

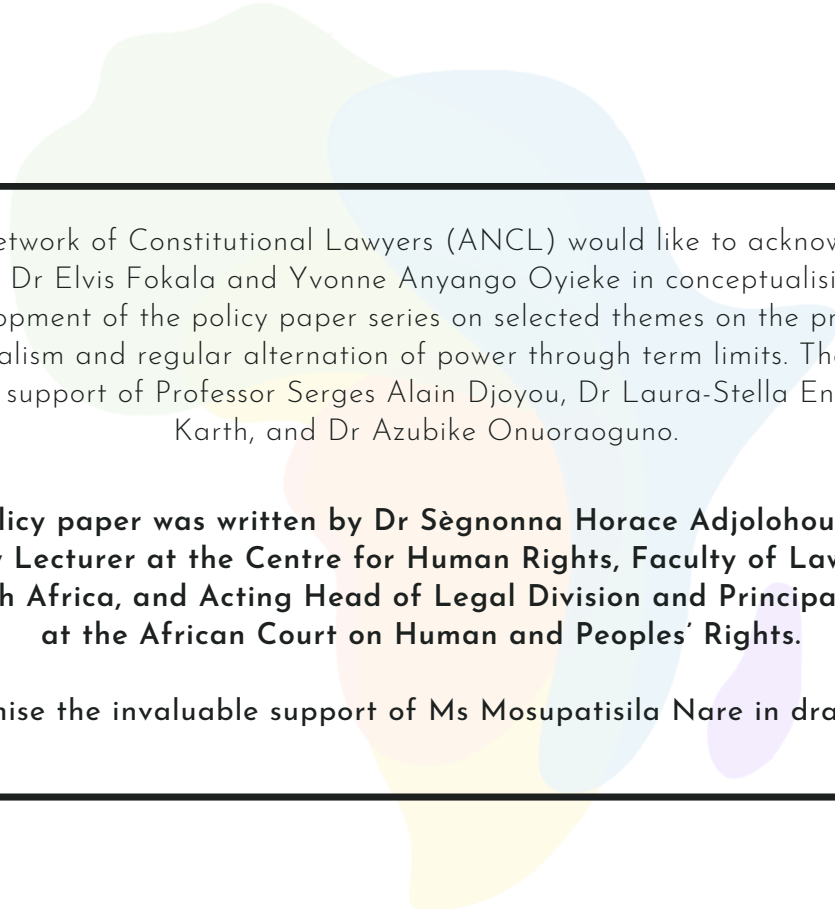


PROMOTION OF CONSTITUTIONALISM  
THROUGH TERM LIMITS IN AFRICA:  
OUR PAST, OUR PRESENT, OUR FUTURE

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

DEVELOPED BY THE AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS

## 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.<sup>i</sup> 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.<sup>ii</sup> 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.<sup>iii</sup>

While the African public widely embraced term limits, these rules soon came under increasing attack from incumbent presidents seeking to extend their tenures.<sup>iv</sup> 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.<sup>v</sup> 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.<sup>vi</sup> 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.<sup>vii</sup>

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.<sup>viii</sup> Term limits were introduced as a tool to address the proclivity among African leaders for life presidencies.<sup>ix</sup> 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.<sup>x</sup> 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.<sup>xi</sup> These aging leaders preside over an overwhelmingly young African population.

| Country                              | President/King      | Years in power<br>(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<br>(absolute monarchy)      | King Mswati III     | 36 Years                               |
| Eritrea                              | Isaias Afwerki      | 29 Years                               |
| Lesotho<br>(constitutional monarchy) | King Letsie III     | 26 Years                               |
| Djibouti                             | Ismail Omar Guelleh | 23 Years                               |
| Morocco<br>(constitutional monarchy) | King Mohammed VI    | 23 Years                               |
| Rwanda                               | Paul Kagame         | 22 Years                               |

*Table 1: The top ten longest-serving Presidents/Kings in Africa in 2023<sup>xii</sup>*

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

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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.<sup>xiii</sup>

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.<sup>xiv</sup> 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.<sup>xv</sup>

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.<sup>xvi</sup> Most recent illustrations are the successful attempts in Côte d'Ivoire and Guinea,<sup>xvii</sup> 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).<sup>xviii</sup>

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.<sup>xix</sup> 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.<sup>xx</sup> Ugandan President Museveni has

maintained his 42 year hold on power by circumventing, modifying or eliminating constitutional age and term limits.<sup>xxi</sup> 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.<sup>xxii</sup> 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.<sup>xxiii</sup>

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.<sup>xxiv</sup> 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.<sup>xxv</sup> 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

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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.<sup>xxvi</sup> 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.<sup>xxvii</sup> 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.<sup>xxviii</sup> The constitutional provisions adopted by these countries provide for the unamendability of both the number and duration of presidential term limits.<sup>xxix</sup> 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*,<sup>xxx</sup> 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).<sup>xxxi</sup> 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.<sup>xxxii</sup> 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.<sup>xxxiii</sup>

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.<sup>xxxiv</sup> 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).<sup>xxxv</sup> 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.<sup>xxxvi</sup> 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.<sup>xxxvii</sup>

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Further, more African countries have adopted referendums as a requirement for amending term limits, making the process more onerous.<sup>xxxviii</sup> Through referendums, the proposed amendments are circulated for public consultation before the final vote is taken.<sup>xxxix</sup> 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.<sup>xl</sup> 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.<sup>xli</sup>

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.<sup>xlii</sup> 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.<sup>xliii</sup> 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.<sup>xliv</sup> 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.<sup>xlv</sup> 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.<sup>xlvi</sup> 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.<sup>xlvii</sup> 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.<sup>xlviii</sup>

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.<sup>xlix</sup> 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

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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.<sup>1</sup> 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.<sup>1</sup> 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).<sup>13</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>14</sup> 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.<sup>15</sup> 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

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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.<sup>lviii</sup>

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.<sup>lviii</sup> 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.<sup>lix</sup> 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.<sup>lx</sup> 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.<sup>lxi</sup> 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.<sup>lxii</sup>

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.<sup>1</sup> 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

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<sup>1</sup> As above, 57.



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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.<sup>lxiii</sup> 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.

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.

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- <sup>i</sup> 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.
- <sup>ii</sup> African Leadership Centre (2014), [The New Assault on Presidential Term Limits in Africa: Focus on Burundi](#) (accessed 8 February 2023).
- <sup>iii</sup> 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.
- <sup>iv</sup> As above.
- <sup>v</sup> 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.
- <sup>vi</sup> 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).
- <sup>vii</sup> African Leadership Centre (n 2 above).
- <sup>viii</sup> Eze (n 7 above) 7.
- <sup>ix</sup> 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.
- <sup>x</sup> Eze (n 7 above) 6.
- <sup>xi</sup> Fombad (n 1 above) 45.
- <sup>xii</sup> Accessed 09 February 2023.
- <sup>xiii</sup> Talk Africana [Top 10 Longest Serving Presidents in Africa, 2023](#) (accessed 09 February 2023).
- <sup>xiv</sup> Dulani (n 3 above) 1-2.
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- <sup>xvi</sup> As above.
- <sup>xvii</sup> 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).
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- <sup>xxiii</sup> As above.
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- <sup>xxvii</sup> F Deloche-Gaudez *La Constitution Européenne: Que faut-il savoir* (2005), chapter 14 207 - 222
- <sup>xxviii</sup> M Wiebusch & C Murray ‘Presidential Term Limits and the African Union’ (2019) 63 *Journal of African Law* 142.
- <sup>xxix</sup> As above, 141.
- <sup>xxx</sup> Constitutional Court of Benin, Decision DCC 11-067 of 20 October 2011.
- <sup>xxxi</sup> 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).
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- <sup>xxxiii</sup> As above.
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- <sup>xxxvi</sup> As above.
- <sup>xxxvii</sup> C M Fombad ‘Some perspectives on durability and change under modern African constitutions’ (2018) 11/2 *International Journal of Constitutional Law* 382.
- <sup>xxxviii</sup> Böckenförde (n 27 above) 18.
- <sup>xxxix</sup> As above.
- <sup>xl</sup> Wiebusch & Murray (n 29 above) 143.
- <sup>xli</sup> As above, 142.
- <sup>xlii</sup> Fombad (n 1 above) 60.
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- <sup>xliiv</sup> Vohito (n 21 above).
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- <sup>li viii</sup> Eze (n 7 above) 13.
- <sup>li ix</sup> Fombad (n 1 above) 53.
- <sup>lix</sup> African Leadership Centre (n 2 above).
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