masses yearning for change. Closely linked to this, the paper also flags the profound degree of economic predation and political disorder that these so-called benevolent dictators have unleashed on their countries, leaving behind legacies of corruption, profligacy, accentuated political fragility and socioeconomic underdevelopment. If benevolent dictatorships are consequently not a viable alternative for Africa’s developmental needs, what then is? How can Africans re-engage and re-engineer African democracy to deliver more than just questionable periodic elections? What policy reflections can guide the continent to the path of reworking African democracy to deliver on the fundamental developmental aspirations of Africans in an era of broader global geopolitics riddled with the ideological uncertainties of increasing great power competition? These are the preoccupations of *the last part* of this paper focused on policy reflections going forward.

2. Why the growing nostalgia for benevolent dictatorships in Africa?

The reflection into the drivers behind the growing perception of nostalgia around benevolent dictatorships in Africa should start by discussing the lingering myth that Africa is not ready for democracy. In some respects, this myth is partly based on a stereotypical, near-racist bias rooted in the faulty assumption that Africans are somehow incapable of summoning the requisite vigilance and intellectual maturity to engage in active citizenship. It also rests on a fundamentally myopic misreading of Africa’s recent history which is replete with the strives and triumphs of Africans to emplace democratic rule, good governance, and human rights within their countries in the post-independence era.

That said, there is clearly no doubt that African democracies are currently confronting a multidimensional crisis of

NOSTALGIA FOR THE MYTH OF “BENEVOLENT” DICTATORSHIP AND CHALLENGES TO DEMOCRATIC CONSOLIDATION IN AFRICA: A SYNOPTIC REFLECTION

credibility, which encapsulates the first driver behind the growing nostalgia for benevolent autocracy across the continent. Almost six decades after most African countries gained independence and three decades since popular clamour for democratisation and good governance incited a tidal wave of political reconfigurations and constitutional reforms across Africa⁹, the region has now begun experiencing a gradual lull in the enthusiasm associated with democratic governments. This can largely be attributed to unmet expectations manifested through the prevalence of deep-seated issues with the perceived performance of African countries since the start of the regular organisation of elections. This includes woefully bad governance and accountability track records, exponential levels of corruption and fiscal indiscipline, underwhelming investments in the socio-economic welfare of the masses, and the inability of a sizeable sample of African democratic states to deliver on service delivery and the human security/human rights aspirations of their citizens.¹⁰

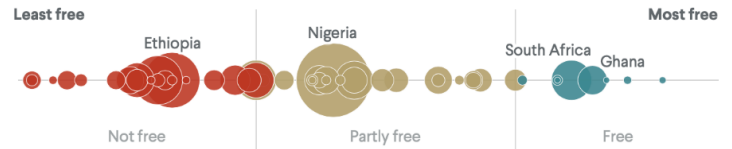
Comparing average scores of existing democratic governance indicators, a 2017 study of the Institute for Security Studies found bad governance amongst Africa’s democratically elected governments as a preeminent variable implicated in the continent’s stagnated development.¹¹ Olukoshi and Laaka¹², and to a considerable extent Ayittey,¹³ had already warned early on that the prevailing crisis of governance in the region is eroding the potency of institutions, reversing the development potential of African states and undermining the role of civil society actors to serve as watchdogs of the social contract. Law enforcement institutions and courts continue to be used to serve the whims of the ruling class and to persecute political opponents. To worsen the scenario, the growing trend whereby elected presidents tinker with constitutions, often acting in complicity with elected parliaments, to eliminate presidential term limits and embed themselves as autocratic “presidents for life” (as seen in countries such as Cameroon, Equatorial Guinea, Uganda, and the Republic of Congo) has given democracy a bad name, a dynamic reflected on broader democratic trend statistics across the continent. In its 2021 report, for instance, Freedom House rated only eight countries in sub-Saharan Africa as free, of which half included small island countries: Sao Tome and Principe, Cape Verde, Mauritius, and Seychelles. The other four included the usual candidates, such as Botswana, South Africa and Ghana¹⁴. Meanwhile, the number of African countries rated not free

upped from fourteen in 2006/2008 to twenty in 2021.¹⁵ The free country rating has since dropped from eight to six countries. This unsavoury outlook for African democracies is captured in the figures below.

Figure 1:

Fewer Than Ten Sub-Saharan African Countries Are Considered Free

Freedom House 2021 report ratings, with circles sized by country population



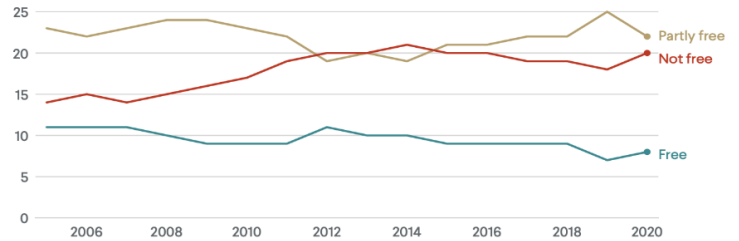
Notes: Scores represent people’s access to political rights and civil liberties in 2020, as published in Freedom House’s 2021 report. Somaliland is included as a territory separate from Somalia and uses the estimated population as of 2014.

Source: Freedom House

Figure 2:

Democracy Has Gradually Declined Across Sub-Saharan Africa

Number of countries in each Freedom House rating category



Notes: Data for each year represents scores in Freedom House’s annual report, which is published the following year. South Sudan is included from 2011 on. Somaliland is included from 2008 on as a territory separate from Somalia.

Source: Freedom House.

Klobucita has argued that “strong correlations exist between sub-Saharan Africa’s entrenched leaderships and its developmental and security challenges, including conflict or instability, stagnant or declining economies and democratic backsliding”.¹⁶ In 2019, the Ibrahim Index on African Governance also linked the socioeconomic failures in Africa to poor governance, high incidences of human rights violations, corruption, and ineffective leadership. Despite the euphoria of the early 1990s, although African countries with relatively better democratic ranking have delivered better than their autocratic counterparts, the holding of elections has not generated the hoped for dividends in the form of better

institutions, governance, service delivery, stability and security, and less corruption.

Consequently, the nostalgia for benevolent autocrats should first and foremost be conceptualized as a quest by the common African for a crop of powerful, decisive and patriotic leaders who can off root this entrenched class of bad elected leaders, salvage the plight of their nations and improve their well-beings. It is a quest for iron-willed leaders who will be unamenable to the whims of powerful corrupt national elite and strong enough to push back against the machinations of external powers – factors that have both played significant roles in distracting African democratic governments from delivering against the aspirations of their people. Jalloh aptly underscores the mood across Africa in the following submission:

People’s patience has run out...Many in Africa are questioning the tenets of democracy and are asking whether it is still relevant in the continent today...Much of the frustration seems to be directed at democratically elected leaders who were hiding an autocratic streak, living extravagant lifestyles despite their poorer populaces. It is not uncommon for these leaders to change their constitutions for political gain and shutter civic space to block dissenting views...[And] this is all happening under the watchful eyes of the pioneers of democratic governance – Western Europe and North America. But instead of taking action, these Western nations legitimize the dirty habits of these democratic-turned-autocratic rulers by prioritizing their own economic interests over rights abuses and corruption.¹⁷

The second driver behind the growing pockets of nostalgia for benevolent dictators in Africa has to do with what could be termed the “Rwandan Example”, as well as the surge in Chinese influence on the African continent. Under Paul Kagame’s leadership, the landlocked country of Rwanda has risen like a phoenix from the ashes of its brutal genocidal past to become one of Africa’s fastest growing economies and better governed countries. Rwanda is amongst the top African countries with the cheapest and best internet technology infrastructures. The country ranked second in Africa only after Mauritius on the World Bank’s 2023 Ease of Doing

Business Report, 38th in the World, is known worldwide for its effective and stringent policies against corruption,¹⁸ with some calling it the “Singapore of Africa”. These achievements no doubt attracted the likes of Volkswagen, the German car maker, to set up its assembly plant in the country for its Africa market, and “Mara”, the first made in Africa smartphones, are produced in Rwanda. Paul Kagame is widely praised across the continent as a pioneer African environmentalist and a champion of women’s rights (under his rule, Rwanda improved on the gender parity goals with women constituting up to 60% of its lawmakers).¹⁹ And despite ongoing criticism of his heavy-handed crackdown on dissenting voices, undemocratic moves, and his extended stay in power, Kagame has been widely praised for sewing together a country torn-apart by genocidal violence nearly three decades ago. Through Umuganda, for instance, Rwandans are compelled to commit a few hours of their time to community service cleaning the streets and their neighbourhoods every last Saturday of the month, a practise that serves to forge a spirit of collective commitment to Rwanda and re-socialize a common purpose between citizens.²⁰ A key reason for Kagame’s popularity amongst especially young Africans is the perceived penchant for unselfish governance and his ability to get things done.²¹

Closely linked to the Rwandan example are African perceptions of China’s phenomenal economic transformation under a state-led model, and the country’s effectiveness in terms of its developmental and infrastructural projects in Africa. This has provided a persuasive alternative to the Western neoliberal economic model, as well as the related multiparty democratic systems, which they believe has locked African countries within a perpetual loop of policy rhetoric, with limited actual focus on getting things done.²²

Having examined some of the drivers behind the growing nostalgia for benevolent dictatorships in Africa, it is now relevant to look at how African dictatorships emerge.

3. The Making of Dictatorships in Africa

This section focuses on three mechanisms through which dictators achieve power in Africa and seek to build a narrative of benevolent dictatorship: Coups, democrats-turned-autocrat constitutional amendments eliminating term limits, and father-to-sons transitions. Some incumbents that came

through all these means have one way or another sought to present themselves as benevolent leaders seeking to transform their countries, improve governance, address corruption and insecurity, and eliminate legally or extrajudicially the opposition and even critics (media, civil society, intellectuals) on charges of being disloyal to the country’s cause or even serving foreign interests.

Coups:

Africa’s billing as a land of coups is, in some respects, well-deserved. Military takeovers were the mechanisms of choice for political transitions in the continent in the immediate post-independent era, and they appear to be making a come-back,²³ as the UN Secretary General Antonio Guterres warned back in September 2021.²⁴ A quick count indicates that when put together, there have been about fifty coups, attempted coups and unconstitutional transfers of governments across Africa since 2010, although this number is likely to change depending on the technical classifications employed in assessing whether or not a power grab attempt was a coup. Nevertheless, a study by two US researchers, Clayton Thyne and Jonathan Powell, has uncovered over 200 such coup attempts in Africa since the 1950s, about half of which have been considered successful.²⁵

The coups and subsequent tyrannical regimes of Bokassa (present day Central African Republic), Idi Amin of Uganda, and Mobutu Sese Seko (present day Democratic Republic of Congo) might have grabbed global headlines due to their unparalleled penchant for bloodletting and spectacular corruption, but Africa’s coup blight has been much widely spread. Sudan, for instance, has had the most coups/attempted takeovers, with six out of the sixteen being successful.²⁶ President Omar al-Bashir, who himself took power in a military coup, was overthrown in 2019 following months of sustained protests. Nigeria, Africa’s most populous nation, has had a significant part of its post-independence history dominated by back-to-back coups and military regimes. Burundi has had eleven separate coups, mostly played out within the context of tensions between the Hutu and Tutsi, and Ghana, the present-day paragon of democracy and political stability in West Africa, used to be beset by a coup culture, having experienced eight within only two decades, the first being against its founding leader Kwame Nkrumah.

While the number of coups declined after the turn of the century, they have made a recent comeback, with Burkina Faso, Chad, Guinea, Mali, and Sudan under military leadership as of July 2023. Combined, Africa has experienced by far more coups than any other region in the world. Indeed, of the sixteen coups recorded worldwide since 2017, all but one (Myanmar in 2021) have occurred in Africa.²⁷ The illustration below depicts African countries with the highest incidences of coups since 1952.

Fig. 3.

Countries in Africa with the highest number of coups since 1952



Source: Jonathan Powell, Uni of Central Florida and Clayton Thyne, Uni of Kentucky

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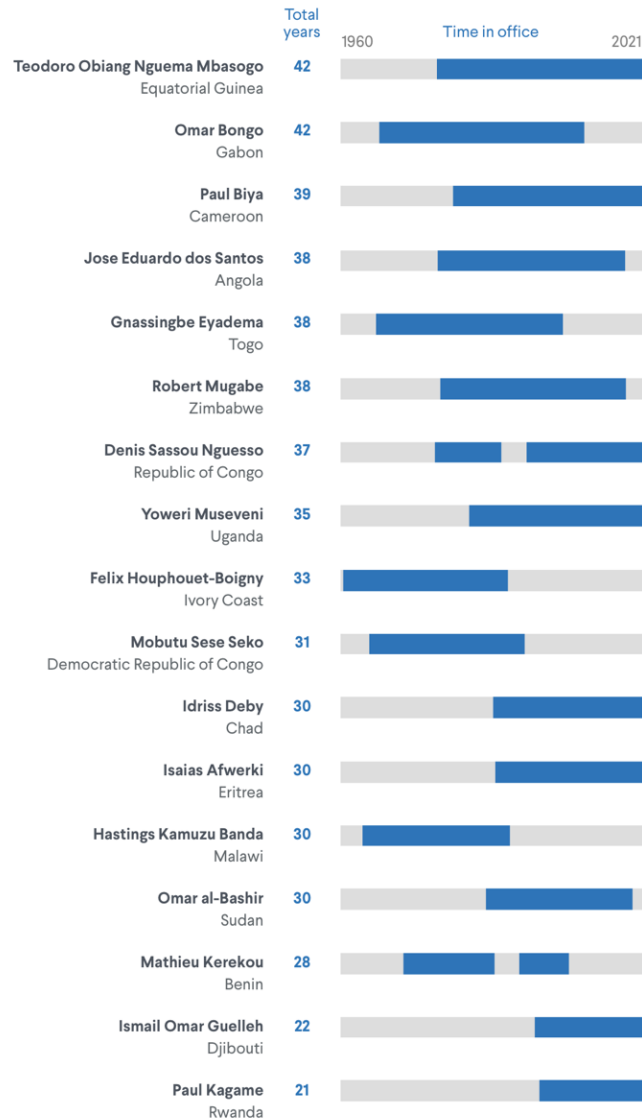
Constitutional amendments by incumbents to stay in power: Sub-Saharan Africa is also the bastion of many of the world’s longest ruling leaders. As of July 2023, five African presidents have held power for more than three decades each: Paul Biya of Cameroon, Teodoro Obiang Nguema Mbasogo of Equatorial Guinea, Yoweri Museveni of Uganda, Denis Sassou Nguessou of the Republic of Congo, and Isaias Afwerki of Eritrea.²⁸

NOSTALGIA FOR THE MYTH OF “BENEVOLENT” DICTATORSHIP AND CHALLENGES TO DEMOCRATIC CONSOLIDATION IN AFRICA: A SYNOPTIC REFLECTION

Fig 4.

Sub-Saharan Africa’s Longest-Serving Leaders, 1960–2021

Leaders by time in office, excluding monarchs



Source: Klobucista (2021)

Others who would have made this list today were recently compelled by natural or political reasons to leave office: Mugabe was forced out by a military coup after thirty-seven years; Jose Eduardo dos Santos of Angola stepped down in 2017 after changing political fortunes made it clearly untenable for him to continue at the helm of the Angolan state after thirty eight years in power; Sudan’s Omar Bashir was disgracefully ousted after thirty years in power by sustained

protests and military intervention, and Chad’s Idriss Deby fell on the battlefield after thirty years in power.²⁹

To sustain their longevity in power, several elected African presidents have successfully pushed constitutional amendments through rubber-stamping parliaments to eliminate term limits, and complementarily embarked on the organisation of decisively fraudulent elections to ensure they win all subsequent elections, as has been the case with Paul Biya of Cameroon, Yoweri Museveni of Uganda, and Sassou Nguessou of the Republic of Congo to name just a few. Efforts are underway by leaders such as Archange Touadera in the Central African Republic to follow this path to eliminate presidential term limits. As the UNDP has cautioned, “the socio-political systems which sustain such long-term regimes of government have been shown to generate their own inherently fragile momentum – with weak state legitimacy a core factor determining long-term fragility according to current policy discourse”.³⁰ To maintain their grip on power, this contagion of deeply entrenched neo-patrimonial regimes have led to the prioritization of regime security and consolidation over human security.

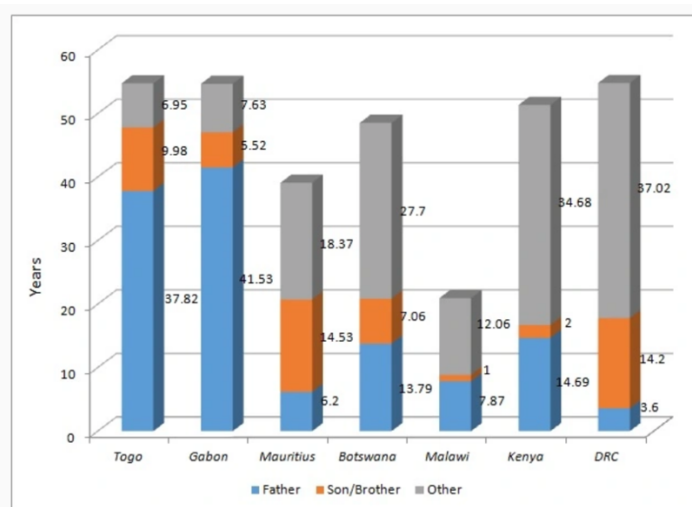
4. Father-to-son Political transitions:

This trend, which Ndiloseh (forthcoming) describes as “demonarchy”, is fast becoming a notable form of power transition at the helm of especially central African states that it merits closer scholarly scrutiny.³¹ Essentially, this entails the following steps: 1) incumbent presidents amend their national constitutions to eliminate term limits, transforming them into “presidents for life”; 2) The presidents for life then secure the loyalty and acquiescence of their national parliaments and other regional and external powerbrokers through rents from neo-patrimonial networks to ensure their backing over their regimes and those of their chosen successors; 3) As the incumbent gets older or infirmed, steps are then taken to integrate their sons – heir apparent – within the formal government bureaucratic structure through formal appointments as government ministers/senior officials (e.g., Gabon’s Ali Bongo, and Equatorial Guinea’s Teodoro Nguema Obiang Mangué) wielding powerful portfolios, or as a high-ranking general in the army (Mahamat Déby of Chad, and Muhoozi Kainerugaba of Uganda). In some cases, the heirs are introduced more subtly through the wing of the ruling party (most likely the case with Frank Emmanuel Biya

in Cameroon) such that they become the most significant power broker after the president and secure significant allegiances from the army to step in when incumbents die (Joseph Kabila in DRC, and Mahamat Deby in Chad).

In 2015, Faure Gnassingbe was declared elected to power for the third time. The incumbent president is the son of Gnassingbe Eyadema, Togo’s fifth president, who was appointed to government as Minister of Equipment, Mines, Posts and Telecommunications by his late father, serving from 2003 to 2005 when he ascended the Presidency of Togo.³² The elections that saw him rise to power were deemed to be decisively fraudulent by international election observers. The mass protests that ensued led to the killing of more than a thousand citizens by security forces, forcing the flight of more than forty thousand refugees to neighbouring Ghana and Benin.³³ The Gnassingbe family has now run Togo for more than fifty years, through father-and-son transitions, effectively in charge of the country for more than 87 percent of its post-independence history.³⁴ Gabon has had a similar experience with a father and son at the head of the country for over 86 percent of the country’s post-independence history (55 out of 63 years of independence).³⁵

Fig 5. Fathers-to-sons transitions: Years of African political dynasties in Power distributed by countries.



Source: Songwe (2015)

6. The impact of so-called benevolent dictatorial regimes on growth and development outcomes

The preceding parts of this paper have assayed the drivers behind the pockets of nostalgia for benevolent dictators currently being felt across Africa. In case there are any misgivings that these longings for benevolent autocrats as alternatives to Africa’s failed democracies are the mere fantasies of intellectually unsophisticated common Africans, prominent African economist Dambisa Moyo also expressed similar sentiments in her 2009 bestseller ‘Dead Aid’, while castigating the current model of development aid as unhelpful to Africans. As an alternative, Moyo argues that “In a perfect world, what poor countries at the lowest rungs of economic development need is not a multi-party democracy, but in fact a decisive benevolent dictator to push through the reforms required to get the economy moving.”³⁶ Moyo’s conclusion contradicts Przeworski’s³⁷ finding that benevolent dictatorships and liberal democracies, through empirical evidence, concluded that political regimes have not had overall effect on economic growth as Moyo claims, with total incomes growing at almost identical rates over the two regime types.³⁸

This section briefly discusses the historical evidence across Africa to assess whether so-called benevolent dictators, except for Rwanda’s Paul Kagame, have indeed accounted for growth and progress in their countries or if they have conversely been responsible for bad governance, underdevelopment, and conflict. To do so, we sample the profile of some of Africa’s renowned so-called benevolent autocrats.

As Klobucistahas argued, “strong correlations exist between sub-Saharan Africa’s entrenched leadership and its developmental and security challenges, including conflict or instability, stagnant or declining economies, and democratic backsliding”.³⁹ This situation is particularly pronounced in countries with authoritarian governments, especially those with long-serving leaders who typify themselves as benevolent autocrats. The desires for regime preservation incentivise the recourse to structured violence, police brutality, arbitrary arrests, and significant restrictions on freedom of expression and human rights. In Zimbabwe, for instance, Robert Mugabe

who once described himself as the hope of the Zimbabwean people, presided over the near collapse of the Zimbabwean economy, reducing the country from a pearl in the Southern African region to a pariah in the eyes of the international community. His poor stewardship of the economy⁴⁰ multiplied hardship and poverty and unleashed a long-struggling economy in which profligacy, cronyism and corruption were the hallmarks: the rich got extremely rich, and the poor languished further into abject poverty. His crackdown on dissenting voices altered Zimbabwe's profile from a rights-enjoying society to a bastion of state-sponsored brutality, and the structure of autocracy that he left behind was so entrenched that even after his death, his long shadow continues to be cast on the country, personified in the corruption and misrule that Emmerson Mnangagwa, his long-time deputy continues to inflict on the control as its current president.

In present-day DRC, Mobutu Sese Seko, who styled himself as a benevolent autocrat, unleashed a brutal dictatorship over three decades that brought the country to its knees. The normalisation of endemic corruption, nepotism, cronyism, embezzlement, and predation over the mineral resources of the Congo were so pronounced under Mobutu that, as Wanki has argued, “by the end of his reign, the strongman had lewdly “amassed a fortune estimated at \$4 billion, [excluding] an array of grand villas in Europe and multiple palaces and yachts”.⁴¹ In the meantime, Congolese citizens suffered in abject poverty and those who dared to oppose the “leopard” paid the ultimate price. Following Mobutu's overthrow in 1997 and the assassination of Laurent Kabila, power passed on to his son, Joseph Kabila who “succeeded in amassing a fortune by stealing state funds and effectively disregarding the provision of public services”.⁴² Upon leaving power in 2018, Joseph Kabila left a legacy of endemic corruption, a brutal war raging in DRC's eastern flank so deadly that it has been considered the world's deadliest war since WWII.

Despite their difference, what do the above cases have in common? In some respects, they illustrate the precariousness of counting on the self-proclaimed benevolence of autocrats and dictators for the development of a country. In Africa and beyond, with complete power often comes complete impunity, and very few leaders maintain virtuousness in the

absence of accountability mechanisms that reign in their power.

In this context, Rwanda at best remains an exception that proves the rule that dictatorship is rarely benevolent and even less likely effective. Any Rwandan miracle, in view of its size, political history, Kagame's hegemony and political dominance and international support, is unlikely to be replicable in the rest of Africa.⁴³ Crucially, remarkable as Rwanda's achievement seems, there is no evidence that it is a result of his autocratic methods, and that the status and trajectory of the country remains open until the time when the country must exist without him at the helm.

In all cases, the idea of benevolent dictatorship suffers from two fundamental weaknesses. First, whether a leader is benevolent or not can only be affirmed after they have ascended to power and led for some time. There is no way of pre-selecting for benevolent dictatorships. Secondly, there is also limited possibilities of removing incumbents who are truly dictatorial but not benevolent. The fact that almost all dictators in Africa, despite their self-proclaimed benevolence, have been dictators of different shades means that the nostalgia for them would likely end with the same disappointment and loss of both worlds – freedom from want (insecurity and economic deprivation) and freedom from fear (civil and political rights).

7. Policy Reflections Going Forward

The people of Africa, as elsewhere, wish to see both effective and democratic government systems. These two are not only compatible but also reinforce each other. It is also clear that some people may be willing to trade effective government for democracy if ambitious autocrats present the two as inconsistent. While democratic systems must be made more effective, it is abundantly clear that benevolent autocrats are not the answer to Africa's development and governance crisis. The question then is how to tackle the endurance of the rhetoric of benevolent dictatorship and crucially re-engage and re-imagine African democracies to deliver development dividends more effectively to the masses. The ensuing policy reflections offer a way forward towards a renewal of the development potential of African democracies:

A. Strengthened vigilance on the part of civil society organisations and opposition political parties in Africa is needed to hold governments to account, and to pushback against constitutional amendments extending term limits. The formation of cross-cutting coalitions for rule of law and democracy involving civil society, opposition parties, traditional leaders and influencers and intellectuals is critical to promote the idea of democracy and push back against a rhetoric of incompatibility with effective governance. Such coalitions would also need to manage popular expectations about democracy and create awareness to push back against myopic promotions of the idea of benevolent dictatorship. In this regard, learning from successful cases of resistance against dictatorship can inspire hope. While so much reporting has been done on the successful attempts by African leaders to eliminate caps on presidential terms, very little reporting is often done of the successful attempts by civil society organisations and oppositional political voices to pushback against these attempts. For instance, in 2001 and 2003 respectively, a robust coalition of civil society voices and political parties brought the requisite pressures to bear on Zambian President Frederick Chiluba, and Malawian President Bakili Muluzi, thwarting their attempts raise presidential term limits. In Nigeria, the senate rejected a 2006 attempt by President Olusegun Obasanjo to run for a third term. In 2012, a crowd of protestors in Senegal forced the electoral defeat of President Wade who was running for a highly disputed third term, and in Gambia in 2017, crowd power played a decisive role in creating the conditions for dictator Yahya Jammeh’s ouster after 23 years in power. The lesson here is that greater investment should be directed towards organising and mobilizing civil society organisations to hold democratically elected governments to account for their stewardship and to prevent the emergence of dictators.

B. Renewed commitment to democratic governance is needed at the level of regional actors and organisations. The role that regional organisation such as the African Union, Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) play as bulwarks against undemocratic governance in Africa cannot be overstated. In West Africa, ECOWAS’ demarches have continued to be crucial in curating recent military regimes to commit to returning their countries to civilian rule. Through measures including diplomacy and as needed sanctions, regional organisations wield significant clout in the inducement of incumbents to respect democratic

standards and processes. ECOWAS, for instance, has considered amending, so far unsuccessfully, its Democracy Protocol to check against the constitutional changes aimed at eliminating presidential term limits. This capacity and orientation ought to be strengthened by pan-African and international development partners.

C. There is need for democracy-promoting Western partners to practise what they preach about democracy in Africa. While the United States and Western European partners frequently appear vocal around the need for democratic governance in Africa, they are known to notoriously prioritize their security and economic interests over human rights and antidemocratic concerns. For instance, the United States was quick to congratulate the DRC’s president Felix Tshisekedi, despite widespread reports of electoral malpractices and fraud that marred the 2019 polls. They also failed to sanction important security allies like Cameroon, Chad and Uganda despite brutal crackdowns these regimes have meted against their people leading to thousands dead and hundreds of thousands displaced.

8. Conclusion

The democratic model of governance is facing crisis in Africa, and indeed around the world. Yet despite the challenges confronting democracies, they remain the best governance model so far, for safeguarding human security, human rights, the rule of law, and for unleashing the realisation of the freedoms and aspirations that are fundamental to meaningful growth and development in all societies. Despite the Rwandan outlier in Africa, it is abundantly clear that the so-called benevolent dictatorships cannot serve as viable development-seeking governance alternatives for Africans for the mere fact the dictators tend to govern according to their whim and to serve their interests. Benevolence and dictatorship are almost always antithetical. The challenge is how to re-engage and capacitate democracies to deliver more effectively on the hopes of better lives for citizens. The policy reflections provided in this paper are by no means conclusive in this regard. But they do point the way to start a meaningful conversation around making democracies work for Africans in the 21st century.

NOSTALGIA FOR THE MYTH OF “BENEVOLENT” DICTATORSHIP AND CHALLENGES TO DEMOCRATIC
CONSOLIDATION IN AFRICA: A SYNOPTIC REFLECTION

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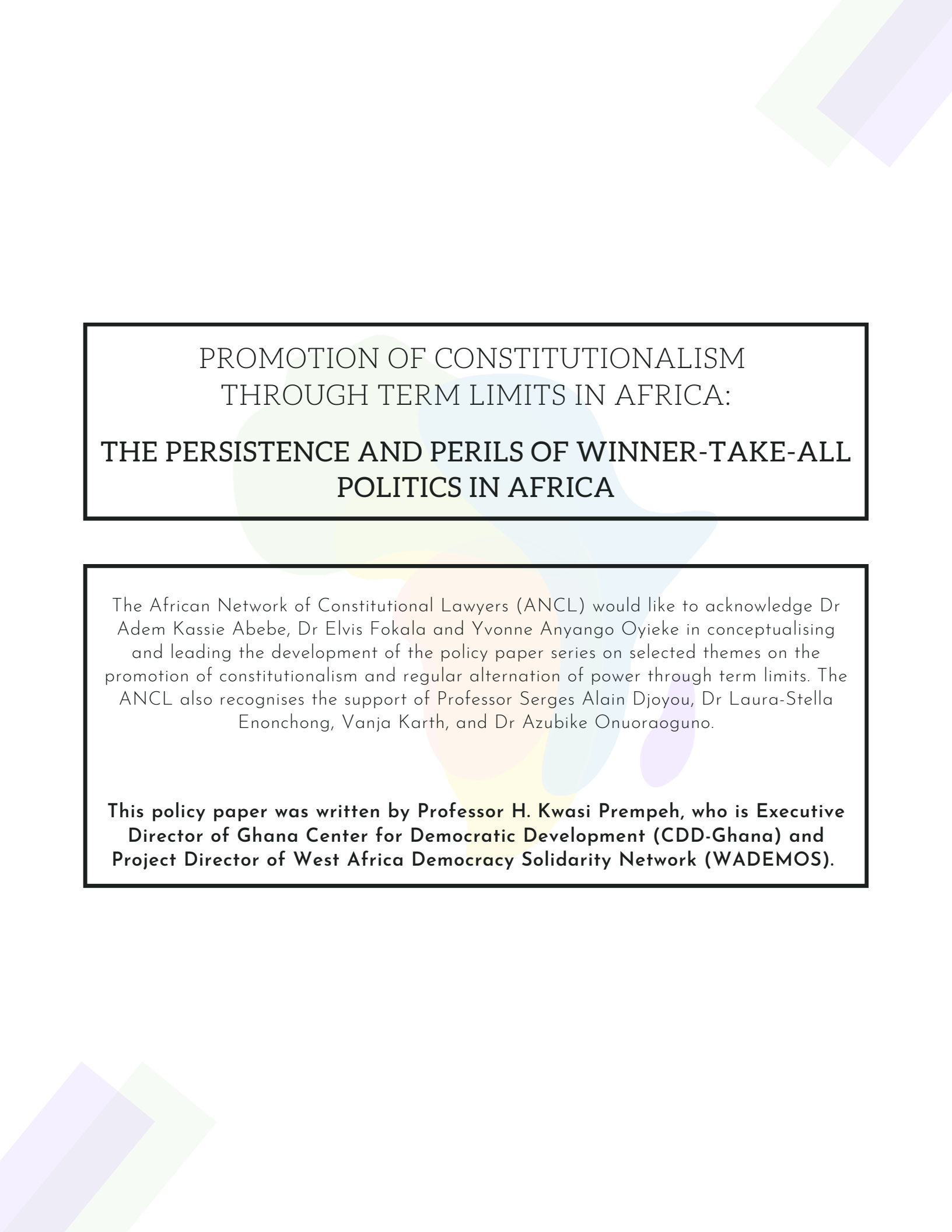
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PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
**THE PERSISTENCE AND PERILS OF WINNER-TAKE-ALL
POLITICS IN AFRICA**

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1. Introduction

Hopes and expectations that the democratic transitions and constitutional reforms that swept parts of Africa beginning in the early 1990s would usher in a new brand of politics and transform the exercise of political power in the African state have generally met with disappointment. Admittedly, the last thirty years have brought important changes onto Africa's political and constitutional landscape. De jure one-party political systems, once the norm on the continent, have disappeared. Presidential term limits, an idea alien to African politics before the 1990s, though still resisted by many incumbent leaders, have gained acceptance and become institutionalized in a number of states, including South Africa, Benin, Nigeria, Ghana, and Kenya. At the popular level, support for a two-term limit on presidential tenure has held strong across Africa over several rounds of Afrobarometer surveys. A combination of new term limits and competitive elections has, in fact, worked to end the tenure of presidents and enabled peaceful power alternation to occur in several once-authoritarian states. While *coups d'état* have made an astonishing comeback recently, they are now met with condemnation from the African Union and affected regional bodies like ECOWAS as violations of continental and regional sanctions-backed normative frameworks against "unconstitutional change of government". Notwithstanding these positive precedent-setting changes and developments, certain perverse features of the *ancien régime* persist. Notable among these is Africa's "winner-take-all" politics.

In African political discourses, the term winner-take-all is used in at least two related senses. In its conventional, typically academic and limited usage, winner-take-all describes an electoral system in which the candidate who receives the most votes, whether that constitutes a majority or only a plurality of the votes, wins all the seats. Losing candidates in such a system win nothing, no matter how substantial their votes and even if the losers' combined vote tally exceeds the votes of the largest vote-getter. In general, such an electoral system favors the emergence of two rival parties, squeezes out smaller parties, and tends to produce single-party legislative majorities. On a national scale, winner-take-all electoral systems enable the party that garnered the most seats, regardless of the thinness of its victory, to form the government and to govern without the necessity of forging consensus or sharing power with its electoral rivals.

As the term is more commonly used to describe politics in Africa, however, winner-take-all means something more than an electoral system that produces non-inclusive or exclusionary representational outcomes. Beyond the electoral system,

winner-take-all politics in Africa describes a practice or mode of exercising political power where the party that

wins power not only gets to exclude its rivals (and their supporters) from a formal role or participation in government (and governing) but, crucially, also shuts out its rivals from a wide range of tangible and intangible public opportunities, including appointments to significant public offices (such as positions in the bureaucracy, armed forces, police, and the public services generally), award of government contracts, and broadly equal legal treatment. In other words, to win power in winner-take-all Africa is to earn not just the right to govern solo but also an entitlement to the fruits of power, comprising a vast wealth of public opportunities and privileges that the winner is free to allocate as "spoils of war" or rewards for the benefit of its co-partisans and allies.

This brand of exclusionary, zero-sum politics, long associated with Africa's authoritarian regimes, has survived the currents of democratization the continent has experienced since the early 1990s. A key domestic driver of the many conflicts that have characterized the continent's post-independence history, the survival of winner-take-all politics in the contemporary period has not only degraded the quality of democratic governance across the continent, it has continued to endanger prospects for peace and stability and might explain, in part, some of the recent episodes of democratic backsliding in the region. As exclusion from power in Africa's winner-take-all political culture portends drastic and ruinous consequences for losers, electoral contests in Africa's democracies have often assumed a potentially violent or destabilizing do-or-die character, with rival parties and contestants sparing no effort to secure victory by fair or foul means. Similar anxieties about life without power might explain the dogged resistance of some African leaders and regimes to the idea of presidential term limits as well as efforts by others to manipulate existing term limit provisions and elections to prolong their stay in office.

2. Origins and Early Construction of Africa's Winner-Take-All Politics

Winner-take-all has been a feature of African politics since the early days of independence. Whether independence came through electoral competition among factions of the nationalist class or through liberation struggle, the leader and faction that emerged victorious and, thus, led their people to independence earned for themselves a messianic status as the liberator and founder of their new nation. With this status came, among other things, a sense of entitlement to rule or govern virtually unchallenged, just as the colonial power before them had done, only now with far superior legitimacy than the erstwhile colonial overlord. Bearing honorifics like *Osagyefo*, *Mzee*,

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA

Ngwazi, and *Mwalimu*, Africa's founding leaders became the human embodiment of their new sovereign states, pioneering Africa's tradition of winner-take-all politics.¹

As the struggle for independence in Africa was everywhere attended by factionalism and rivalry among elements of the nationalist class -each factional leader typically drawing their base of support from their ethnic or regional kin-, Africa's new states were born with rifts, divisions, and jealousies to heal, overcome, or suppress. Political party and leadership rivalry, such as the country had experienced or witnessed in the lead-up to independence, was seen as subversive of the nation-building project. In particular, the idea of an opposition party, a party waiting in the wings in the expectation of forming an alternative government, was regarded not only as alien to traditional African conceptions and practices of governance but as a kind of "fifth column" or enemy within. The notion of sharing governing power with an opposition party was, thus, ruled out of the question *ab initio*. What was advanced as the vehicle to drive the national project to its destination was the "one-party state". Invariably, this meant the party of the Founding Father, that being the party which the prevailing nationalist historiography credited exclusively with liberating the people from the clutches of colonial domination. A party-state system thus developed in which a single party took and exercised control, literally, of all the levers of state power, including the bureaucracy, the army, and the police. Opposition elements who desired to participate in government could join the ruling party or be consigned to the margins of power or worse.

At the sub-national level, the nation-building rationale translated into official hostility toward assertions of provincial or local autonomy by one of the other constituent social or political groupings. Given the political geography of the African state, in which a particular regional or local territory tended to be home to a dominant ethnic or ethnocultural group, demands for a measure of subnational self-government were treated suspiciously as secessionist or subversive. It did not help that opposition parties and their political principals often drew their base of support from one or the other ethnically-identified subnational community. Of course, the positions Africa's regionally-based parties took on some national questions often reflected legitimate socio-economic interests rooted in the unique geography and history of the regions or ethnic groups in question, including the history and manner of their integration or incorporation into the colonial project and economy. To Africa's new leaders, however, none of this mattered; any expression of regionalism or local nationalism was deemed tribalistic and illegitimate. Consequently, demands for federalism or for concessions in favor of regional or provincial autonomy were summarily dismissed and, in some

cases, criminalized, along with the parties advocating such positions. The centralized unitary model, under the leadership of the Founding Father and his vanguard party, emerged as the only model of state structure deemed politically compatible with the nation-building project.

Winner-take-all politics also drew justification from the crisis of underdevelopment that confronted the newly emergent African state and society at the time of independence. Colonialism had left in its wake a legacy of substantial unmet needs in education, health, housing, and other social infrastructure. In addition, the colonial economy, focused, as it was, on domestic extraction, importation of foreign manufactures, and export of primary commodities, offered little in the way of wage-earning opportunity for the politically restive and growing urban population. This state of affairs, as the new managers of the African state and economy reasoned, qualified as a national emergency. The metaphor of war--a war to conquer "those very real enemies"--"ignorance, poverty, and disease"--was invoked to characterize the nature and urgency of the response that was needed. As with wars generally, including metaphorical ones, the implication was that the push for "accelerated development" would require "all hands on deck" -- a national mobilization, so to speak--as well as a "commander" in charge. Once again, as with the nation-building rationale, the development rationale, as articulated by the Africa's new leaders, countenanced neither opposition nor rivalry. Rather, the one rationale reinforced the other, both converging in the need for a supreme (and lifelong) leader at the head of a vanguard party leading one people ostensibly toward a common destiny.

The development rationale underwrote winner-take-all, one-party control of the state in another important respect, namely the model of development that Africa's new state managers adopted. Almost invariably, the choice was in favor of a state-led, command-and-control economic model. As Africa's new economic managers reasoned, the pre-industrial character of the inherited colonial economy, and, in particular, its structural inability to produce a local capitalist class with sufficient private accumulation to drive industrialization, left the state as the only viable option to lead economic transformation. In consequence, Africa's new governments invested in an array of state-owned enterprises across industries, in agriculture, mining, commerce, and services. These ventures not only placed the state in charge of the "commanding heights of the economy", but they also served the additional social and political function of offering livelihood opportunities and other material rewards for party and regime loyalists.

In terms of constitutional design, winner-take-all politics found expression in elite preference for presidentialism as the form

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA

of government that supposedly best aligned with postcolonial Africa's national projects. The parliamentary system was almost uniformly disfavored. Some of Africa's founding fathers in countries with parliamentary systems, mainly in Anglophone Africa, were not less powerful as prime ministers, but being president appeared to signal something grander. Formally at least, unlike the prime minister in a parliamentary, Westminster-style system, an executive president, combining both head of state and head of government functions, represented the whole nation, stood above both party and cabinet, and, having a fixed term, was invulnerable to removal by confidence vote of the legislature. Even so, in choosing presidentialism over parliamentarism, Africa's postcolonial leaders did not go for the American presidential model, featuring a term-limited president sharing power with a separate multiparty legislature and an independent judiciary within an interactive system of checks and balances. African presidentialism dispensed with both opposition parties and American-style checks and balances.

Justifying the departure, Tanzania's Julius Nyerere's noted that "the system of checks and balances is an admirable way of applying the brakes to social change. Our need is not for brakes; we need accelerators powerful enough to overcome the inertia breed of poverty and the resistances which are inherent in all societies".² Ghana's Kwame Nkrumah, who pioneered the switch to African neo-presidentialism in 1960 defended his extraordinary presidential powers in similar terms: "The increased authority given to the President is to enable him to exercise the positive leadership that is so vital to a country seeking to pull itself up by its bootstraps . . . There are some jobs in the world that can be best done by a committee, others need a managing director".³ Through neo-presidentialism, winner-take-all politics in Africa thus became personalized and embodied in the African president.

3. Why Winner-Take-All Politics Persists

The winner-take-all brand of politics pioneered by Africa's founding generation of leaders held sway across the continent for the next three decades following independence, remaining a constant feature of the succession of authoritarian, nondemocratic projects and regimes that Africa witnessed during this period yet delivering neither stable national integration nor equitable or balanced development. Perhaps because of its historical association with authoritarian single-party and one-man rule in Africa, the current survival of winner-take-all politics, despite the wave of democratic and related constitutional changes in Africa since the end of the 1980s, is as confounding as it is disappointing to the many

ordinary Africans who expected that democratization would bring with it a different and better kind of politics.

What accounts for the stubborn persistence of winner-take-all politics despite the wave of democratization and related constitutional reforms – changes that have sent many old-guard leaders and authoritarian regimes off the African political stage since the early 1990s? The answer lies in the nature and the extent of the changes in question.

First, while there is no denying that the post-1980s wave of democratization in Africa introduced new rules of the game in the political arena, these changes were primarily in the nature of changes to the *rules of entry and exit*, as opposed to changes to the *rules of play*.⁴ The constitutional changes that accompanied democratization focused on opening up a previously closed political system to competition from once excluded political actors. In other words, *democratizing* politics and power, not *transforming* them, was the main driver behind the constitutional reform projects that accompanied African democratization in the period after the 1980s. Accordingly, the principal rule changes involved removing existing bans and other restrictions against political parties and other provisions to guarantee political pluralism and free and fair elections. Also featured among the new rules were presidential term limits; these were designed to facilitate the exit of long-entrenched incumbents and ensure orderly leadership succession in presidential office.

Beyond these new changes to the rules of entry and exit, which, indeed, have worked to democratize the political space and competition for political power, the other rules of the game, namely the rules of play – that is to say, the substantive content, character, and relationships of power in the African state – have remained substantially unchanged. Notably, certain notable features of the *ancien regime* like the imperial presidency and related winner-take-all politics, have been preserved, if only by default. Thus, newly term-limited presidents, once installed in office, inherit and possess nearly as much power in substance as some of their authoritarian predecessors, even if new formalities must now attend the way power is expressed by the new incumbents. The net effect of the preservation of substantial aspects of the old order is that – even in countries like Ghana where post-1980s presidential term limit provisions enjoy unquestioned acceptance, or where general elections have produced turnover in government multiple times – democratically elected, term-limited presidents and their parties run the country practically like a "one party state" during their terms.

Also noteworthy is the fact that, by and large, Africa's post-1980s constitutional reform projects left in place the existing sub-constitutional legal order, comprising the vast panoply of authoritarian-era laws and regulations – among them, public

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA

order laws, various security-related legislation, criminal defamation and sedition laws. This stock of existing laws has, thus, continued to provide the operational legal tools for the everyday exercise of governmental authority and executive prerogative. Bureaucratic traditions of habitual deference and fidelity to the authoritarian-era statutory and administrative regime have ensured the continued use and enforcement of such laws and practices, even if they may be at variance with the letter or spirit of new constitutional precepts and standards.

Multiparty elections have, of course, made sure that Africa's parliaments are no longer a one-party affair. However, this has not necessarily made governing more party-inclusive. Even where, as is often the case, formal separation of powers is enshrined in the current constitutional relationship between the legislative and executive branches, presidents have been able to count on their continued control of wide-ranging political resources and prerogatives to secure the loyal support of their party legislators in parliament in approving appointments, bills and other executive initiatives. In Africa, as elsewhere, partisanship and party-line voting behavior among legislators have tended to nullify the checks and balances on presidential behavior that traditional separation of powers is supposed to induce. In the case of new African constitutions that require or allow the president to appoint sitting MPs to ministerial positions, as obtains in Zambia, Ghana and many other African states, this hybrid feature has further facilitated presidential dominance of the legislature. The president's role as chief dispenser of patronage, a role that has historically placed him at the center of Africa's winner-take-all politics, has been largely preserved.

The failure of democratic and constitutional reforms to deconcentrate power and resources from the center and devolve them democratically downwards in favor of subnational units and communities is another factor accounting for the persistence of winner-take-all politics. The African state continues to be governed and administered, by and large, from the center, with local authorities little more than under-resourced branch offices of the capital city-based central government. Africa's post-1980s democratization wave often did not trickle down from the center. Democratizing national politics without democratizing the subnational or local governments means, in practice, that the party that loses out in national elections also loses the opportunity to participate in government at the local level, no matter the strength and spread of its local electoral support. Ghana's current constitutional arrangement best illustrates this problem. Under Ghana's 1992 constitution, the only elective executive political office in the country is the office of the President (elected together with a vice president). There is no elective executive office at the subnational level. The mayors of the more than

200 local government units into which the country is divided administratively, including the capital city district, are all appointed by the president and serve at his pleasure. This means that even in those districts where an opposition party commands substantially greater electoral support than the party in government, local governing authority resides solely with the party of the president. Political parties that lose national elections in Ghana are, therefore, cast out of power at all levels of the state—national, provincial, and local.

4. Ways Forward In Addressing Winner-Take-All Politics

If winner-take-all politics has carried over into the contemporary period in Africa, it is because, with the exception of Kenya's post-2007 constitution-making process, which culminated in the 2010 constitution, Africa's political and constitutional reform projects have thus far not made dismantling winner-take-all politics a central focus or target of their efforts. As democracy in Africa has begun to show worrying signs of stagnation, decline and, in some cases, collapse, this omission or blind spot of the earlier round of constitutional reforms must be corrected—and corrected with intention. Analyzing trend data over several years, Afrobarometer has observed, insightfully, that, while Africans' "demand" for democracy has generally held strong, everyday Africans are disappointed with the "supply" of democracy being served them.⁵ Because of the various ills associated with it — non-inclusive governance, excessive partisanship, political and social polarization, election rigging and violence, abuse of incumbency, state capture, insider impunity, privileging party and group interest over the interest of the nation, term limit evasion, etc. — persistent winner-take-all politics must bear part of the blame for popular dissatisfaction and disappointment with democracy's delivery and performance in contemporary Africa. Addressing winner-take-all politics must, therefore, feature prominently on the future agenda of Africa's policymakers and constitutional reforms.

The remainder of this section offers, by way of concluding thoughts, a few proposals for institutional and constitutional designers and reformers to consider in tackling Africa's winner-take-all problem.

Presidential term limits still matter

Given, as we have seen, that winner-take-all politics has survived the introduction of presidential term limits in Africa, it might sound counterintuitive to propose deeper entrenchment of term limits as one of the ways to tame winner-take-all politics. While it is true that term limits have continued to coexist with imperial presidents and winner-take-all politics, it is also the case that the countries in Africa that have

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA

experienced repeat party turnover in government, among them, Benin, Ghana, Nigeria, Malawi and Zambia, are also the countries where presidential term limits have gained both elite and popular acceptance as a non-negotiable part of the rules of the game. In other words, the emerging evidence suggests that, all things being equal, a presidential term limit provision enhances the chances of an opposition party or candidate winning power. Thus, while presidential terms limits do not, in and of themselves, solve the winner-take-all problem, they make winner-take-all behavior transitory by raising the prospect of incumbent party defeat, particularly at the end of a president's last term. Especially if such party turnover or rotation in and out of government is sustained or repeated over time, signaling electorate disapproval of continuous or prolonged winner-take-all politics, presidential term limits may help reduce the incentive for winner-take-all behavior on the part of incumbents.

Afrobarometer data show that Africans support consistently—and by very large majorities—a two-term limit on presidential tenure.⁶ Leaders who defy popular opposition to extend their term in office must often resort to repressive and other undemocratic methods and practices in order to maintain their insecure hold on power. In West Africa, attempts to sidestep or modify term limit provisions to prolong the president's stay in office have recently provoked strong negative reactions, including bloody street protests (Senegal, 2023) and coups d'etat (Guinea, 2021; Burkina Faso, 2014; Niger, 2010). Following the September 2021 coup in Guinea, ECOWAS' invocation of its protocol against "unconstitutional change of government" to sanction the new military junta was met with swift popular condemnation both in the country and across the region. Critics condemned the regional body for applying double standards for failing to register any form of disapproval when the former president, Alpha Conde, pushed through a widely unpopular constitutional amendment to grant himself a third term in office, thus provoking—or providing a pretext for—the ensuing coup. In the wake of the recent re-emergence of coups in Africa, the continent's regional bodies risk further erosion of their credibility and legitimacy if they are seen to tolerate or turn a blind eye to "constitutional coups", notably in the form of incumbent maneuvers to evade term limits, while denouncing and sanctioning military coups. The case for the adoption and enforcement of a regional norm against incumbent manipulation of term limit provisions has never been stronger, or more urgent.

Decongest and disperse presidential executive functions

As noted, winner-take-all politics in Africa is underwritten and sustained largely by the vast powers and prerogatives of the presidency. Therefore, taming winner-take-all politics in Africa

necessarily requires reconsideration of the scope of the president's executive powers and functions. Traditional constitutional design has relied on interbranch separation of powers and functions between the president and the legislature to keep each power in check. However, the basic assumption underlying standard separation of powers, namely that each branch would stand united in defense of its institutional prerogatives, has proven illusory in practice, as party politics and inter-party rivalry have typically operated to defeat legislative cohesion, with the president's co-partisans in parliament often choosing to side with the executive (their party in power) instead.⁷ As conventional separation of powers has proven unreliable or insufficient as a check on presidential power, it is necessary to consider additional or alternative mechanisms. One idea is *intra-branch* or "internal" separation of powers. Unlike conventional separation of powers, internal separation of powers looks for separation of powers and functions *within* the executive branch, not between the branches.⁸ The objective is to carve out of the portfolio of executive functions traditionally located in or under the control of the presidency certain specific functions and related powers that require partisan detachment and professionalism for their effective performance and entrust each of them to a separate office that is vested with appropriate independence and protection from presidential control and political micromanagement. Executive functions that are ideal candidates for such internal separation of powers, in addition to the broader bureaucracy, include general law enforcement and policing, criminal investigations, and prosecutions.

Kenya's 2010 Constitution seeks to shield policing, criminal investigations, and prosecutions from partisan and presidential meddling. Thus, the offices of Director of Public Prosecutions (DPP) and Inspector-General of Police (IGP) in Kenya are established under the constitution as independent offices. Kenya's attorney-general, who is a member of the president's cabinet, does not have prosecutorial power; that power is in the DPP. The DPP is appointed (by the president with the approval of parliament) to a fixed, non-renewable term of eight-years and may not be removed except on grounds and in accordance with a multi-layered, quasi-judicial process specified in the constitution. The DPP "shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her functions shall not be under the control or direction of any person or authority." (Article 157(10)). On the other hand, the DPP "shall have the power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal misconduct and the Inspector-General shall comply with any such direction." (Article 157). Unlike the DPP, the IGP is appointed to a shorter, four-year term. However, he, too, may be removed only on constitutionally

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA

specified grounds. Other than the DPP, "no person may give a direction to the Inspector-General with respect to the investigation of any particular offence or offences, the enforcement of the law against any particular person or persons, or the employment, assignment, promotion, suspension, or dismissal of any member of the National Police Service." While the cabinet secretary (Minister) responsible for police services may direct the IGP, such ministerial direction is limited to matters of "policy for the National Police Service" and must be in writing.

Constitutional provisions like these, designed to ensure that law enforcement and prosecutorial functions are performed independently and professionally, are essential to upholding the rule of law, a value that is frequently undermined when winner-take-all politics extends to the domain of law enforcement and prosecutions.

Opposition Empowerment

Winner-take-all politics can also be tamed by enhancing the representation and power of opposition parties (and opposition leadership) on important legislative and non-legislative bodies and in the making of certain key national decisions and appointments.⁹ While a simple-majority vote of parliament is standard and appropriate for the passage of ordinary legislation and the approval of a president's nominees for appointment to cabinet, ministerial and other political offices whose occupants serve at the president's pleasure, a simple-majority decision rule generally falls short of the degree of inclusiveness or cross-party support that is considered appropriate for extraordinary legislation, such as constitutional amendments, and appointments to judicial and other independent offices (such as election management bodies, auditor-general, anticorruption commission, etc.) Supermajority rules are thus routine for passage of constitutional amendments, but also increasingly common for the appointment of judges and independent officeholders. In Chile, for example, the President's appointment of Supreme Court judges, the National Prosecutor and members of the Directive Council of the Electoral Service must receive the approval of a two-thirds majority of the Senate. South Africa's Public Prosecutor and Auditor-General are each appointed by the President with the approval of at least 60% of the National Assembly.

Supermajority rules carry the risk of deadlock and paralysis. Therefore, it is necessary to couple them with deadlock-breaking or "anti-deadlock" mechanisms. These are fall back options that kick in when there is an unresolvable deadlock. However, ideally the anti-deadlock mechanism should be one that none of the decision-making parties would prefer to use. Thus, its real value is to induce or incentivize the parliamentary

parties to work out a compromise within the supermajority rule, knowing that failure on their part to compromise would cause them to lose the ability to influence the appointment or decision. Serbia has included an anti-deadlock provision in its recently adopted constitutional amendments giving the power of appointing judges and prosecutors to a judicial council whose members are appointed by a two-thirds majority in Parliament.¹⁰ If parliament is unable to garner the required supermajority to appoint the judicial council members, the power to do so falls on a body comprising the speaker of parliament, president of the constitutional court, president of the supreme court, the supreme public prosecutor, and the ombudsman.

Instead of (or in addition to) supermajority rules, some constitutions establish special bodies to handle nominations or appointments to specified public offices. For example, the 1993 Constitution of Seychelles provides for a Constitutional Appointments Authority (CAA), a five-member body whose mandate is to propose candidates for appointment (by the President) to senior judicial offices (chief justice, supreme court, court of appeal) and other independent offices, including the attorney-general, ombudsman, and electoral commissioner. The CAA also deals with removal of the holders of these offices. The President and the Leader of Opposition each select two of the CAA's members, and the four, in turn, select a fifth who serves as chairperson of the Authority.

Formal constitutional recognition and empowerment of the position of Leader of the Opposition as a public office with appropriate compensation and privileges, as exists in the Seychelles constitution, is an important way of signaling and acknowledging the importance of opposition parties. In Dominica, for example, half of the members of the Electoral Commission are appointed on the binding advice of the Leader of Opposition. Fiji's 2013 Constitution also establishes a Constitutional Offices Commission whose membership includes the Leader of the Opposition and another member appointed by the President on the advice of the Leader of the Opposition.

Open, competitive meritocratic recruitment into public services and SOEs

Recruitment into the public services, including state-owned corporations (SOEs), on the basis of partisan criteria or through party networks has been a longstanding feature of winner-take-all politics across Africa. It is, in fact, one of the avenues through which winner-take-all politics has been sustained materially. This is a common outcome where, as in Ghana, the power to appoint persons to the boards and management of state corporate entities is left in the hands of the President or a minister of the president, without any clear

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA

or binding legal principles, standards or restrictions. Kenya's 2010 Constitution charts a new path in this regard. "Fair competition and merit as the basis for appointments and promotions" is one of the constitutional "values and principles of public service" applicable to all state organs at all levels of government as well as all state corporations. Application of this principle means that recruitment and selection into the public services must follow a transparent, competitive, and meritocratic process. Taming winner-take-all politics must mean an end to the "spoils system" in the public services and its replacement by an open, competitive, and meritocratic process of recruitment and selection that is administered independently and professionally.

Democratization of subnational and local government

Although elite and popular prejudice against federalism appears to persist in Africa, the point is also widely conceded or acknowledged that the centralized state model has not worked either to unify the people or develop the country. Of the post-1980s constitutional reform projects other than full-fledged federations, Kenya's "devolved system of government," involving the 47 newly created counties each with its own elected governor working alongside an elected county assembly, has gone the farthest in democratizing power and politics at the subnational level. Parties that lose national elections but enjoy strong electoral support in certain counties are thus no longer shut out of government entirely; they have an opportunity to gain control of either the governorship and/or assembly in some county, including in the national capital area. Kenyan-style devolution is indeed a big step in tackling the winner-take-all politics in contemporary Africa, short of a full-fledged federal arrangement. Giving municipal or metropolitan communities the right and opportunity to choose their own mayors and town councils in competitive local elections, and even consider allowing them to decide on the design of their local government, would have a similar effect.

It is not possible to exhaust all of the various arrangements and options for addressing the problem of winner-take-all politics in Africa. What is most important is to recognize that persistent winner-take-all politics continues to pose a problem for democracy in Africa, as it did in the years after independence. Furthermore, addressing Africa's winner-take-all problem demands both intentionality and innovation, including an openness to comparative learning and borrowing, on the part of constitutional designers and reformers. As the emerging evidence already shows, presidential term limits alone cannot carry the burden of reforming or transforming politics in

Africa. Without addressing the scourge of winner-take-all politics, presidential term limits will, in fact, remain not only insufficient but also vulnerable to reversal, either through incumbent elongation of tenure, or abrupt overthrows of government.

PROMOTION OF CONSTITUTIONALISM THROUGH TERM LIMITS IN AFRICA:
THE PERSISTENCE AND PERILS OF WINNER-TAKES-ALL POLITICS IN AFRICA

¹ On the emergence and persistence of the imperial presidency, see H. Kwasi Prempeh “Presidential power in comparative perspective: The puzzling persistence of imperial presidency in post-authoritarian Africa” (2008) 35 *Hastings Constitutional Law Quarterly* 761.

² Julius Nyerere “*How much power for a leader*” (1962) 7 *Africa Report* 7.

³ Kwame Nkrumah *Africa Must Unite* (1964) 82.

⁴ H Kwasi Prempeh “Africa’s “constitutionalism revival”: False start or new dawn?” (2007) 5 *International Journal of Constitutional Law* 469, 501.

⁵ Robert Mattes “Democracy in Africa: Demand, supply and the ‘dissatisfied democrat’”, Afrobarometer Policy Paper No 54, February 2019.

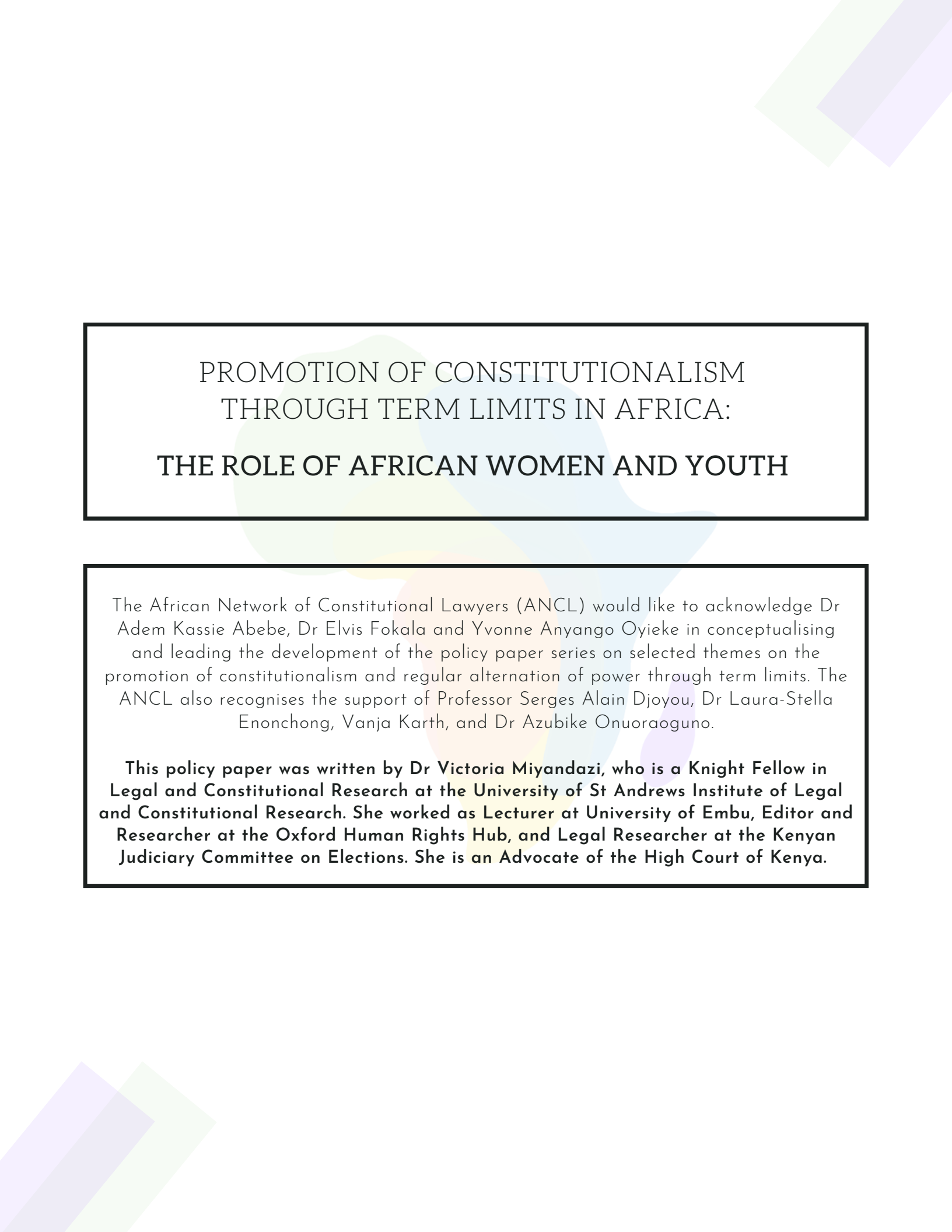
⁶ Boniface Dulani, “Long-serving African presidents say the people want them to stay on. Is that true?”, *Washington Post*, November 5, 2021.

⁷ David Fontana “Government in Opposition” (2009) 119 *Yale Law Journal* 548.

⁸ Neal Kumar Katyal “Internal separation of powers: Checking today’s most dangerous branch from within” (2006) 115 *Yale Law Journal* 2314.

⁹ See also Adem Kassie Abebe “Winner-takes-all politics and opposition empowerment: Towards ‘Africanization’ of democracy?”, *Annual Review of Constitution Building Processes 2022*, International Institute for Democracy and Electoral Assistance (2023, forthcoming).

¹⁰ Milica Stojanovic “Serbia votes on ‘positive’ judicial reform, but doubts linger”, *Balkan Insight*, 14 January 2022, <https://balkaninsight.com/2022/01/14/serbia-votes-on-positive-judicial-reform-but-doubts-linger/> (accessed 20 August 2023)



PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
THE ROLE OF AFRICAN WOMEN AND YOUTH

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I. Introduction

While most countries around the world that adopt presidential systems of government adhere to a two-term limit for their presidents, the extent to which this rule is followed varies. The inclusion of presidential term limits in the post 1990 African constitutional frameworks – when 33 out of 48 constitutions incorporated presidential term limits – generated optimism regarding democracy and constitutionalism on the continent,¹ and indeed delivered unprecedented levels of regular and peaceful alternation of power. Nevertheless, the post-independence phenomenon of ‘presidents-for-life’ has not gone away, with incumbents in many countries extending, ignoring, or completely removing term limits, disregarding the principles of power alternation within the constitutional and political framework.²

Between April 2000 and July 2018, presidential term limits were changed 47 times in 28 African countries. Out of these, 23 changes occurring in 19 countries strengthened term limits by imposing stricter temporal restrictions on presidential mandates, while 24 changes in 18 countries removed or loosened the limitations.³ This is concerning for the populace, with over 75% of citizens in African countries supporting the two-term presidential limit.⁴

Beyond a (delusional) belief in their own indispensability, the struggle to maintain control over the benefits obtained through the abuse of power by incumbents, apprehension of potential consequences at the end of their term – including loss of power, forfeiture of amassed wealth and economic gains, and potential prosecution for human rights violations – heightens incumbents’ determination to cling to power.⁵ In most cases, presidential term limits exceeding two consecutive terms are often marked with each term by consolidation of power and influence, dictatorial takeover, encouragement of corrupt behaviour, patronage relationships, ethnic politics, personalistic dominance, and various abuses of power to secure and prolong tenure in office.⁶

Unlike the pre-1990’s, today, often ‘when presidents have sought to overthrow term limits, they have typically done so through legal means – parliamentary legislation and constitutional amendments – as opposed to simply ignoring the law.’⁷ Such ostensibly proper constitutional changes, frequently instigated by the incumbent and ruling elites, often occur in a context where crucial institutions such as

parliament and the judiciary are weak and result in their further weakening.⁸ Such weakening of alternative centres of power is critical, as the success of opposition parties and citizens in opposing a leader’s pursuit of a third term relies on ‘the extent to which the executive is constrained by institutional checks and balances.’⁹ The alteration or removal of term limits is also closely tied to discussions on democracy, as regular turnover of executive power, including through term limits, is a key indicator of democratic consolidation.¹⁰ Relatedly, it raises the question of how African countries can achieve long-term constitutional stability in the face of presidents manipulating formal constitutions to extend their terms.

Attempts at term limit evasion or removal often face opposition from a range of stakeholders, and don’t always succeed. This paper particularly interrogates the role of women and youth in promoting the establishment and respect for presidential term limits. Women and youth have emerged as two of the most vocal and vulnerable groups in resisting the alteration and removal of presidential term limits in Africa. How do they engage in this challenge, and what valuable lessons can be derived from their efforts?

With this objective, Part II examines efforts by women and the youth in various African countries to demand responsive and accountable governance and to prevent incumbent attempts to subvert term limits, particularly through constitutional manipulation. The section includes case studies on how women and the youth framed the issues, embarked on their initiatives, and the strategies they employed. It specifically looks at protests, campaigns and other strategies used by the youth and women in Sudan, Senegal, Burkina Faso, Uganda, and Zambia. Part III examines the key insights derived from the discussion presented in Part II and makes recommendations on how to enhance the role of women and the youth in promoting and defending regular alternation of power and presidential term limits. Part IV concludes.

II. How do African Women and Youth Challenge Presidential Term Limits Alteration?

In many African countries, prevailing patriarchal approaches to governance often result in the marginalisation of women in the political sphere, exacerbating the disproportionate socio-economic burden they face due to gendered roles that predominantly confine them to domestic responsibilities.¹¹ Women have thus actively participated in movements opposing the extension of presidential term limits, using these platforms to not only protest against bad governance but also advocate

for political and social reforms such as gender equality and political participation.

The youth, persons between 15 and 35 years,¹² represent the core demographics across Africa. As of 2019, 60% of Africa's population were below 25 years old, and the continent's average age in 2020 was 19.8 years, positioning Africa as the youngest continent in the world.¹³ However, a significant portion of them remain unemployed or under-employed.¹⁴ Additionally, 40% of youth perceive their living conditions as dire, and more than 60% of Africans believe that their governments are not adequately addressing the needs of the youth.¹⁵ The marginalisation and exclusion of youth in development processes in numerous African countries have compelled them to engage in struggles against governments to bring about systemic changes.¹⁶

Sudan

Sudan was under authoritarian rule for decades, with President Omar al-Bashir ruling for 30 years (1989–2019) after seizing power through a coup in 1989.¹⁷ In 2005, a new Constitution introduced a presidential two-term limit.¹⁸ However, the ruling party nominated al-Bashir for a third term in 2018, which, alongside economic and other troubles, triggered resistance, and subsequently popular protests. The revolution began in a distant town from the capital Khartoum, triggered by rising living costs and perceived government authoritarianism, disrespect toward youth and women, corruption, and violence.¹⁹ Women and youth played a significant role in the December 2018 to April 2019 revolution that ultimately led to the military's ouster of Al-Bashir.²⁰

Sudan's youth, constituting over 68% of the population, and women, comprising 50%, had long been politically marginalised.²¹ Neighbourhood resistance committees, formed by youth and women, served as grassroots networks for protest mobilisation. These committees emerged from previous uprisings in 2013 and operated outside the authorities' radar.²² They were the grassroots base for the Sudanese Professional Association (SPA), comprising the Sudan Doctors' Central Committee, the Sudanese Journalists Network, and the Alliance of Democratic Lawyers.²³ The mass protests were predominantly led by students, with social media playing a crucial role in organising and mobilising participants.²⁴

Women also played a significant role in the Sudanese uprising, surpassing their participation in earlier uprisings in 1965 and 1985.²⁵ It is estimated that over 70% of the protesters

nationwide were women.²⁶ In addition to opposing the oppressive rule, they specifically protested the violence meted out against women, including rape and the restrictive Public Order Act imposed by al-Bashir's government. This law imposed strict regulations on women's attire, such as the requirement to wear headscarves and the prohibition of pants, and restricted their interactions with men who were not related to them.²⁷ Women activists and feminists faced death threats, detentions, and violent beatings. Accordingly, in addition to calls for a democratic dispensation, their participation in anti-government protests also sought to advocate for women's rights and demand their recognition and protection.²⁸

The iconic image of 22-year-old Alaa Salah, dressed in a traditional Sudanese 'toub', leading anti-government demonstrators in Khartoum became widely shared on social media platforms. The hashtag #SudanUprising trended alongside her photo, generating substantial national and international support for the revolution.²⁹ Despite the government shutting down the internet, the youth ingeniously used virtual private networks (VPN) to circumvent the blackout and disseminate messages under the hashtag #KeepEyesOnSudan.³⁰

The youth and women led protests strengthened the emergence of the Forces of Freedom and Change of Sudan, a coalition of political and civil society groups, as a prominent youth-led movement. It represented the interests of ordinary citizens and professionals in Sudan, leading protests and engaging in negotiations.³¹ After the removal of al-Bashir in April 2019, ongoing protests persisted, with demand for the establishment of civilian rule. These protests eventually led to the formation of a coalition government and the development of a roadmap for a transition to a civilian-led government through elections.³² However, the army eventually overthrew the organised civilian groups, political parties, and other formations that initially aimed to secure a path to fair elections.³³ Since April 2023, the country has been bleeding under a devastating civil war.

Senegal

In recent decades, Senegal has experienced a flux between periods of semi-authoritarian and democratic rule.³⁴ The country's first president, Léopold Senghor, stood out for voluntarily resigning from office in 1980 in favour of Abdou Diouf.³⁵ The country witnessed its first peaceful alternation of power through elections in 2000 when opposition leader Abdoulaye Wade defeated Diouf. Wade subsequently led a

constitutional reform process that strengthened term limits. Nevertheless, he initiated several amendments aimed at increasing executive powers while weakening the political opposition, as well as transparency and accountability mechanisms.³⁶ Notably, in 2011 Wade proposed reforms to lower the vote threshold for a first-round presidential election victory, and subsequently to vie for a third term in 2012, arguing that the term limit introduced in 2001 did not retroactively apply to his first term that started in 2000.³⁷ In January 2012, the Constitutional Council ruled in his favour.³⁸

In response to these constitutional amendments and Wade's bid for a third term, a group of young Senegalese rappers, journalists, youth associations, Senegalese celebrities, human rights activists, and the youth in general joined forces under the banner of Y'en a Marre (Fed Up).³⁹ The group established extensive neighbourhood units across the country and set up camps to educate and empower youth about their fundamental rights. They actively encouraged the youth to register to vote, and use their collective vote to remove Wade from the presidency. This initiative proved successful, resulting in approximately 400,000 new young voters being registered in time for the 2012 elections.⁴⁰ Over months, they took to the streets, utilising their popularity, microphones, and media access to launch strategic campaigns such as *Ne touche pas a ma constitution* (Don't touch my constitution) including songs criticising Wade's regime, videos, concerts, community meetings, and flyers, rallying people behind their cause of addressing poverty, corruption, and inequality.⁴¹ Wade's government reacted by banning protests and arresting protestors.⁴²

In a hip-hop song video produced by Y'en a Marre titled *Faux! Pas Forcé!* ('Don't push!'), the participation of women who have historically faced political marginalisation in Senegal is showcased. The video depicts women removing the veils covering their heads and tying them around their waist as they join protests. This act symbolises their determination to fight, as tying head wraps around one's waist signifies resolve in Senegalese culture. It represents a transition from a humble stance to a more resolute state.

Additionally, the video captures the presence of numerous women who joined the 2012 demonstrations, dressed in white attire and holding banners that read 'Enough!' and 'Stop the killing of our children!' These mothers protested police violence resulting in youth deaths during riots. By solely featuring women and young people in the video, the video

emphasises their political marginalisation and their united effort to remove Wade from power.⁴³

Subsequently, a broader civil society collective known as the June 23rd Movement (M23), including the African Meeting for the Defense of Human Rights (RADDHO), united with Y'en a Marre and the opposition to organise a mass protest movement against Wade's power consolidation and controversial constitutional amendments, which were scheduled for a vote on 23 June 2012.⁴⁴ Although Wade withdrew the proposed amendments, he persisted with his bid for a third term, prompting Y'en a Marre and other civil society and citizen groups to intensify their opposition efforts. They focused on ensuring Wade's defeat at the ballot box, launching campaigns such as 'My vote is my weapon' and 'Millions and millions of votes.'⁴⁵ Their collective efforts culminated in Wade's defeat by the opposition candidate, Macky Sall, in a significant election outcome as incumbents in Africa, especially those running for third terms, rarely lose.

Fast forward to 2016, despite President Macky Sall fulfilling his promise to shorten term limits from two seven-year to two five-year terms if he won the election, he failed to apply this to himself and thus reneged on this additional promise.⁴⁶ Although the Constitutional Council upheld the new constitutional amendment, it struck down the provisions intended to shorten Sall's own term. Sall had initially stated that he would respect the Court's decision but, by 2015, all five of the constitutional judges had been appointed by Sall himself.⁴⁷ As a result, opposition groups and civil society activists, such as Y'en a Marre and RADDHO, criticised Sall for breaking his electoral promise and using the Constitutional Council to mask his true intentions.⁴⁸

The Senegalese example serves as a remarkable illustration of ordinary citizens advocating for the preservation of democratic ideals by thwarting attempts at constitutional manipulation through peaceful protests and electoral engagement. The success of the resistance against Wade's third term is largely due to 'better coordination on the part of the opposition and the emergence of new [youth-led] protest movements.'⁴⁹ And in this process, the role of youth and women was critical to strengthening the will to prevent the violation of term limits.

Burkina Faso

Blaise Compaoré, the former President of Burkina Faso, held power for 27 years, from 1987 to 2014. Compaoré led a constitutional amendment in 2000 that reduced presidential

terms from seven to five years, and limited re-election only for one term.⁵⁰ Opposition members cited this provision when challenging Compaoré's bid for re-election in 2005. However, the Burkinabé Constitutional Council ruled that the new two-term limit did not apply to Compaoré until after 2005, enabling him to run and win the presidential election that year.⁵¹ He was subsequently re-elected in 2010. Having served two five-year terms under the new constitutional amendment, Compaoré was expected to retire, but he attempted to extend his stay in power by pushing for a constitutional amendment in October 2014, which triggered protests and his flight out of the country.

With a majority of the country's population – over 65% – under the age of 25, the Burkinabé youth played a pivotal role in Compaoré's removal from power.⁵² Burkina Faso has a rich history of student-led protests, where student organisations have consistently demonstrated their effectiveness in organising and leading a range of impactful actions. These include demonstrations, marches, strikes, and class boycotts, mobilised in response to critical socio-economic and political issues such as food crises, rising fuel prices, municipal mismanagement, favouritism, and corruption, with the climax involving the handover of written claims.⁵³

Notably, two prominent figures, activist Smockey and reggae musician Sams'K Le Jah, voiced their objections to Compaoré's 27-year rule. Sams'K Le Jah even released a song titled 'Ce président l'a' ('This president, he must go and he will go') expressing the determination for change.⁵⁴ Through their music and public statements, the two artists effectively conveyed radical ideas in a language that connected deeply with the younger generation, thereby broadening political engagement beyond traditional boundaries. They played a crucial role in addressing pressing concerns that fuelled public protests.⁵⁵ In June 2013, they co-founded a youth-led pro-democracy and non-violent activist group called Le Balai Citoyen ('Citizen's Broom'), symbolising their aim to help clean up the country's political landscape and fight against poor governance and social conditions.⁵⁶

The foundation of the organisation was established on the campus of the University of Ouagadougou in May 2013. In response to plans to amend the constitution, students created a debate forum named 'Deux heures pour nous deux heures pour l'Afrique' ('Two hours for us, two hours for Africa') to engage in discussions on current political and social matters.⁵⁷ The group encouraged youth participation in protests and organised concerts and conferences throughout Burkina Faso, opposing any constitutional amendment that would enable the president

to seek another term. They also formed alliances with political opposition leaders – particularly the CFOP, a coalition of Burkina Faso's opposition parties – and engaged local communities to ensure a strong response at the ballot box or in the streets.⁵⁸

Saran Sérémé, a woman and political veteran who had experienced first-hand the unfairness of the ruling party, Congress for Democracy and Progress (CDP), and subsequently resigned from it, emerged as a leader of one of the largest women's movements against the Compaoré regime.⁵⁹ On 27 October 2014, women activists held their own demonstration to protest against Compaoré. Sérémé led women in the prominent opposition party, while Madeline Somba, the president of the Cofedec civil society association, led women activists. Hundreds of women assembled 'outside Ouagadougou's Maison du peuple, waving spatulas and brooms and chanting the slogan "Liberate Kosyam!" [liberation of Kosyam, the presidential palace]'.⁶⁰ The spatulas symbolised women's determination to defend their homes, as it is a common symbol among various ethnic groups and often used to stir pots of porridge.⁶¹ The demonstration also included a rally with additional chants and speeches. The sight of women taking to the streets and wielding symbols of rupture was seen as a decisive blow as in African tradition, such a scenario typically leads to either divorce or the final solution in a conflict.⁶² Also, the courage displayed by women in the streets inspired and encouraged other protestors.⁶³

By the time Compaoré announced the parliamentary vote for a constitutional amendment to allow him to run for another term, Balai Citoyen had garnered widespread support, and established clubs in many neighbourhoods in the capital as well as in smaller cities.⁶⁴ Their campaign, 'Hands Off My Constitution', rallied people against the amendment.⁶⁵ On 30 October 2014, the eve of the vote, Balai Citoyen and a coalition of civil society groups including Collectif anti référendum (CAR), Mouvement du 21 juin (M21), Ça Suffit, Ligue des jeunes and Mouvement Brassard Noir (MBN), called for mass protests.⁶⁶ Many of the youth adorned themselves in vibrant red T-shirts, while the proliferation of mobile phones during that period exerted a profound influence on youth culture and strategies, facilitating the swift dissemination of information and ideas.⁶⁷ The widespread public protests and demonstrations calling for his resignation garnered immense support, drawing hundreds of thousands of people from across the country.⁶⁸ These relentless expressions of dissent eventually compelled him to step down from his position and seek refuge in Cote d'Ivoire.⁶⁹

Uganda

Uganda's President Yoweri Museveni has maintained his position for over 36 years, since his inauguration on 29 January 1986. Ironically, Museveni had early in his career criticised African leaders who clung to power and even stated in his inaugural speech that, 'The problem of Africa in general and Uganda in particular is not the people but leaders who want to overstay in power.'⁷⁰ Museveni reneging from his promise to respect term limits has been partly motivated by 'his exaggerated sense of having liberated Ugandans from bad governance, his feelings of indispensability for Uganda's prosperity and his fears that he and his close relatives and allies would be persecuted and prosecuted for their wrongdoings.'⁷¹

With over 78% of Uganda's population under 35 years old, youth figures like musician, activist, and politician Robert 'Bobi Wine' Kyagulanyi Ssentamu have made respect for presidential term limits a central theme in their campaigns.⁷² During a 2007 protest march by Makerere University students, chants of 'We want change, we want change' echoed as they called for Museveni to step down from power.⁷³ In 2018, Bobi Wine, then an opposition member of parliament, challenged Museveni, who had been in power since Bobi Wine was just four years old, in the presidential election.⁷⁴ Despite losing the election, Bobi Wine gained significant support from Ugandans eager to end Museveni's despotic and authoritarian rule, characterised by frequent alterations to presidential term limits. In Uganda's 1995 Constitution, a limit of two five-year terms was established. However, in a 2005 constitutional referendum, term limits were removed following Museveni's dismissal and marginalisation of those who opposed his constitutional amendments, and through political manipulation, bribery, and patronage.⁷⁵ While, in 2017, term limits were reinstated, age limits were purposely removed to allow Museveni to vie in the 2021 elections.⁷⁶

Hundreds of youth, predominantly students from Makerere University, marched towards the parliamentary precincts to protest the removal of the presidential age limit. However, their peaceful demonstration was met by tear-gas, and the arrest and detention of dozens by the police.⁷⁷ In some protests, tires and T-shirts bearing President Museveni's image were set ablaze as a symbol of protest.⁷⁸ Ugandan youth also took to social media platforms to voice their opposition, engaging in extensive discussions and sharing slogans like 'Age limit is the limit.'⁷⁹ Winnie Kiiza, a woman parliamentarian and former leader of the opposition from the Forum for Democratic Change, demonstrated her dissent by leading a walk-out during the age

limit removal Bill's introduction in Parliament, refusing to partake in what she deemed 'Museveni's life presidency project.'⁸⁰ Despite these objections, the Bill was ultimately passed.

Women activists, including prominent figure Stella Nyanzi, have emerged as outspoken critics of Museveni's manipulation of term limits and prolonged presidency⁸¹ Nyanzi, an academic and activist, has consistently employed unconventional forms of protest, such as nude demonstrations and the use of provocative language and poetry infused with 'metaphors, humour, insults and profanity', to vehemently criticise Museveni and his government.⁸² These daring acts of dissent have resulted in Nyanzi being imprisoned on multiple occasions.

Museveni continues his firm grip on power. But Bobi Wine and other opposition leaders and activists, despite occasionally seeking refuge and medical treatment in other countries after brutal attacks by security forces, remain steadfast in their mission to democratic constitutionalism and peaceful alternation of power through the ousting of Museveni from power. Bobi Wine has formed the People Power Movement, which aims to mobilise grassroots support, particularly young men and women, to achieve this objective, alongside its other goals.⁸³

Zambia

In Zambia, the 1991 Constitution introduced a presidential limit of two five-year terms, which was retained in the 1996 amendment which made term limits applicable retrospectively.⁸⁴ In 2016, a new clause on term limits was introduced, stating that a leader who replaces the incumbent mid-term would only be considered to have served a term in office if they take over with at least three years remaining before the next election.⁸⁵ The country has experienced oscillations between episodes of authoritarianism and periods of democracy, highlighted by the peaceful turnover of power when the Movement for Multiparty Democracy (MMD) defeated the incumbent United National Independence Party (UNIP) in 1991, and the MMD being later defeated by the Patriotic Front in the 2011 elections.⁸⁶

President Frederick Chiluba (1991–2002) made an unsuccessful attempt to vie for a third term. He argued that he had only served one term under the 1996 Constitution. However, the Constitution explicitly stated that a person who had been elected as president twice before was not eligible for re-

election.⁸⁷ Chiluba subsequently tried in 2001 to amend the Constitution to allow a third term. But he faced strong opposition from a diverse range of groups, including Women for Change (WfC), the legal fraternity, religious groups, politicians, traditional leaders, the NGO Coordinating Committee (NGOCC) (an umbrella body for women's organisations renowned for its grassroots outreach), civil society members, human rights activists, senior citizens, students, community-based organisations in rural areas, the independent media, trade union leaders, and ordinary citizens from all walks of life.⁸⁸ These groups formed a cross-ethnic coalition called the Oasis Forum.⁸⁹

The Oasis Forum aimed to mount a robust resistance against Chiluba's proposed constitutional reforms.⁹⁰ Roles within the Forum were clearly defined, with the church providing moral authority and credibility, its structures making countrywide outreach easier; the Law Association of Zambia offering legal expertise; women civic groups facilitating women's activism; the NGOCC mobilising grassroots participation; the independent Member of Parliament (MP) Dipak Patel mobilising MPs and ministers; and the independent media rallying support through coverage of the Forum's activities.⁹¹

The Oasis Forum employed various campaign strategies, including rallies, public statements, independent and private media coverage, extensive outreach, mass meetings, demonstrations, and lobbying of politicians.⁹² Their main campaign slogan, 'Hands off our Constitution,' and related messaging conveyed the point that allowing a third term would result in further suffering for the people, linking rising poverty and unemployment to the ruling party's policies.⁹³ The Forum's campaigns received an extraordinary response from the public, with many Zambians wearing green 'No Third Term' ribbons distributed by the Forum as they marched in the streets of Lusaka and Copperbelt every Friday at 5 pm, accompanied by motorists honking their car horns in solidarity with the 'No Third Term Campaign.'⁹⁴

Notable women leaders in the Forum included Emily Sikazwe from WfC and Grace Kanyanga from the NGOCC.⁹⁵ After three months of sustained pressure from the nationwide social movement and a significant number of ruling party members joining the anti-third term campaign, Chiluba succumbed to public demands on 5 May 2011, and announced that he would not seek a third term.⁹⁶

III. Key Insights and Recommendations

Valuable insights can be derived from the discussion presented in Part II above. First, collaborative initiatives that create broad public awareness and garner extensive support have a higher likelihood of success. These efforts have been marked by well-organised collaborations among diverse stakeholders, including civil society organisations, opposition leaders, and dissidents within ruling parties. This highlights the importance of collective action rather than working in isolation.⁹⁷ Senegal's Y'en a Marre, as a movement, achieved significant success due to its strong organisation, effective mobilisation of people, nationwide reach, and the support of opposition political parties.⁹⁸ In the Zambian example, each group within the Oasis Forum anti-third term coalition effectively appealed to different constituencies and demographics.⁹⁹ In addition, the history of democratic experience, relatively free political environment, and the military's relative disengagement from politics in the two countries allowed the effectiveness of opposition forces.

Second, protests against the alteration of term limits go beyond that specific issue and also address broader grievances related to governance, corruption, and mishandling of socio-economic issues that resonate with the general population, particularly among youth and women as seen in the Sudan example.¹⁰⁰

Third, a crucial factor that influences the success of social mobilisation against circumventing term limits is the availability of resources for social movements and civil society actors advocating for change. As such, 'Groups that have access to greater resources are more likely to mobilise people and have an influence on the reform process.'¹⁰¹

Fourth, the rallying of support over months prior to an election, anticipating attempts by incumbents to try and extend their limits, has a higher success rate in effectively blocking alteration of term limits compared to spontaneous protests by disparate groups shortly before a vote on such extensions.

Fifth, Balai Citoyen and Y'en a Marre effectively engaged with the youth through rap music and hip-hop songs, using them as manifestos and means of communication in a language that resonates with the youth, illustrating that the language used in social movements is key. However, the Stella Nyanzi example demonstrates that protests need not adhere to politeness to be impactful, as she used blunt language to protest Museveni's regime.

Lastly, in all the examples above, youth and women across Africa effectively utilised mainstream and social media

THE ROLE OF AFRICAN WOMEN AND YOUTH IN PROMOTING AND MAINTAINING PEACEFUL ALTERNATION OF POWER THROUGH TERM LIMITS

platforms to mobilise and organise peaceful protests against their presidents' attempts to cling to power.

Based on the insights gathered from the country examples and observations on enhancing the role of women and youth in promoting and defending regular alternation of power and presidential term limits, the following recommendations are proposed:

1. To encourage the formation of networks and coalitions including women and youth organisations and leaders, fostering cooperation and coordination in advocacy activities;
2. To support programmes and provide resources to help youth and women leaders enhance their advocacy, leadership and organisational skills;
3. To promote the use of social media and technology, including tools such as the use of virtual private networks, to effectively organise and build social media campaigns that can amplify the voices of women and youth. This will also enable rapid dissemination of information and ideas, and create safe spaces for discussing controversial topics, forming new alliances, and allowing 'more women from conservative backgrounds to participate from safe spaces, perhaps to take on personae that do not mark them out as women.'¹⁰² Despite government restrictions on internet access, as often happens in mass social movements challenging the alteration of term limits, leveraging captivating content and continuously connecting with the target audience raises awareness, shapes public opinion, and drives change;
4. To ensure that movements are both political and educational, with activists learning from and educating women and youth about constitutional goals and their relevance in their lives. By giving tangible reasons to care about eliminating bad governance and preserving presidential term limits, movements can generate greater engagement and support;¹⁰³
5. To facilitate peer-to-peer collaboration and learning exchanges between women and the young across Africa, leveraging insights on funding, organisation common challenges, and strategies.¹⁰⁴ The relationship between Senegal's Y'en a Marre and Burkina Faso's Le Balai Citoyen highlights the value of such exchanges, particularly for nascent movements;
6. To encourage cross-generational and multi-stakeholder exchanges, fostering dialogue between politicians and activists to nurture mutual understanding and collaboration;¹⁰⁵
7. To secure support from mainstream and independent media to publicise the activities and key messages of social movements, effectively rallying the masses behind their cause;
8. Early establishment of women and youth movements across a country ensures that protests have a wider reach and hence are more impactful. Burkina Faso's rich history of youth-led protests and the presence of established student and youth organisations that consistently held the government accountable for socio-economic and political shortcomings facilitated easier mobilisation;
9. Symbolisms, such as the Burkina Faso example of carrying brooms and spatulas, are helpful during protests in representing a collective expression of frustration and a call to clean up despotic governance;
10. To submit written claims at the end of a march or protest as this is crucial in emphasising the group's demands and the issues they want addressed; and
11. To employ a broad and creative range of strategies to sustain momentum in social movements, such as songs, videos, concerts, blogging, community meetings, rallies, flyers, public statements, extensive social media campaigns, and synchronised actions such as mass blowing of whistles or honking cars at a specific day and time of the week.¹⁰⁶

By implementing these recommendations, efforts to promote democracy, improve socio-economic conditions, and empower women and youth in Africa, alongside the challenging of alteration of presidential term limits, can be strengthened.

IV. Conclusion

This paper has explored the struggle over presidential term limits, their impact in Sudan, Senegal, Burkina Faso, Uganda and Zambia, and the role of women and the youth in promoting and protecting term limits and broadly democratic governance and constitutionalism. It has shown that women and youth-led civil society and social movements have played crucial roles in preventing incumbents from manipulating democratic mechanisms to consolidate their power and alter

term limits. By forming strategic alliances, these groups have united around the common goal of preserving term limits. Furthermore, as demonstrated, emphasising issues that resonate with people's daily experiences, such as increased poverty and high unemployment rates has proven effective in garnering public support. Based on the key insights gleaned from the country examples, recommendations have been put forward to empower women and youth in promoting and safeguarding regular alternation of power and presidential term limits in Africa. These recommendations aim to strengthen democracy and bring about positive changes in the social, economic, and political domains, with a particular focus on improving the lives of women and the youth.

THE ROLE OF AFRICAN WOMEN AND YOUTH IN PROMOTING AND MAINTAINING PEACEFUL ALTERNATION OF POWER THROUGH TERM LIMITS

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THE ROLE OF AFRICAN WOMEN AND YOUTH IN PROMOTING AND MAINTAINING PEACEFUL ALTERNATION OF POWER THROUGH TERM LIMITS

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PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
LESSONS FROM THE CENTRAL AFRICAN REPUBLIC

The African Network of Constitutional Lawyers (ANCL) would like to acknowledge Dr Adem Kassie Abebe, Dr Elvis Fokala and Yvonne Anyango Oyieke in conceptualising and leading the development of the policy paper series on selected themes on the promotion of constitutionalism and regular alternation of power through term limits. The ANCL also recognises the support of Professor Serges Alain Djoyou, Dr Laura-Stella Enonchong, Vanja Karth, and Dr Azubike Onuoraoguno.

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Introduction

On 23 September 2022, the Constitutional Court of the Central African Republic (CAR) rejected as unconstitutional a series of four presidential decrees related to the establishment of a Constitution Drafting Committee and the appointment of its members. With the abrogation of the existing 2016 Constitution and the adoption of a new Constitution, President Faustin-Archange Touadera intended to bypass constitutional obstructions and review unamendable provisions of the 2016 Constitution, notably the presidential term limit. In 2020, the Constitutional Court had already rejected as unconstitutional a similar proposed constitutional amendment.

With this recent decision, it is hoped that the recurrent debate on the amendment of the presidential term under the 2016 Constitution will eventually end and that any constitutional amendment initiated in the country will take place in full compliance with the Constitution. But, compliance with the decision of the Court is not guaranteed. Indeed, the President has forcefully retired the President of the Constitutional Court alongside other judges and politicians who have sought to ensure adherence to the Constitution.

Compliance would require the concerted efforts of domestic civil society and political stakeholders, as well as vigilance and support from the African Union and the Economic Community of Central African States (ECCAS). The stakes cannot be higher. On the one hand, if the president succeeds in extending his term, there is a significant risk of insecurity and political instability. It also sets a dangerous precedent. On the other hand, compliance with the decision of the Court would ensure that CAR builds on its nascent tradition of peaceful transfer of power in the 2026 elections. It should be noted that CAR is one of the few bright spots in the 1990s wave of democratization where the incumbent president lost elections in 1993, and handed power to the new president. Interim President Catherine Samba-Panza also enabled free, fair, and credible elections and handed over power to the winner in 2016.

This policy-oriented paper provides context and background and identifies key lessons learned from this constitutional reform process. It also makes policy recommendations on ways to promote and protect presidential term limits in CAR that may be replicated in other African countries.

Background: Consensus around term limits

Since its independence in 1960, the CAR has witnessed several episodes of socio-political instability, violent conflicts, and humanitarian crises. To date, the country has adopted five different constitutions and experienced five different regimes, which included a period of constitutional monarchy, with three *coups d'état*. In 2012, following a period of acute political tension between then President François Bozizé, the political opposition and the Séléka armed group,¹ a period of political transition was agreed to in Libreville, Gabon,² under the auspices of the ECCAS. Signed in January 2013, the Libreville Agreement defined the modalities for power sharing (e.g. government of national unity) as well as the country's electoral timetable. In March 2013, President François Bozizé was deposed by the Séléka rebel forces and Séléka leader Michel Djotodia proclaimed himself President. Djotodia suspended the 2004 Constitution and dissolved both the National Assembly and the Government. With the support of the UN, a transition roadmap³ was established for the country by the African Union⁴ and ECCAS. The roadmap recommended the adoption of a new Constitution through a constitutional referendum before presidential and legislative elections, which were scheduled for 2015. It set the transition period to 18 months but did not refer to presidential term limits.⁵

A National Transitional Council (also known under its French acronym as *Conseil National de Transition* (CNT) representing the country's stakeholders ("*forces vives*") was formed and a Transitional Constitutional Charter was adopted. It was promulgated by President Djotodia on 18 July 2013. The CNT was a non-elected temporary legislative body formed with a view to organize and facilitate the transition to constitutional democracy and secure the rule of law, most notably through the development and adoption of a draft constitution. On 10 January 2014, Djotodia resigned at an ECCAS heads of state meeting and on 20 January 2014, the CNT elected Catherine Samba-Panza as the President of the Transitional Government. She was mainly tasked with overseeing the drafting and adoption of a new constitution.

The constitution drafting took place in 2014 with the assistance of CAR and international experts and the draft was adopted during the CNT plenary session in February 2015. In March 2015, the draft was submitted to the Transitional Government, for its opinion and amendments. The draft including the Government's amendments was subsequently discussed in July 2015 during a national consultation workshop involving 200 participants, jointly organized by the CNT and the

Government, with support from UN agencies. During this national consultation workshop, the Transitional Government highlighted key aspects to be included in the final draft of the Constitution including the unamendable status of presidential term limits.⁶ In addition to consultations held by the Transitional Government, there were a series of consultations initiated by external partners and local CSOs, local authorities, religious and traditional leaders. The results of the debates were submitted to the CNT.

The preliminary draft Constitution resulting from the national workshop was submitted to the Constitutional Court for its opinion. Parallel to this process, the Bangui Forum on National Reconciliation was held in May 2015.⁷ It involved more than 600 participants from all regions of the country and from different communities, religious backgrounds and ethnicities, including the diaspora and refugees.⁸ The participants discussed four themes in plenary debates and working groups: peace and security; governance; justice and reconciliation; and economic and social development but did not discuss the draft Constitution and the entrenchment of presidential term limits.⁹

In December 2015, the CAR Constitution¹⁰ was adopted with the support of 93% of voters in a referendum marked by a low voter turnout (30%), and violent incidents as the country was still divided between armed groups.¹¹ This raised questions about the participatory, inclusive, and deliberative approach of the constitution-making process in the country.¹² One of the most notable features of the Constitution was the adoption of two five-year presidential term limits in Article 35. The constitution included the term limit as part of the unamendable provisions of the constitution in Article 153. It also required elected presidents to take an oath, including a promise to never exercise their powers to revise the number and the duration of their mandate in Article 38. It was the first time that a Central African constitution specifically entrenched provisions that prohibited the amendment of the presidential term limits.¹³ This may be due to the fact that in 2012, former President Bozizé was rumored to plan on amending the 2004 Constitution to seek a third presidential term. This, in part, contributed to division within the national army and political leadership and subsequently led to the political crisis and *coup d'état* in 2013.¹⁴ The entrenchment of 'constitutional locks' in relation to the presidential term limits illustrated the desire of CAR citizens and constitution makers' to prevent a phenomenon of presidents-for-life.

In February 2016, following the second round of the presidential elections and a re-run of the parliamentary

elections,¹⁵ former Prime Minister Faustin-Archange Touadera was elected President of CAR for a five-year term. The adoption of the 2016 Constitution coupled with the general elections represented a milestone towards the end of the CAR transition period. President Touadera is expected to complete his second and final term in 2026.

Targeting term limits

On 13 August 2022, during an address to the Nation,¹⁶ President Touadera announced his intention to initiate a process to adopt a new constitution. To justify his plans, the President cited 'popular demand' as well as a memo from the President of the National Assembly as basis for a new constitution fitting the country's social, political, and environmental circumstances. Prior to his announcement, in May 2022, a group of parliamentarians from the majority party, *Mouvement Coeurs Unis* (MCU), which is also the party of the President, submitted a Constitutional Amendment Bill to the National Assembly. The proposed constitutional amendments included the abolition of presidential term limits, the creation of the office of Vice-President, the prohibition of dual citizenship for presidential candidates, and the modification of the composition of the Constitutional Court (wherein former heads of state would become *ex officio* members). In July 2022, the Government officially endorsed the terms of the Constitutional Amendment Bill but opted to repeal the existing Constitution and write a new one. The Government clearly explained¹⁷ that the adoption of a new constitution would enable it to rewrite provisions that are deemed unamendable, including Article 153 of the Constitution which provides for the number and duration of presidential term limits.

Despite opposition from political parties and civil society groups, President Touadera signed four decrees to establish a Constitution Drafting Committee and appoint its members.¹⁸ On 26 August 2022, he signed his first decree establishing a committee responsible for drafting a new constitution for CAR (Decree no. 22.348).¹⁹ The Drafting Committee was composed of fifty-three members ostensibly representing various viewpoints, appointed by their respective entities on the basis of their expertise, experience, credibility and moral integrity. The Committee included representatives of government institutions, the National Assembly, independent constitutional bodies, political parties, civil society, academia, traditional leaders and minority groups. The Drafting Committee was mainly tasked with developing a draft constitution and related documents for submission to the President no later than three months from the date of its installation. It was mandated to

conduct consultations with the people on constitutional matters.

On 12 September 2022, President Touadera signed another decree (Decree no. 22.367) confirming the appointment of members of the Constitution Drafting Committee. Another decree was signed on 14 September 2022 (Decree no. 22.372), amending the provisions of Decree no. 22.367 of 12 September 2022. On 29 August 2022, with a view to implement Decree no. 22.348 of 26 August 2022, the President's Chief of Staff addressed a circular²⁰ to the different sectors expected to compose the Drafting Committee. The Chief of Staff invited each sector to internally designate their representatives to the Committee and inform his office accordingly. In response to the circular, the representative of the Catholic Church declined²¹ the presidential invitation and questioned the pertinence of drafting a new constitution, especially considering the unamendable 'constitutional locks'.²² The Episcopal Conference submitted that prior to drafting a new constitution, a wider consultation would have been more appropriate to establish the necessity of engaging in such a process. Actors who opposed the presidential plan to write a new constitution, including the Episcopal Conference, civil society organizations and the CAR Bar Association, were subjected to verbal attacks and intimidation from the President's allies.

Overall, it appears that the President and his Government had planned to play a key role in the constitution drafting process. Through his decrees, the President initiated the creation of the Drafting Committee, and determined the sectors to be represented and the number of their respective representatives. Since the Drafting Committee was state funded - through the Ministry of Finance - the President was implicitly involved in the Committee's finances and the appointment of its public accountant. Crucially, the Committee was required to submit its narrative and financial report directly to the President. Pursuant to Decree no. 22.348 of 26 August 2022, the Drafting Committee was mandated to draw up and adopt its own rules of procedure, conduct public consultations on constitutional issues, prepare and submit to the President a draft Constitution and related texts and internal reports. All of this was expected to be conducted within three months.

Questions could be asked about the quality of the work the Committee was expected to deliver, considering the ambitious constitution drafting agenda and the short timeline. Remarkably, the Decree was silent on the role of the Drafting Committee after the first draft was submitted to the President.

The status and outlook of the first draft Constitution and the role of the President in this process remained unclear.

External factors

Evidence of the geopolitical factors that may have influenced the President's intention to write a new constitution and ultimately stay in office beyond the constitutionally mandated two-term limit is difficult to establish. Unlike during the transition period in 2013-2015, when allies, international and regional actors (e.g. UN, AU, ECCAS, France) were actively involved in the country's political developments, during the recent years, the geostrategic orientations of CAR have drastically changed. In 2017, in response to recurrent tensions and insecurity across the country, the Government made use of the country's bilateral defence agreements with Russia and Rwanda to protect the territory from rebel threats.²³

Considering that the mandate of the United Nations MINUSCA²⁴ is primarily limited to peacekeeping and protecting the civilian population under threat of physical violence, Rwanda²⁵ and Russia²⁶ sent soldiers and instructors as well as weapons to CAR, to help counter the mounting violence from rebel forces. In 2019, Rwanda and CAR signed several bilateral agreements including defence and economic deals.²⁷ Rwanda is the biggest contributor of peacekeeping forces in CAR with more than two thousand soldiers and police officers.²⁸ Equally, in 2021, it was estimated that approximately a thousand Russian 'instructors' were operating in CAR.²⁹ It is reported that Russia is using its bilateral agreement with CAR to expand its influence in the country in military, political and economic matters.³⁰ The President could lean on this close relationship with Russia and Rwanda to resist any potential criticism from other external partners, including in his efforts to illegally bypass presidential term limits. These external actors also have interest in supporting continuity to preserve their deals and interests through the President.

Decision of the Constitutional Court: Enhancing Prospects for Compliance

Political parties in opposition and civil society organizations filed petitions against the presidential decrees before the Constitutional Court on the ground that the constitutional reform process was unconstitutional since it intended to review unamendable constitutional provisions. On 23 September 2022, the Constitutional Court³¹ declared the four presidential decrees related to the establishment of a Constitution Drafting Committee and the appointment of its members unconstitutional. It found that there is no constitutional

provision allowing the President to initiate the abrogation of the Constitution and establish a constituent body to draft a new constitution. It also ruled that only the National Assembly and the Senate (which is yet to be established) representing ‘popular sovereignty’ can initiate a referendum. The Court unequivocally held that a constitutional referendum could not be used to amend presidential term limits as it would be in violation of Article 153 (which prohibits certain constitutional amendments including the term and duration of presidential mandates). It would also be incompatible with Article 38 (articulating the exact wording of the presidential oath, which stipulates that the president will observe the Constitution and undertake to not seek to amend the term and duration of the presidential mandate). The decision was made in the context of an already strained relationship between the Constitutional Court and the government. That is because, in August 2022, following a civil society group’s petition, the Court declared unconstitutional³² provisions of a new law sponsored by the President on making crypto a legal currency in CAR.³³ This consequently affected the Government’s global campaign to attract investors in the country.

The Court’s decision on term limits comes amid political tensions mainly in Bangui, the capital city, where there have been demonstrations and rallies led by the opposition and counter rallies by allies of the President’s party. Members of the Constitutional Court, especially its President, certain opposition leaders³⁴ and civil society groups were subjected to harassment and intimidation from the President’s supporters. Special Advisor to the President, Fidèle Gouandjika, was quoted as accepting the Court’s decision.³⁵ Even though the President did not make any official statement,³⁶ On 29 September he publicly hosted a group of women demonstrating in support of a new constitution.³⁷

On 3 October 2022, during his address to parliamentarians and members of the Government and referring to the Constitutional Court decision, the President of the National Assembly called for peace and unity.³⁸ Invoking the Constitution, he highlighted that the decisions of the Court were binding and not subject to appeal. On 4 October 2022, a presidential decree repealed the four decrees already annulled by the Constitutional Court. It is not clear whether these acts were coordinated. It was hoped that the political tensions and debate on constitutional reform would eventually decrease. An official and conciliatory statement from the President would have effectively symbolised the end of this unsuccessful process.

Following the Court’s decision, as the President remained silent and his supporters continued to demand a new constitution. Opposition parties and civil society groups examined ways of protecting the Court’s decision, should the President decide to bypass it. This possibility has been heightened following the President’s decrees forcing the retirement – as university professors – of the President of the Constitutional Court and the President of the National Assembly. On 24 October 2022, the President of the Constitutional Court was removed by presidential decree³⁹ due to her retirement as a professor of law.⁴⁰

The option of initiating an impeachment procedure against President Touadera and some parliamentarians from his party was raised based on their supposed disloyalty to the country and its institutions. Article 124 of the 2016 Constitution provides that the President can be prosecuted by the High Court of Justice in the case of high treason. The Constitution enshrines a list of crimes of high treason including violation of the oath of office as well as any action contrary to the best interest of the Nation. However, the impeachment procedure is admissible only if it is supported by fifty percent of members of the National Assembly. Considering that the President’s party – and its allies – hold a majority of seats in the National Assembly, an impeachment procedure against him is very unlikely. Moreover, the High Court of Justice has not yet been established. This is mainly because the parliamentarians have not yet enacted the organic law on the establishment of the Court.⁴¹ Moreover, the High Court is partly composed of Senators, but the Senate has not been established yet. Senators are elected by local elected officials, and local elections are only expected to take place in July 2023.

This impasse raises the question of effective implementation of the Constitution through the establishment of constitutional institutions within appropriate timelines. This situation is evidence that parliamentarians from across the political spectrum should prioritize the full implementation of the Constitution notably with the enactment of required laws, the installment of local authorities, the Senate and the High Court of Justice. The effective implementation of the existing Constitution, the adoption of an adequate legal framework and establishment of mandatory institutions may ultimately alleviate the need for adopting a new Constitution, and therefore close opportunities for abusive changes, including the term limit provisions.

- Another avenue for protecting the Constitutional Court decision is the involvement of well-respected and prominent

figures such as religious and community leaders – who have been involved in peacebuilding initiatives during previous interreligious and inter-communal crises. For instance, following the Constitutional Court decision and rising tensions, Catholic cardinal Dieudonné Nzapalainga⁴² publicly urged all parties to comply with the Court decision and its implications. He asked that the unamendable constitutional provisions are respected.

- Civil society organizations could use the upcoming local elections to mobilize citizens and send a clear message to the Government on the need to respect the constitutional order and ensure alternation of power. The Government's compliance with the decision of the Constitutional Court should become a central discussion point during the local elections campaign. For candidates of the majority party to be elected, citizens could demand that the Government refrain from holding the constitutional referendum. However, this strategy will be applicable only during the election period, leaving the Government latitude to bypass the Constitutional Court decision at a later stage. The Government may also seek to hold a constitutional referendum along with the local elections.
- The MINUSCA, which is mandated to protect civilians and support transition processes in CAR, should also play a key role in this process. Through its role of promotion and protection of human rights and support for justice and the rule of law in CAR, MINUSCA could hold mediations between all parties and provide security support to stakeholders. For instance, following the Court decision and subsequent threats against members of the Court, MINUSCA soldiers have heightened security arrangements of the premises of the Constitutional Court and its members.⁴³
- The protection of the decision of the Constitutional Court may also be ensured by CAR's partners to the Political Agreement on Peace and Reconciliation (Khartoum Agreement) which was negotiated in Khartoum, under the auspices of the African Union and ECCAS in 2019.⁴⁴ Although the Khartoum Agreement specifically refers to commitments between the Government and armed groups to achieve peace and reconciliation in the country, it may constitute a mechanism for CAR's external partners to highlight the Government's obligations to ensure peace and political stability in the country.

Role of the African Union and ECCAS

At the continental level, the African Union (AU) and its mechanisms could play a leading role in the protection of presidential term limits under its mandate in the promotion of democracy through the rule of law and constitutional order. Over the years, several African constitutions have been

amended or changed with a view to either lift or extend presidential term limits and remove age limits (e.g. Chad, Guinea, Republic of Congo and Rwanda).⁴⁵ The AU could promote examples of countries that uphold term limits and consequently send a clear and coherent message about member states' obligations to respect the principles of constitutionalism and good governance.

The 22 September 2022 decision of the African Court on Human and Peoples' Rights⁴⁶ calling on the Government of Tunisia to establish the Constitutional Court and remove all legal and political obstacles that impede this goal, within two years is evidence that AU mechanisms can exhort states to fulfil their human rights obligations. This may empower national judicial systems to remind governments of their obligation to comply with the Constitution and with the international and regional instruments that they ratify. In this regard, in 2020, when the CAR Constitutional Court ruled that the presidential mandate is protected by a 'constitutional lock', it also invoked the provisions of the 2007 African Charter on Democracy, Elections and Governance (ACDEG) on the promotion of political stability and security.⁴⁷

Sub-regional instruments are also essential in promoting democracy, constitutionalism and good governance. For instance, the Economic Community of West African States (ECOWAS) adopted in 2001 a Protocol on Democracy and Good Governance, which enshrines key constitutional principles, including the separation of power and the independence of the judiciary. Not all ECOWAS states have upheld presidential term limits and ECOWAS has not imposed any sanctions on them. However, the impact of the ECOWAS Protocol cannot be underestimated. For instance, the ECOWAS Court has issued judgments related to its members' constitutional matters.⁴⁸

While ECCAS does not have a similar instrument, it could rely on the ACDEG and broader principles of constitutionalism and the rule of law to urge Touadera to respect the decision of the Constitutional Court. In support of President Touadera's third term agenda, parliamentarians from his party used the experience of neighbouring countries on term limits violation to defend CAR's constitutional reform. It is therefore important that sub regional standards on human rights and democracy are developed and promoted so that such human rights and governance shortcomings do not become the norm. This is particularly critical in view of the potentially destabilizing consequences of evading term limits in CAR, which will affect the entire region, which is already reeling

under tremendous insecurity. In the long term, ECCAS should consider the development of a similar instrument to ECOWAS as a critical asset for the promotion of constitutionalism in the sub-region.

Insights and Lessons from CAR's experience

If implemented, the Court decision could set a ground-breaking example of constitutional democracy in the Central African Region and beyond. Very few apex courts in Africa have successfully opposed presidential ambitions to extend their stay in office. The only prominent case where courts in Africa rejected amendments to extend term limits was in Niger in 2009. Interestingly, the protections to ensure the autonomy of the Constitutional Court of CAR were designed along the lines of the Constitutional Court of Niger under the country's 2010 Constitution. From a broader perspective, several lessons could be drawn from CAR's experience to thwart the unrestricted presidential terms trend in Africa.

- A key aspect in the CAR case is that political parties, civil society and individuals have direct access to the Constitutional Court - pursuant to Article 98 of the 2016 Constitution. The President's decrees were systematically challenged in Court and, in return, supporters of the President filed their own petitions. To some extent, this contributed to diffusing tensions and averting further violence since all parties were awaiting the Court's decision. Similarly, this consolidated the Constitutional Court's position as a key player in promoting constitutionalism and peace in the country.
- An independent judiciary is essential in protecting presidential term limits. While the primary responsibility of ensuring respect for fundamental constitutional values remains with the people and political stakeholders, independent judges can also render justice on all issues of substantial legal and constitutional importance fairly and impartially without undue influence or fear of reprisal, especially where their composition is not dominated by presidents or their political allies.⁴⁹ Unlike in most African Francophone countries,⁵⁰ in CAR, six of the nine members of the Constitutional Court, are designated by their peers including law professors, attorneys, and magistrates.⁵¹ It is therefore not surprising that the proposed constitutional reform aimed to allow former heads of state to become *ex officio* members of the Constitutional Court. Without political interference, it is expected that independent judges will adopt rights-sensitive approaches in interpreting the constitution and protect the constitutional order.
- The absence of express constitutional provisions regulating the making of new constitutions, in addition to 'amendments' or 'revisions' exposes the constitutional framework, including unamendable provisions, to abuse by unscrupulous leaders. Constitution makers would be well advised to clearly indicate that amendment or revision procedures apply even to the making of new constitutions or provide specific procedures and rules within which new constitutions may be made. The absence of such clarity can expose courts and judges who seek to protect the letter and spirit of constitutionalism and peaceful alternation of power to political attacks.
- The 2016 Constitution of CAR provides that members of the Constitutional Court cannot be removed, and that they cannot be arrested or prosecuted without the Court's approval. To avoid manipulation and intimidation from politicians, the Constitution (or any Statute regulating the Constitutional Court) should equally specify that members of the Constitutional Court cannot be forced to retire, based on flimsy grounds that the CAR Government used to force the retirement of the President of the Court. In this way, the Government will not be able to opportunistically alter the composition of the Constitutional Court through the retirement process.
- The express empowerment of the Constitutional Court of CAR to review proposed constitutional reforms has also legitimized its involvement in those processes and would make it legally difficult for the President and his supporters to simply bypass the decision. Nevertheless, this is no guarantee that the CAR President will not go ahead with the referendum. The Court's decision of the Court provides grounds for the AU, ECCAS, and other international actors to warn against violating term limits.
- The establishment of a powerful constitutional court whose composition does not give a dominant voice to the executive and political actors also offers better hopes for defending the constitution and the principles of constitutionalism.
- The accessibility of constitutional courts whereby ordinary citizens and concerned organizations can challenge the validity of proposed constitutional amendments also enhances the chances of effective checks on presidential powers and may also remind political organs to respect the wishes of the public expressed in the constitution.

Conclusion and recommendations

CAR's political and institutional fragility reflects its long history of misrule.⁵² For the past decade, the country has been positioned at the near bottom of the UN Human Rights

Development Index. The adoption of the 2016 Constitution, the return to relative political stability, the somewhat containment of armed groups, and the apparent Government commitment to peace and reconciliation through ‘Republican Dialogues’ and peace agreements have restored nationwide confidence in the country’s socioeconomic prospects. In recent years, the Constitutional Court’s decisions have proven to be effective and conciliatory, consequently generating hopes for the establishment of constitutionalism and a peaceful alternation of powers in CAR. It is hoped that the political crisis between the Government and the Constitutional Court – which led to the dismissal of the President of the Constitutional Court – will not affect the Court’s role in protecting the rule of law, the constitutional order and peace in the country.

- In this regard, domestic stakeholders should coalesce around a coalition of democrats to support the decision of the Constitutional Court.
- The AU and ECCAS should support constitutionalism, including by putting CAR on the agenda and leaning on President Touadera to respect the decision of the Court. CAR offers the AU in particular a unique opportunity to protect term limits. Unlike in other cases, where courts have often approved constitutional tampering of term limits, making it difficult for the AU to intervene, the decision of the Constitutional Court of CAR presents the AU with the legitimacy to engage proactively to enable peaceful alternation of power.
- Stakeholders in CAR should also work toward establishing the necessary incentives to nudge incumbents to respect term limits. Notably, the country should consider revamping the retirement benefits and privileges of former presidents to allow them to live a dignified life after office, regardless of their involvement in the country’s political affairs. The current law of 2020 establishing the system of pensions and other benefits granted to former presidents, requires former presidents to remain politically ‘neutral’ to access their benefits. In this regard, any former president who expresses the desire to return to the political scene by standing as a candidate in any election will lose all the benefits granted to him.
- This stringent provision may deter incumbent presidents from relinquishing power should they wish to remain involved in the political affairs of the country at the end of their term.

¹ A group of rebel factions from several militant political movements.

² [2013 Libreville Agreement](#) (accessed 3 November 2022).

³ Adopted during the fourth Extraordinary Summit of the ECCAS Heads of State and Government held in Ndjamena, Chad on 18 April 2013. The road map was endorsed by Resolutions 2134 (2014), 2149 (2014) of the UN Security Council, adopted respectively on 28 January 2014 and 10 April 2014.

⁴ The African-led International Support Mission to the Central African Republic (MISCA, French acronym for *Mission internationale de soutien à la Centrafrique sous conduite africaine*) was an African Union peacekeeping mission to the CAR, established in December 2013 by the UN Resolution 2127 to stabilise the country amid ongoing political unrest following the 2013 coup d'état.

⁵ The fourth Extraordinary Summit of Heads of State and Government of ECCAS held in Ndjamena, Chad on 18 April 2013 entrusted with, among other things, the task of drafting a new Constitution for adoption through a referendum.

⁶ [“Le projet de Constitution centrafricaine encore sur la table du CNT” Radio Ndeke Luka, 3 July 2015 \(accessed 10 November 2022\)](#)

⁷ The Bangui Forum was preceded by a series of consultations involving 19,232 interviewees across the country. The result of the consultations was compiled in a report which informed the thematic discussions of the Bangui Forum. (see R Sullivan ‘Central African Republic’s Bangui Forum in [‘National Dialogues in Peacebuilding and Transitions: Creativity and adaptative thinking, E Murray and S Stigant ed.’](#), UC Institute of Peace (2021) (accessed 10 November 2022).

⁸ [Report of the Secretary-General on the situation in the Central African Republic, 29 July 2015, S/2015/576 \(accessed 13 November 2022\).](#)

⁹ The Bangui Forum recommended the postponement of the parliamentary elections to June and July 2015 and the presidential elections to August 2015. The recommendation was endorsed by ECCAS (see R Sullivan ‘Central African Republic’s Bangui Forum in [‘National Dialogues in Peacebuilding and Transitions: Creativity and adaptative thinking, E Murray and S Stigant ed.’](#), US Institute of Peace (2021) (accessed 10 November 2022).

¹⁰ Constitution of 30 March 2016.

¹¹ In response to the violations committed by the Séléka combatants, self-defence groups known as the “anti-Balaka” retaliated, leading to an escalation of violence across the country.

¹² E Murray and F Mangan [‘The 2015-2016 CAR Elections. A look back’](#), US Institute of Peace (2017) – 10 October 2022).

¹³ For instance, Article 24 of the CAR Constitution of 27 December 2004 provides that the duration of the mandate of the President of the Republic is of five years. The mandate is renewable one time.

¹⁴ “Agreements signed today in Libreville to halt recent rebellion in Central African Republic, provide map for political transition, security Council told”, [Meetings Coverage UN Security Council](#), 11 January 2013, (accessed on 10 November 2022).

¹⁵ A re-run of the legislative elections was ordered by the Constitutional Court due to significant irregularities.

¹⁶ [“Centrafrique: Message à la Nation du président Touadera à l’occasion des 62 ans d’indépendance”](#), *Oubangui Medias*, 12 August 2022, (accessed 10 October 2022)

¹⁷ [Centrafrique: le gouvernement, favorable à la révision de la Constitution’](#), *Radio Ndeke Luka*, 26 July 2022, (accessed 10 October 2022)

¹⁸ Decree No. 22.348 of 26 August 2022; Decree No. 22.367 of 12 September 2022; Decree No. 22.372 of 14 September 2022 and Decree No. 22.378 of 15 September 2022.

¹⁹ [Centrafrique: Décret portant création du Comité de Rédaction de la nouvelle Constitution’](#), *Oubangui Medias*, 29 August 2022 (accessed 10 October 2022)

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²¹ [Centrafrique: l’épiscopat décline l’invitation à faire partie du comité chargé de réviser la constitution’](#), *Vatican News*, 14 September 2022, (accessed 4 December 2022).

²² See Decision of CAR Constitutional Court of 5 June 2020.

²³ The UN Security Council had imposed an arms embargo on CAR in 2013 - UN Security Council Resolution 2127.

²⁴ United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic.

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²⁹ [“Central African Republic: Abuses by Russia-Linked Forces”](#), *Human Rights Watch*, 3 May 2022 (accessed 11 November 2022).

³⁰ [“Russia’s influence in the Central African Republic”](#), *International Crisis Group*, 3 December 2021, available at (accessed 11 November 2022).

³¹ Decision N° 009/CC/22 of 22 September 2022.

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³⁶ As of 5 November 2022.

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³⁸ Opening address for the National Assembly’s Second Ordinary Session.

³⁹ [Decree No. 22.454](#) of 24 October 2022, (accessed 13 November 2022).

⁴⁰ Since the President of the Constitutional Court had retired as a professor of law (i.e. eligibility criteria to become member of the Constitutional Court), the Government argued that she could no longer be a member of the Court, citing “definitive impediment”. Also see “Central African Republic: Independence of judges and institutions key to stability and transitional process, says UN expert”, *OHCHR press release*, 4 November 2022,

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