



Discussion Paper

THE EFFICACY OF PRESIDENTIAL TERM LIMITS IN AFRICA

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EXECUTIVE SUMMARY

Constitutional term limits that gained prominence on the African continent in the mid-1990s, as a measure against prolonged stays in power, are currently intensely contested. Twelve (12) African countries have varied their term limit provisions extending, abolishing or suspending the constraints on presidential tenures over the last fifteen (15) years. Based on an analysis of the literature on the subject, this paper examines the efficacy of presidential term limits in Africa, by exploring the achievements and shortfalls of their application on the continent. African countries began to restrict presidential terms at the end of the 20th century, following the adaptation of a comprehensive framework of democratic reforms. This study traces the origins of term limits to the foundations of democracy in Greece and Rome. The aforementioned constraints were later to constitute the office of presidency in the American Constitution of 1789. Undocumented systems of regime change among political entities in African traditional society are remotely linked to modern day limits to high-level leadership tenures although this debate is not sustainable without benchmarked scholarly evidence. Consequently, presidential term limits in Africa are often viewed as a “borrowed” notion or as a strategy imposed by donors that was adapted without clarity of purpose and therefore short of a firm resolve on the continent.

It is however notable that progressing democracies in Africa, such as Ghana, South Africa and Tanzania embraced and enforced presidential term limits, and subsequently the capacity of supported term limit provisions to facilitate peaceful transfer of power became a core measure of democracy. There was a decline in forceful or unconstitutional change of government among several African countries following the introduction of term limits. On the other hand, term limits were seen as constraints to democratic choice, a barrier to completion of government programmes and a recipe for conflict. This paper examines the aforementioned effects and offers an evidence-based standpoint on the efficacy of presidential term limits on the African continent.

This study reveals that, despite the inherently contentious and conflictual character of presidential term constraints, the majority of conflicts emerged from circumstances of defiance of term limits. Struggles over the subject of term limits often characterised the people’s resistance of efforts by leaders that sought to stretch the initial boundaries. Although the concept is challenged, it is not subdued, even amongst countries where leaders have successfully amended term limit provisions. There is a discrepancy between the opinions of several leaders and those of their people; whereas there is widespread support for setting boundaries of presidential terms among the citizenry, attempts by leaders to vary their tenures occur, and the African Union (AU) is silent on this thorny debate. It is recommended that democratic principles are applied consistently, and that the role of state institutions is bolstered. The African Union (AU) ought to formulate and enforce the implementation of a regional policy on term limits, considering that the effects of conflicts over term limits transcend national boundaries, hence justifying supra-national intervention. Government programmes can also be accorded a successive character, so as to remedy disruption of programmes upon

change of government. It is also expected that the vitality of term limits as a democratic principle will advance as Africa progresses in its application of liberal principles, and makes more strides in its human capital development.

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ACRONYMS AND ABBREVIATIONS

ACDEG	African Charter on Democracy, Elections and Governance
Addis Charter African	Charter on Democracy, Elections and Governance
AU	African Union
CAR	Central African Republic
CCEDU	Citizens Coalition for Electoral Democracy in Uganda
DRC	Democratic Republic of Congo
OAU	Organisation of African Unity
ISS	Institute of Security Studies

INTRODUCTION

The end of the 20th century was characterised by the integration of constitutional limits on the tenures of presidents among three (3) quarters of African countries. It was mainly intended that leaders serve only two (2) terms, which varied between four (4) to seven (7) years. Term limits were primarily directed at the presidency, but Botswana, Ghana and Tanzania adopted a broader model, which also included the office of the vice president. Ogot (2012) describes term limits as a key constitutional component of the democratic or governance polity, which applies to a nation's top executive leader.¹

This ancient restriction, which was rooted in the origins of the office of executive presidency, was introduced to African nations following a history of protracted stays in power, which were often associated with military and one-party rule, which spread across the continent after independence. The remedial function of term limits arguably placed them at the centre of democratisation in Africa. Entrenched within the Constitution as the supreme law governing a country, the limits formed part of a broader spectrum of principles encouraging participation of citizenry in governance; notable among these were decentralisation of power, regular electoral processes, and the emancipation of women. The new constitutional frameworks offered a glimmer of hope of expanding the political platform, facilitating reform, and ensuring the timely and peaceful turnover of executive leadership in Africa.

The debate changed course from mid-2000s, barely two decades following the initiation of term limits amongst African countries. Efforts for extension and even total waiver of term limits emerged, which persist today, although under protest. Struggles in defence of term limits have been violent in some respects, while protracted stays in power, although on the decline, have not been eliminated. This paper seeks to assess the efficacy of term limits on the African continent.

The assessment commences with an analysis of the evolution of presidential term limits in Africa in Chapter One. This is followed by an exposition of the achievements and shortfalls of their applicability on the Continent in Chapter Two. Chapter Three addresses the thorny debate on extension of term limits. The conclusion and further research perspectives are contained in Chapter Four.

¹ Ogot, G., The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values, *The Citizens Coalition for Electoral Democracy in Uganda*, 2012, p. 3. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (21 June 2016).

METHODOLOGY

This study is predominantly a qualitative study, with simple quantitative approaches to address issues such as the number of countries with term limits, nations that have successfully effected amendments, and those that have failed, which require quantification. It has adopted a literature-based research methodology constituting an analysis of online resources, reports, working papers, scholarly and credible newspaper articles, and books on the subject of presidential term limits in Africa.

CHAPTER ONE

1.1. THE EVOLUTION OF PRESIDENTIAL TERM LIMITS IN AFRICA

Africa's leadership in the post-independence era, extending from the 1960s onwards, was dominated by personalities that masterminded the transition from colonial rule. Liberation of the continent was on top of Africa's agenda during the 20th century, such that it constituted the founding objectives of the Organisation of African Unity (OAU) at its establishment on 25 May 1963.² The success of some African nationalists in negotiating self-rule accorded them a high degree of acclaim and allegiance in their respective jurisdictions. Many obtained accolades such as "liberator", and "father of the nation", but while some exemplary leaders maximised their repute to foster peaceful transfer of power,³ others established pseudo-monarchies.⁴ The significance of the position of president as a symbol of national unity degenerated in many instances into a reward of particular persons that contributed to independence, and their close compatriots.⁵ This led to a 'big man' syndrome in Africa's politics. Efforts to monopolise political space were met with corresponding attempts to access the spectrum, causing strife among several African countries, with many plunging into armed conflicts fuelled by rebellion and state-sanctioned violence. In the period prior to 1990, many African leaders were ousted from power through military coups, assassinations and other forms of violent overthrow.⁶ In West Africa alone, there were thirteen (13) coups between 1963 and 1970; eleven (11) coups between 1971 and 1980; and seven (7) coups between 1981 and 1990.⁷ Only a handful of presidential-system constitutions of African countries contained presidential term-limit clauses prior to 1990. These include The Republic of South Africa Constitution Act, 1961; The Constitution of the Federal and Islamic Republic of Comoros, 1978; The Constitution of the United Republic of Tanzania, 1984; The Constitution of the Republic of Liberia, 1986; and The Constitution of the Republic of Tunisia, 1959 as amended in 1988.⁸

² See Article II (1) d, Charter of the Organisation of African Unity (OAU Charter), entered into force on 25 May 1963.

³ Nelson Mandela of South Africa left office after completion of only one term in 1997; Julius Kambarage Nyerere stepped down as president of Tanzania in 1985 (see <http://www.nathanielturner.com/juliuskambaragenyerere.htm>. Last accessed on 7 July 2016).

⁴ Kwame Nkrumah declared himself "life president" of Ghana in 1964 (see <http://www.ghanaweb.com/GhanaHomePage/features/The-Achievements-and-Failures-of-President-Kwame-Nkrumah-166895>. Last accessed on 7 July 2016).

⁵ See Ogot, G., The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values, *The Citizens Coalition for Electoral Democracy in Uganda*, 2012, p. 2.

⁶ Issaka, K.S., The AU and the Challenge of Unconstitutional Changes of Government in Africa, ISS Paper 197, August 2009, p. 4. Last accessed from <https://www.issafrika.org/acpst/papers/the-au-and-the-challenge-of-unconstitutional-changes-of-government-in-africa> (21 June 2016).

⁷ *Ibid.*, p. 6.

⁸ See Dulani, B., African Publics Strongly Support Term Limits, Resist Leaders' Efforts to extend their Tenure, Afrobarometer Dispatch No. 30, 25 May 2015, p.2. Last accessed from http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno30.pdf (21 June 2016).

In the mid-1990s, a global wave of democratisation inspired momentum for competitive party politics in Africa. This offered a viable alternative to the seemingly troubled autocratic regimes. The tilt towards political liberalisation was further intensified by donor pressure, amongst other factors.⁹ It is against this background that what has been termed the “whirlwind of democratisation” swept across the African continent.¹⁰ Africa’s agenda transformed, to include promotion of democratic principles and institutions, popular participation and good governance.¹¹ Limiting the tenures of the top leadership of a nation is arguably one of the most fundamental of democratic principles. Due to the challenge of streamlining the transition of power, the measure quickly gained prominence among African countries. Dulani (2015) has noted that forty-nine (49) of the sixty-four (64) constitutions were adopted or amended between 1990 and 2010 incorporated term limits, which represents three (3) quarters of the enactments.¹² Thus, term limits evolved as a constitutional norm. The supremacy of national constitutions elevated their profile to one of an entrenched democratic principle. The strategic location of term limits among constitutional frameworks raised the presumption that they represented the popular will of the people. The norm was accompanied by a broader set of constitutional developments, such as women’s empowerment, multi-party politics, independence of the judiciary, and a commitment to conduct regular democratic elections, among other aspects. The resolve to encourage the participation of African women in politics and elections¹³ enhanced competition in the political spectrum, where the need to change guards intensified as a new category of contestants emerged. A study conducted by Afrobarometer between 2011-2013 among thirty-four (34) African countries, revealed strong support for presidential term limits among three (3) quarters of the citizens of the countries surveyed, including those where term limits had been scrapped, such as Togo and Uganda.¹⁴ Public opinion is a viable indicator of the philosophy of society, and the philosophy of society is a strong determinant of the efficacy of law reform. Imposing term limits to restrain autocracy is an ancient idea that formed part of the origins of democracy, based on the experiences of

⁹ See Lebas, A., Term Limits and Beyond: Africa’s Democratic Hurdles, *Current History*, May 2016. p.170. Last accessed from http://www.currenthistory.com/CurrentHistory_LeBas.pdf (05 July 2016).

¹⁰ See Chengeta, Thompson, *A Critical Analysis of the Concept of ‘Democracy’ in Africa with Particular Reference to Majoritarianism and the Rights of Minorities* (10 November 2011). Last accessed from <http://dx.doi.org/10.2139/ssrn.2312331> (6 July 2016).

¹¹ Represented in Article 3 (g), Constitutive Act of the African Union (The Constitutive Act), adopted on 11 July 2000, Lome, Togo.

¹² Dulani, B., ‘African Publics Strongly Support Term Limits, Resist Leaders’ Efforts to Extend their Tenure, *Afrobarometer Dispatch* No. 30, 25 May 2015, p. 2. Last accessed from http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno30.pdf (21 June 2016).

¹³ See Principle III (j), OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII), 2002.

¹⁴ See Dulani, B., African publics strongly support term limits, resist leaders’ efforts to extend their tenure. *Afro barometer Dispatch* No. 30, 25 May 2015. *Ibid.*, Afro barometer is a pan-African, non-partisan research network. See also George, M., A Look at Presidential Term Limits in Central Africa Ahead of Elections, 6 January 2016. Last accessed from http://afrobarometer.org/sites/default/files/press-release/global/ab_r6 (20 June 2016).

Athens and Rome.¹⁵ The intervention was inspired by the reign of Peisistratos – the tyrant of Athens, and his sons, between 546 BC- 510 BC, in which many Athenians fled or were forced into exile.¹⁶ Subsequently, the Cleisthenes' Constitution of 508-507 BC set term limits for public office to two separate one-year periods.¹⁷ The limitation of leadership tenures has therefore been part of institutional design for more than two millennia. The theory influenced the structure of constitutional presidency, the origins of which can be traced to the 1789 Constitution of the United States. The framers of the American Constitution set the length of a presidential term, to four years, but did not specify the number of terms that a president would hold office.¹⁸ However, the voluntary retirement of America's first president-George Washington, after serving only two terms, set a precedent for limiting presidential tenures to two terms.¹⁹ The practice of term limits became tradition, and prevailed until Franklin Roosevelt's presidency, despite contestation of its validity and application, and was accorded a normative framework by the 22nd amendment to the U.S. Constitution, which was ratified in 1951.²⁰ The comprehensive framework of democratic norms introduced among constitutions of African countries, especially in the 1990s, embodied a similar provision.

1.1.1. Forms of Term Limit Provisions

The provisions limiting presidential tenures among all the forty-nine (49) constitutions of African countries adopted or amended between 1990 and 2010 set a two-term limit.²¹ The length of each term varied between four (4) to seven (7) years.²² The only exception was the Constitution of the Republic of Seychelles, which provided for three-five year terms, but an amendment effected this year has reduced them to two five-year terms.²³ The five-year two-term limit model is the most dominant, with over twenty three (23) African countries subscribing to it at present.²⁴

¹⁵ See Klaas, B., Two elections and you're out? Good Governance, 1 June 2015, p.4. Last accessed from <http://gga.org/stories/editions/aif-32-shaky-foundations/two-elections-and-you2019re-out> (21 June 2016).

¹⁶ *Tangian, A.*, Mathematical Theory of Democracy, Springer, 2014, p. 299.

¹⁷ *Ibid.*

¹⁸ Article 2, Section 1, The Constitution of the United States, 1789.

¹⁹ Peabody, G. Bruce, George Washington, Presidential Term Limits, and the Problem of Reluctant Political Leadership, *Presidential Studies Quarterly*, 31 (3) September 2001, p. 440.

²⁰ *Ibid.*, p.448.

²¹ Dulani, B., African publics strongly support term limits, resist leaders' efforts to extend their tenure. *Afrobarometer Dispatch* No. 30, 25 May 2015, p. 2. Last accessed from http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno30.pdf (21 June 2016).

²² Ghana, Nigeria and Egypt have a two four-year term limit; Ethiopia and Liberia have a two six-year term limit, while Senegal and Republic of Congo have a two seven-year term limits.

²³ See Winsor, M., Seychelles Cuts Presidential Term Limits, Going Against Recent Trend in Africa, 4 May 2016. Last accessed from <http://www.ibtimes.com/seychelles-cuts-presidential-term-limits-going-against-recent-trend-africa-2348695> (6 July 2016).

²⁴ Examples include: Tanzania, Kenya, Angola, Benin, Botswana, Burundi, Cape Verde, Central African Republic (CAR), Democratic Republic of Congo (DRC), Madagascar, Eritrea, Malawi, Mauritania, Mauritius, Mozambique, Namibia, Niger, Sao Tome and Principe, Sierra Leone, South Africa, Tanzania, Egypt, Mali and Zambia.

Exceptionally, a few constitutions contained specific provisions protecting term limit provisions from amendment. Examples include Article 220 of the Constitution of the Democratic Republic of Congo, which provides that the number and duration of presidential terms cannot be subject to a constitutional revision.²⁵ Similarly, the Constitution of Rwanda contained an absolute prohibition of further candidature for a person having already served as president for two terms, by providing in Article 101 that “under no circumstances shall a person hold the office of President of the Republic for more than two terms.”²⁶

Whereas the term limits were restricted to the presidency, three (3) African nations: the Republic of Tanzania, the Republic of Ghana, and the Republic of Botswana, adopted a broader model that also restricted the tenures of vice presidents.²⁷

²⁵ See also Article 185 of the Constitution of Congo-Brazzaville, which prohibits revising the restrictions on presidential terms.

²⁶ See also Article 47 of Niger’s Constitution of 2010, which states that no one may exercise more than two (2) presidential mandates or extend the mandate for any reason whatsoever.

²⁷ Ogot, G., *The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values The Citizens Coalition for Electoral Democracy in Uganda*, 2012, p.9. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (21 June 2016).

CHAPTER TWO

2.1. THE ACHIEVEMENTS OF PRESIDENTIAL TERM LIMITS IN AFRICA

Term limits have had a presence in the politics of African countries for more than two (2) decades. The paper seeks to examine the utility of the limits, in view of the peculiar context into which they were introduced.

2.1.1. Term Limits Enable Power Alternation

Limitation of presidential tenures has facilitated power alternation. Souré (2009) highlights an empirically proven correlation between presidential term limits and leadership alternation in Africa, while observing that the majority of African leaders that have left power have done so after ‘exhausting’ their constitutional terms.²⁸ A set time at which a particular leader is expected to leave naturally reduces uncertainty, and avoids discrepancy between the leaders and the population.²⁹ The measure has fostered smooth transitions in Ghana, Malawi, South Africa, and Tanzania, among others. Vencovsky (2007) has argued that “timely and responsible departure from power is a central feature of a democratic polity and constitutes an integral component of responsible leadership.”³⁰ Term limits were founded on the liberal principle that leadership is fundamentally a shared, public, participatory, timely, and a transitory function.³¹

Leadership turnover has a positive impact *per se* on the development of democracies.³² It potentially results in the introduction of new reforms and new strategies, some of which might instigate new hopes among the citizenry. In ethnically diverse jurisdictions such as Nigeria, term limits contribute to the zonal rotation of the presidency, and foster a balanced distribution of political power and resources.³³ It is a justifiable trend that leaders choose to serve with persons associated with them so as to secure loyalty and goodwill. Nigeria experienced both change of the country’s leadership and change of the ruling party following a national election in 2015.

²⁸ Issaka K.S., *The AU and the Challenge of Unconstitutional Changes of Government in Africa*, ISS Paper 197, August 2009, p. 9. Last accessed from <https://www.issafrica.org/acpst/papers/the-au-and-the-challenge-of-unconstitutional-changes-of-government-in-africa> (21 June 2016).

²⁹ Tangian, A., *Mathematical Theory of Democracy*, Springer, 2014, p.299.

³⁰ Vencovsky, D., *Presidential Term Limits in Africa: Conflict Trends*, p.16. 2007. Last accessed from <http://accord.org.za/wp-content/uploads/2007/04/ACCORD-Conflict-Trends-2007-2.pdf> (21 June 2016).

³¹ Ogot, G., *The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values The Citizens Coalition for Electoral Democracy in Uganda*, 2012, p. 10. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (21 June 2016).

³² Wilmot, C., *How and Why Term Limits Matter*, p.5. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016).

³³ Vencovsky, D., *Presidential Term Limits in Africa: Conflict Trends*, p. 16. 2007. Last accessed from <http://accord.org.za/wp-content/uploads/2007/04/ACCORD-Conflict-Trends-2007-2.pdf> (21 June 2016).

Three circumstances raise questions about the democratic quality of the power alteration resulting from presidential term constraints in Africa: (i) where the ruling party does not change even upon change of leadership (one-party dominant systems).³⁴ A case in point is Tanzania where the ruling party (*Chama Cha Mapinduzi (CCM)*) has not changed since independence in 1961. (ii) where new political parties are formed by incumbents ahead of elections. The formation of the Jubilee Party of Kenya (JP) in 2016, one year after the establishment of the Jubilee Alliance Party (JAP) in 2015, is suspected to be a move to propel the re-election of Uhuru Kenyatta in the anticipated presidential elections of 2017.³⁵ Uhuru Kenyatta emerged from The National Alliance (TNA) to become president on Kenya in 2013, a party that he formed in May 2012, in the run up to the 2013 elections, after leaving Kenya African National Union (KANU) in April 2012.³⁶ This trend draws critical attention to the fundamentals of change of the ruling party. (iii) where stooges are facilitated to succeed power. This often results from undemocratic practices among political party structures. The duality of ruling party leaders as also leaders of the country negates the likelihood of accountability. China presents a model of nurturing parallel centres of power within the party, which match the strength of a country's leadership. This is done by retaining senior people within the party ranks that are able to monitor the performance of the state.

2.1.2. Term Limits Enhance Capacity Building among Individuals

A nation is conceived as a perpetual entity. It requires established legal and structural frameworks to inspire, position and develop the capacity of its future leaders. Its people and institutions need to be prepared for leadership changes that are a natural consequence of its continuity. Capacity building is instigated by an actual opportunity to assume leadership roles, and the likelihood of reaching the highest attainable office. Limitations of tenures lower barriers to political participation by challenging authoritarian legacies.³⁷ The 2005 Arusha Accord ending Burundi's civil war recognised term limits as a mechanism of ensuring equal opportunity to serve in government.³⁸

The “big man” syndrome in Africa overshadows the development of leadership potential among the citizenry. Emerging leaders and their resources are often consumed by the daunting task of ousting the “big man” other than focus on substantial strategic endeavours that would strengthen their stance. Members within the ruling party itself may be inhibited from operating constructively. The former Mayor of Ouagadougou stated that “it's the impossibility to act

³⁴ One-party dominant systems are defined as those party systems in which the same party wins an absolute majority in at least three consecutive elections – See Doorenspleet, R., Nijzink, L., (eds), *One-Party Dominance in African Democracies*, Boulder: Lynne Rienner Publishers, 2013. p.3.

³⁵ See New party and by-elections, causing rift in Kenya's Jubilee Party, *The East African*, 5 March 2016. Last accessed from <http://www.theeastafrican.co.ke/news/New-party-by-elections-cause-rift-in-Kenya-Jubilee-party/2558-3104388-14xtlnz/index.html> (17 August 2016).

³⁶ See <https://global.britannica.com/biography/Uhuru-Kenyatta> . Last accessed on 17 August 2016).

³⁷ See Wilmot, C., *How and Why Term Limits Matter*, p. 5. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016).

³⁸ *Ibid.* Term limits are stipulated in Article 7 (3) of the Arusha Peace and Reconciliation Agreement for Burundi.

from within the party to carry through our ideals of democracy... that led us to leave reluctantly.”³⁹

2.1.3. Term Limits and Development of State Institutions

The limits act as an incentive for right thinking leaders to develop equitable and effective institutions, which they would be subject to after they leave office.⁴⁰ Protracted stay in the state presidency often leads to personalisation of power and entrenchment of informal patronage networks.⁴¹ These traits undermine the development of state institutions by intensely politicising them. The stay of the “big man” translates into stay of many other patriots in the system and maintenance of a privileged position. On the contrary, Wilmot rightly observes that term limits make patronage networks harder to build and also less valuable.

2.1.4. Term Limits Facilitate Electoral Processes

Constraints on the number of times an incumbent may stand for elections prevents emergence of ‘electoral dictatorships’ and pseudo-monarchs.⁴² Term limits moderate the political environment from the excesses of incumbency, and allow electoral processes to function. Incumbency in Africa is associated with dominant decision-making, where exclusive control of state resources and undue influence over state institutions – including the judiciary – make electoral change more difficult.⁴³ With due regard to the few exceptions, as a general trend, incumbents do not lose elections in Africa.⁴⁴ There are allegations of use of state resources to facilitate campaigns of ruling parties, and to suppress the opposition by harassing their candidates through legal and extra-legal system manoeuvres, controlling media freedom,

³⁹ Bertrand, E., *Extension Discord: Will the military of Burkina Faso include the opposition in the Interim Government?* 1 Dec. 2014, p.4. Last accessed from <http://gga.org/stories/editions/aif-29-africas-opposition-in-pieces/extension-discord> (21 June 2016). Amama Mbabazi of Uganda was compelled to leave the ruling party so as to nurture his ambitions to stand for presidential elections.

⁴⁰ See Wilmot, C., *How and Why Term Limits Matter*, p. 5. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016).

⁴¹ Vencovsky, D., *Presidential Term Limits in Africa: Conflict Trends*, p.16. 2007. Last accessed from <http://accord.org.za/wp-content/uploads/2007/04/ACCORD-Conflict-Trends-2007-2.pdf> (21 June 2016). See Wilmot, C., *How and Why Term Limits Matter*, p. 5. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016).

⁴² George, Madaline, *A Look at Presidential Term Limits in Central Africa ahead of Elections*, 06 January 2016. Last accessed from <http://law.wustl.edu/harris/lexlata/?p=918> (05 July 2016).

⁴³ Vencovsky, D., *Presidential Term Limits in Africa, Conflict Trends*, p.16. 2007. Last accessed from <http://accord.org.za/wp-content/uploads/2007/04/ACCORD-Conflict-Trends-2007-2.pdf> (21 June 2016). See also Ogot, G., *The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values The Citizens Coalition for Electoral Democracy in Uganda*, CCEDU 2012, p. 3. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (21 June 2016)

⁴⁴ Ogot, G., *The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values The Citizens Coalition for Electoral Democracy in Uganda*, 2012, p.6. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (21 June 2016).

regulating the use of social media, frustrating the funding sources of the opposition, among other means.⁴⁵

Democratic elections are the basis of the authority of any representative government.⁴⁶ The OAU/AU Declaration on the Principles Governing Democratic Elections in Africa affirms the role of regular elections as a key element of the democratisation process, and an essential ingredient for good governance, the rule of law, the maintenance of peace, security, stability and development.⁴⁷ The Declaration lays down the benchmarks of democratic elections to include freedom and fairness; compliance with democratic constitutions and supportive legal instruments; a system of separation of powers especially the independence of the judiciary; constitutionalised regularity of elections; impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.⁴⁸ Experience has shown that incumbency has to be mitigated for these standards to advance. It is noteworthy that despite regular elections, approximately ten (10) African countries have not witnessed change of leadership for more than three decades.⁴⁹

Lessons can be taken from Nigeria, which demonstrated resistance against Olusegun Obasanjo's attempt to amend the Constitution so as to stand for a third term in 2006. Nigeria's triumph over Obasanjo's move was sealed by a decision of the Supreme Court. The subsequent political environment enabled an opposition candidate, Muhammadu Buhari, to win a free and fair election for the highest office.

2.1.5. Term Limits Facilitate the Peaceful Transition of Power

Term limits facilitate constitutional change of power among individuals, political organisations, and even ethnicities. A system that guarantees leadership turnover renders violence unnecessary, by according each person a chance to compete for leadership positions through elections.⁵⁰ This aligns with an objective of the African Charter on Democracy,

⁴⁵ See Khisa M., *The Challenged Life of the Challenger-Good Governance Africa*, 1 December 2014, p.2. Last accessed from <http://admin.gga.org/stories/editions/aif-29-africas-opposition-in-pieces/the-challenged-life-of-the-challenger/view> (21 June 2016). See also, Nduwimana, P., *No Room to Move: Political Space Shrinks as the Government undermines the Opposition at every turn*. Good Governance Africa. Last accessed from <http://gga.org/stories/editions/aif-29-africas-opposition-in-pieces/no-room-to-move> (21 June 2016).

⁴⁶ Principle II (1) OAU/AU Declaration on the Principles Governing Democratic Elections in Africa AHG/Decl. 1(XXXVIII)

⁴⁷ See OAU/AU Declaration on the Principles Governing Democratic Elections in Africa AHG/Decl. 1(XXXVIII).

⁴⁸ Principle II (4) a-e, OAU/AU Declaration on the Principles Governing Democratic Elections in Africa.

⁴⁹ Affected countries include Angola, Cameroon, Equatorial Guinea, Gambia, Togo, Uganda, Zimbabwe, among others. See *Africa's new arena of contestation for democratic change*. Last accessed from <https://solomondersso.wordpress.com/2016/01/25/africas-new-arena-of-contestation-for-democratic-change/> (2 June 2016).

⁵⁰ Wilmot, C., *How and Why Term Limits Matter*, p. 5. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016). See also, Vencovsky, D., *Presidential Term Limits in Africa*, *Conflict Trends*, p.16. Last accessed from <http://accord.org.za/wp-content/uploads/2007/04/ACCORD-Conflict-Trends-2007-2.pdf> (21 June 2016).

Elections and Governance (ACDEG), to promote the holding of regular free and fair elections by means of which to institutionalise legitimate authority of representative government, as well as democratic change of governments.⁵¹

A dictatorial regime results in the rise of a defiant opposition, which keeps a country in the politics of aggression and rebellion. The aggressive leaders tend to flourish in such an environment, at the expense of competitive leadership at the level of ideas.

Similarly, ethnic dynamics are strong undercurrents in African politics. The prosperity of ethnic communities tends to correspond to the ethnicity of the leadership.⁵² Monopoly of power by one leader from a particular group often results in ethnic favouritism in the allocation of public goods and poses the risk of political instability among multi-ethnic countries.⁵³ This includes jurisdictions with only two dominant ethnic groups such as Rwanda and Burundi.

In conclusion, term limits make a country's top position accessible, accountable and transparent. Studies reveal a decline in the number of military coups and assassinations of heads of state since 2000;⁵⁴ a decline in the number of military insurgencies; increased regard for and the quality of elections; an increased number of political parties or organisations; an increased number of peaceful transitions even upon the death of a head of state such as in Ghana and Malawi; a decrease in the number of exiled former African leaders; and an increase in the re-integration of former African leaders upon completion of their presidential tenures since the introduction of term limits.⁵⁵ Constitutional, legal and electoral battles have replaced military confrontations amongst many jurisdictions.

⁵¹ Article 2 (3), *African Charter on Democracy: Elections and Governance*, 30 January 2007.

⁵² Wilmot, C., *How and Why Term Limits Matter*, p.5. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016).

⁵³ Opalo, K., *Term Limits and Democratic Consolidation in Sub-Saharan Africa: Lessons from Burundi*. Constitutional Net, 30 July 2015, p.3. Last accessed from <http://www.constitutionnet.org/news/term-limits-and-democratic-consolidation-sub-saharan-africa-lessons-burundi> (21 June 2016).

⁵⁴ Issaka, K. S., *The AU and the Challenge of Unconstitutional Changes of Government in Africa*, ISS Paper 197, August 2009, p.5. Last accessed from <https://www.issafrica.org/acpst/papers/the-au-and-the-challenge-of-unconstitutional-changes-of-government-in-africa> (21 June 2016).

⁵⁵ See Ogot, G., *The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values The Citizens Coalition for Electoral Democracy in Uganda*, 2012, p.5. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (21 June 2016).

CHAPTER THREE

3.1. THE SHORTFALLS OF PRESIDENTIAL TERM LIMITS IN AFRICA

The idea of imposing term limits has been controversial since its inception.⁵⁶ An analysis of the effectiveness of the mechanism in Africa can only be completed by an objective assessment of the cost of its applicability on the continent.

3.1.1. Term Limiting as a Constraint to Democratic Choice

Democracy should enable free selection of leaders. Term limits are seen as constraining the choices of voters, where people ought to be free to vote for whoever they want even if the candidate has already exhausted the constitutional tenures.⁵⁷ The people are the foundations of power, and should not be constrained by legal instruments, which are only meant to express their aspirations. This view is illustrated by the fact that almost all incumbents who have removed term limits have won the subsequent elections.⁵⁸ The credibility of such elections is a subject of independent investigation. It is notable that African countries support imposition of term limits, but that support does not translate into rejection of those who stand for further terms.⁵⁹ This raises a presumption of the existence of intervening factors which could constitute a subject of independent investigation. The aforementioned argument also highlights a possible clash between choice and change as qualities of a democratic polity.

3.1.2. Term Limits and the Risk of Instability

It is argued that leadership continuity contributes to the stability of a nation.⁶⁰ Term limits have not successfully tamed rivalry over power succession in Africa. Instead, they predetermine a prospective leadership vacuum, irrespective of the circumstances that may prevail in the country at that time. The phraseology of term limit provisions is rigid, and does not include exceptions; any modifications are arguably derogatory. This has been a recipe for disaster. The loss of lives characterising conflicts over term limits taking place between governments and

⁵⁶ Peabody affirms the expectations from term limits have always been mutable and contested - Peabody, G. B., *Presidential Term Limits and the Problem of Reluctant Political Leadership*, *Presidential Studies Quarterly*, 31 (3) September 2001, 439.

⁵⁷ Wilmot, C., *How and Why Term Limits Matter*, p. 4. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016).

⁵⁸ See Blunt, P., and Jones, M.L (1997) Exploring the limits of Western leadership theory in East Asia and Africa. *Personal Review*, 26, pp. 6-23; Opalo, K., *Term Limits and Democratic Consolidation in Sub-Saharan Africa: Lessons from Burundi*. *Constitutional Net*, 30 July 2015, p.1. Last accessed from <http://www.constitutionnet.org/news/term-limits-and-democratic-consolidation-sub-saharan-africa-lessons-burundi> (21 June 2016).

⁵⁹ Dulani, B., *African publics strongly support term limits, resist leaders' efforts to extend their tenure*, p.4. Last accessed from http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno30.pdf (21 June 2016).

⁶⁰ Dulani, B., *Ibid.* citing Blunt, P., and Jones, M.L. (1997) Exploring the limits of Western leadership theory in East Asia and Africa. *Personal Review*, 26, pp. 6-23.

the citizenry, have led to a rebuttable argument that the concept is a liability to the African continent.

Further, rebellion against government and military coups have occurred even in countries with restrictions on presidential tenures. Forceful changes of governments have been registered in the Central African Republic (5 March 2003), São Tomé and Príncipe (17 July 2003), Guinea-Bissau (14 September 2003), Togo (5 February 2005), Mauritania (twice, on 3 August 2005, and 6 August 2008, respectively), Guinea-Conakry (23 December 2008), Madagascar (17 March 2009), and Burkina Faso (30 October 2014), among others.⁶¹ However, a critical analysis of the conflicts reveals that other opportunistic factors occasion conflicts other than term limits themselves. Several unconstitutional changes of government are instigated by governance deficiencies, such as the refusal of the incumbents to step down after exhausting their terms; and manipulation and unconstitutional review of constitutions to serve narrow interests.⁶² Amendment or revision of constitutional term limit provisions and legal instruments is a common assault on term limits that has caused turmoil.⁶³ These effects cannot fairly speak to the credibility of term limits themselves. Conflict has arisen from the manoeuvres of a democratic principle in an undemocratic political environment. The Addis Charter has classified such amendments as unconstitutional changes of government, if they amount to an infringement of the principles of democratic change of government.⁶⁴ Although the lack of definition of principles of democratic change of government in the Charter makes the provision ambiguous, it makes a clear statement as to the illegitimacy of these amendments.

3.1.3. Disruption of Government Programs Due To Term Limits

Term limits have been criticised for depriving the people of the opportunity to keep “performing leaders” as well as interrupting government programmes.⁶⁵ Government programs are not successive in character, and often change according to the manifesto of the incoming government. The definitive nature of limited presidential tenures may terminate their implementation.

The aforementioned argument has been challenged with the view that a good legacy finds its own way. A former head of state, with a good track record, that maximises his/her tenure to

⁶¹ Issaka, K. S., *The AU and the Challenge of Unconstitutional Changes of Government in Africa*, ISS Paper 197, August 2009, p. 5. Last accessed from <https://www.issafrica.org/acpst/papers/the-au-and-the-challenge-of-unconstitutional-changes-of-government-in-africa> (21 June 2016). See AU PSC, Presidential Statement on the Resurgence of Coup D'états in Africa. Kampala: AU PSC (2009).

⁶² Press Release by the 432nd Meeting of the AU Peace and Security Council, PSC/PR/BR.(CDXXXII) 29 April 2014, Addis Ababa, Ethiopia, p. 1. <https://www.issafrica.org/pscreport/uploads/ps-432-psc-29-4-2014.pdf>

⁶³ See also Sete, T., *Overcoming Constitutional Term Limits and Protests in Africa*, 9 June 2015. Last accessed from <http://theowp.org/reports/overcoming-constitutional-term-limits-and-protests-in-africa/> (22 June 2016).

⁶⁴ Article 23 (5), African Charter on Democracy, Elections and Governance.

⁶⁵ Issaka, K. S., *The AU and the Challenge of Unconstitutional Changes of Government in Africa*, ISS Paper 197, August 2009, p. 9. Last accessed from <https://www.issafrica.org/acpst/papers/the-au-and-the-challenge-of-unconstitutional-changes-of-government-in-africa> (21 June 2016).

create a conducive environment, can still contribute to the advancement of his/her country and also promote the continuity of potent programmes. Notable examples are Nelson Mandela of South Africa, who formed part of “The Elders”⁶⁶ commanding respect both in his home country and abroad, to the extent that his persuasive pronouncements on the status of global politics found broad international purchase. Creating such a conducive environment is arguably a more legitimate and beneficial objective than distorting the constitutional framework to sustain a regime. Many of the leaders that distorted term limits are those that would have stayed in power for a long time.⁶⁷ This may however give rise to a rebuttable presumption that long-standing leaders take longer to complete their plans, because they have no incentive to deliver.

Table 1: Achievements and Shortfalls of Presidential Term Limits in Africa

Achievements	Shortfalls
Enabling power alternation	Constraining democratic choice
Enhancing capacity building among individuals	Term limits bear the risk of causing instability
Facilitating development of state institutions	Disruption of government programmes
Facilitating electoral processes	
Facilitating peaceful transition of power	

⁶⁶ See <http://theelders.org/> (last accessed on 6 July 2016).

⁶⁷ Omar Bongo of Gabon (42 years), Robert Mugabe of Zimbabwe (), Equatorial Guinea, Western Sahara, Paul Biya of Cameroon (34 years), Yoweri Museveni Kaguta of Uganda (30 years), Denis N’Guesso of Congo – Brazzaville (31 years), Blaise Compaoré of Burkina Faso (27 years),

CHAPTER FOUR

4. 1. THE DEBATE ON EXTENSION OF PRESIDENTIAL TERM LIMITS IN AFRICA

Africa's recent history constitutes both successful and failed attempts to circumvent presidential term limits, barely two decades after their introduction. Beginning with Namibia in 1998, seventeen (17) African countries have registered endeavours to amend their constitutions to remove or extend the limits on presidential terms. Twelve (12) of these, also constituting the majority, were successful.⁶⁸ The constitutions of some of the aforementioned countries expressly prohibited variation of presidential term limit provisions, such as Rwanda and Niger.

Instruments that have been used to change term limits include national referenda, constitutional amendments by legislatures, and judicial interpretations. Evading term limits is done by extending the number of presidential terms, removing limits, delaying elections, or by simply ignoring the existence of these limitations.⁶⁹ Opalo (2015) categorises these approaches as either "soft" or "hard" contraventions.⁷⁰ Soft contraventions involve capitalising on ambiguities in the law so as to obtain more time in office. Examples include Abdoulaye Wade of Senegal and Blaise Compaore of Burkina Faso who argued that term limits did not apply retrospectively to their first term(s) in office. Similarly, Pierre Nkurunziza of Burundi argued that the restriction did not apply to him because he was indirectly elected before serving his first term.⁷¹ Hard contraventions constitute abolition of term limits. Examples include Idris Deby of Chad who held a referendum, in 2005, deleting the provision limiting presidential terms from the Constitution.⁷² Other leaders effected amendments to term limit provisions through parliamentary votes. Examples include Gnassingbe Eyadema of Togo (2002), Omar Bongo of Gabon (2003), Yoweri Museveni of Uganda (2005), Paul Biya of Cameroon (2008), Omar Guelleh of Djibouti 2010, and Paul Kagame of Rwanda (2015).

⁶⁸ Successful amendments were registered in Algeria (2008), Cameroon (2008), Chad (2004), Republic of Congo (2015), Djibouti (2010), Gabon (2003), Guinea (2001), Namibia (1998), Togo (2002), Tunisia (2002), Uganda (2005), and Rwanda (2015). Unsuccessful attempts occurred in Malawi (2003), Niger (2010), Nigeria (2006), Burkina Faso (2014), and Zambia (2001).

⁶⁹ Isaias Afwerki of Eritrea has ignored constitutional term limit clauses and remained in office for more than twenty two (22) years. See Dulani, B., *African publics strongly support term limits, resist leaders' efforts to extend their tenure*, p. 2. Last accessed from http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno30.pdf (21 June 2016).

⁷⁰ Opalo, K., *Term Limits and Democratic Consolidation in Sub-Saharan Africa: Lessons from Burundi*. Constitutional Net, 30 July 2015, p.3. Last accessed from <http://www.constitutionnet.org/news/term-limits-and-democratic-consolidation-sub-saharan-africa-lessons-burundi> (21 June 2016).

⁷¹ *Ibid.*

⁷² *Ibid.* Conte Lansana of Guinea also held a referendum abolishing term limits in 2001.

It is noteworthy that a handful of countries including Algeria and Liberia are debating introducing term limits.⁷³ Togo experienced widespread protests in November 2014, following demands for the introduction of term limits that are not currently provided for in the nation's constitution.⁷⁴ Idriss Deby of Chad promised to reintroduce term limits in his recent presidential election campaign.⁷⁵ The aforementioned trend raises the question as to whether abrogation or extension of presidential term constraints is justifiable.

Proponents for the removal of term limits argue that they may not be necessary to fostering a democracy, because some well-established and traditional democracies such as France, the United Kingdom and Germany do not have them. In response, scholars have argued that free and fair electoral processes in established democracies facilitate the election of persons on merit and the removal of non-performing leaders.⁷⁶ Elections in many African countries leave much to be desired. Further, the level of human capital development underscores the focus of an election, with a greater likelihood that an empowered population would capitalise on the issues and is less likely to be manipulated with bribes and unrealistic promises. A large number of Africans still need systemic protection against possible opportunist endeavours. A fair comparison cannot be made between clearly distinct contexts that have different needs.

It should be remembered that attempts to procure amendments, so as to vary term limits, often originate from the leadership. Whereas some changes are inspired by the popular will of the people, others may also be propelled by difficulty, among the leadership, in abiding by the Constitution, hence the need to change course. Some African countries such as the Democratic Republic of Congo, Malawi, Nigeria, and Zambia have rejected this pattern. Resistance was also registered in certain countries, where changes were successfully effected. Protests against removal and extension of presidential term limits are often violent, demonstrating an element of suppression of a principle that is being defended by the law, and often the majority of a society. Mass protests forced Burkina Faso's President Blaise Compaoré out of power after an attempt to extend his constitutional mandate in 2014.⁷⁷ In 2010, an attempt by President Mamadou Tandja of Niger to abrogate a constitutional provision that prohibited the amendment of the provision on term limits to stand for a third term, resulted in a coup.⁷⁸ Violent protests against distortion of term limits were also experienced in Senegal (2012), Burundi (2015), and the Democratic Republic of Congo (2016). Loss of an election by an incumbent, following

⁷³ See <https://solomondersso.wordpress.com/2016/01/25/africas-new-arena-of-contestation-for-democratic-change/> (last accessed on 6 July 2016).

⁷⁴ Klaas B., Two elections and you're out? *Good Governance*, 1 June 2015, p.4. Last accessed from <http://gga.org/stories/editions/aif-32-shaky-foundations/two-elections-and-you2019re-out> (21 June 2016).

⁷⁵ See <http://africanarguments.org/2016/03/24/could-president-idriss-deby-face-a-shock-in-chads-elections/> (last accessed on 6 July 2016).

⁷⁶ Issaka, K. S., *The AU and the Challenge of Unconstitutional Changes of Government in Africa*, ISS Paper 197, August 2009, p.10. Last accessed from <https://www.issafrica.org/acpst/papers/the-au-and-the-challenge-of-unconstitutional-changes-of-government-in-africa> (21 June 2016).

⁷⁷ George, M., *A Look at Presidential Term Limits in Central Africa Ahead of Elections*. 6 January 2016. Last accessed from http://afrobarometer.org/sites/default/files/press-release/global/ab_r6 (20 June 2016).

⁷⁸ *Ibid.*

alteration of a term limit provision, may challenge the foundations of the amendment. A case in point is that of Senegalese president Abdoulaye Wade, who lost the election of 2012, after using the Constitutional Court to interpret a legal technicality to allow him to bid for a third term.⁷⁹

Amendments are often effected to extend a particular leader's rule. This may keep a performing government in power, hence serving the interests of the people, but the change of principle may boomerang when the subsequent leadership is not favourable. Rwanda's recent amendment offers a fascinating case, where the applicability of presidential term limits was suspended in respect of a sitting president, for a specified period of time, with a prospect of being reintroduced, in a modified form, at a later date.

Resistance of controls from African leaders is not a surprise. Wilmot traces the roots of authoritarian legacies in Africa to colonial state apparatuses, which were designed to facilitate resource extraction, and relied on state control over its subjects; noting that "the state became a bastion of wealth and a locus of exclusionary power, usually at the expense of excluded groups."⁸⁰ This position has not changed. The state remains a prize to capture and maintain at all costs.⁸¹ Prempeh's exposé of the untamed nature of the office of the presidency in Africa offers useful insights.⁸² Power, control of resources and patronage rest with the presidency.⁸³ The observation by a political science lecturer at the Université Lumière in Bujumbura that "when one is in power, one wants to stay there and all means are useful for that purpose",⁸⁴ is to some extent valid.

4.1.1. The African Union (AU) and the Debate on Extending Term Limits

Abrogating or extending limits on presidential terms are arguably some of the most critical foreign policy challenges of the African Union.⁸⁵ The approach of the AU to the subject has been a cautious one. A constitutional provision or its amendment is regarded as an exercise of a state's sovereignty, hence ordinarily not subject to external intervention. The AU has only made soft interventions in event of a resultant conflict, such as the organisation's refusal to participate in the Burundi elections of 2015. The capacity of the AU to lead policy change is

⁷⁹ See Senegal's Democratic Stress Test, Good Governance Africa, 1 June 2012, p.3. Last accessed from <http://gga.404.co.za/stories/editions/aif-1-teetering-towards-democracy> (6 July 2016).

⁸⁰ Wilmot, C., *How and Why Term Limits Matter*, p. 4. 5 October 2015. Last accessed from <http://africanarguments.org/2015/10/05> (21 June 2016).

⁸¹ *Ibid.*

⁸² Prempeh, K., Presidents Untamed, in Diamond, L., and Plattner, F.M., *Democratisation in Africa: Progress and Retreat* (eds.), 2 Edition, The John Hopkins University Press, Baltimore, 2010, p.19.

⁸³ *Ibid.*

⁸⁴ Nduwimana, P., No Room to Move: Political Space Shrinks as the Government undermines the Opposition at every turn. *Good Governance Africa*, p. 5. Last accessed from <http://gga.org/stories/editions/aif-29-africas-opposition-in-pieces/no-room-to-move> (21 June 2016).

⁸⁵ Tjiurimo, H. A., *Presidential Term Limits: A New African Foreign Policy Challenge*, Policy Briefing 138 June 2015, p.2. Last accessed from <http://www.saiia.org.za/policy-briefings/presidential-term-limits-a-new-african-foreign-policy-challenge> (6 July 2016).

also inhibited by the fact that some of its influential members have successfully circumvented term limits. Sub-regional endeavours at a unified stance have also been constrained by the *status quo* among individual states, where some member states have evaded or aspire to avoid term limits. For instance, attempts by West African leaders to adopt a common position for all presidential tenures in the West Africa sub-region were frustrated by Togo, which abolished term limits in 2002, and the Gambia.⁸⁶

The AU, however, has an existing normative framework that is intended to demystify the organisation's position on democratic principles.⁸⁷ The African Charter on Democracy, Elections and Governance expresses a commitment by member states of the AU to take appropriate measures to ensure constitutional rule, especially the constitutional transfer of power.⁸⁸ The Charter anticipates proclamations that would bind members of the AU jointly, and severally. It is suggested that this may be a good opportunity for the African body to formulate a continental policy against abrogation of term limits, which is an already entrenched constitutional principle.

Africa's record on term limits is double-faced, with one side portraying promises and the other bottlenecks of the measure. The applicability of term limits on the African continent is relatively new, and has been distorted before being tested or tried for viability. However, the number of leaders who abdicated the presidency upon completion of their constitutional terms, combined with those whose efforts to extend their tenures failed, outweighs that of those that overstayed their original constitutional mandate. The magnitude of violations among struggling countries, however, causes great concern, and makes the matter critical. The hostility directed at term limits, in the leaders' bid to overstay in power may itself be indicative of why Africa needs term limits. Some leaders are not prepared to go without a fight, but the modern fight is with the constitution.

⁸⁶ Dulani, B., African Publics Strongly Support Term Limits, Resist Leaders' Efforts to extend their Tenure, *Afrobarometer Dispatch* No. 30, 25 May 2015, p.2. Last accessed from http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno30.pdf (21 June 2016).

⁸⁷ Article 2, African Charter on Democracy, Elections and Governance (the Addis Charter), entered into force on 15 February 2012.

⁸⁸ Article 5, *Ibid.*

CONCLUSION

The implementation of presidential term limits has had a remedial and intervening role in Africa's history. The measure was introduced to a unique African context that was burdened by autocratic legacies of colonialism and the subsequent despotism. The essence of term limits ought to be examined in light of Africa's peculiar circumstances, and the status of its populace. They emerged in a broad framework of democratic principles as an effective and peaceful way of terminating the tenure of a leader, so as to allow power alternation and strengthening of state institutions. Adherence to term limits is one of the achievements of progressing democracies in Africa, such as Ghana, Malawi, South Africa, and Tanzania. Legal and electoral battles have replaced military confrontations in such countries. In fact, the majority of African leaders of countries with term limits handed over power upon completing their constitutional tenures.⁸⁹ Studies reveal an increased number of peaceful transitions; increased regard for elections; increased re-integration of former African leaders upon completion of their presidential tenures since the introduction of term limits; among other developments.⁹⁰

Implemented in Africa for approximately two decades, the concept of limiting presidential terms is contested. Peabody traces this contention to the origins of the notion of term limits as introduced in the American Constitution of 1789.⁹¹ The measure is thought to limit democratic choice, disrupt government programmes, and cause instability. Term limit provisions are therefore hugely burdened and nearly overridden by the complexities of the context in which they are implemented. The implementation of term limits is facilitated by other factors such as respect for civil liberties, a free and fair electoral system, and the capacity of the state such as the independence of its judiciary. As a democratic principle, it thrives better in a democratic environment. The challenge is that term limits are leading the way in establishing democracy, but introducing constraints to the "fount of power", viz. the presidency. They have therefore been subjects to several distortions including extensions, suspensions, abolitions, and sometimes total disregard.

The debate on extension of term limits is tense and conflictual. Whereas constitutional amendments or revisions are permissible, changes to term limit provisions are peculiar. They often involve two opposite forces: the leadership and their patriots proposing modification on one hand, and the people opposing it on the other. It ought to be remembered that the people form the foundations of power. Success in the removal of term limits, among countries where the people strongly support their retention, such as Togo and Uganda, reveals a problematic tilt in the balance of power between the citizens and the leadership. The fundamental question then

⁸⁹ See Posner, D.N., and Young D.J., *Term Limits and the Transfer of Power*, p. 12. Last accessed from <http://danielnposner.com/wp-content/uploads/2015/12/Posner-Young-chapter-151123.pdf> (22 June 2016).

⁹⁰ See Ogot, G., The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values, *The Citizens Coalition for Electoral Democracy in Uganda*, 2012, p. 3. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (21 June 2016).

⁹¹ See Peabody, G. Bruce, G.W., Presidential Term Limits, and the Problem of Reluctant Political Leadership, *Presidential Studies Quarterly*, 31 (3) September 2001, 440.

changes from whether term limits are useful, to whether people have a decisive say in their country. Constitutional or normative safeguards have not been sufficient to guarantee the influence of term limits as much as other democratic rights of the people in troubled jurisdictions. This is partly because the extensive powers of the typical African president have not been checked by democratic reforms.⁹² Assault on term limits is one of the legacies of Africa's authoritarian past. Term limits are an intervention at risk from the very problem it rose against. The *status quo* also compromises the capacity of state institutions such as electoral bodies and the Courts, which are essential to reinforcing normative standards.

Assaults on term limits need to be weighed objectively. The number of countries having retained presidential term limits, when combined with those having foiled the attempts of leaders to alter such limits, outnumbers those in which term limits have been changed.⁹³ Among approximately thirty four (34) countries that embraced term limit provisions, twelve (12) have experienced successful amendments; attempts at such amendment in five (5) jurisdictions were foiled. It is the magnitude of the cost of conflicts over term limits which are characterised by loss of lives, which raise the profile of this debate, and place a would-be domestic issue on the agenda of supranational bodies such as the African Union (AU).

The African Union has approached this matter cautiously, and with due regard to its inherent limitations as an organisation. The need for a continental policy on term limits is countered by the aspirations of some of the leaders that are members of the organisation to stay in power for longer. Despite these setbacks, it is significant to note that the support for democratic principles, including term limits, is only challenged, but not subdued. Presidential term limits, like all normative frameworks, have served Africa to the extent they have been capacitated to operate on the continent. Africa is further challenged to develop and affirm the concept to match the rigours of the context in which it is operating.

RECOMMENDATIONS/ FURTHER RESEARCH PERSPECTIVES

- There is need for Africa to take ownership, domesticate, modify and develop the concept of term limits to the continent's peculiar circumstances.
- The principles of democracy must be viewed as a consolidated whole. Term limits need to be protected as part of a comprehensive framework of mutually reinforcing democratic principles. Selective implementation of principles distorts the equilibrium. Debas rightly notes that term limits alone do not address the foundations of Africa's democratic deficit.⁹⁴

⁹² Prempeh Kwasi, Presidents Untamed, in Diamond, L., and Plattner, F.M., *Democratisation in Africa: Progress and Retreat* (eds.), 2nd edition, John Hopkins University Press, Baltimore, 2010, p. 19.

⁹³ See Posner, D.N., and Young D. J., Term Limits and the Transfer of Power, pp. 2, 20. Last accessed from <http://danielnposner.com/wp-content/uploads/2015/12/Posner-Young-chapter-151123.pdf> (22 June 2016).

⁹⁴ Lebas, Addrienne, Term Limits and Beyond: Africa's Democratic Hurdles, *Current History*, May 2016. p. 170. Last accessed from http://www.currenthistory.com/CurrentHistory_LeBas.pdf (5 July 2016).

- Enforcement of term limits extends beyond entrenched constitutional provisions to an empowered population and strong state institutions, such as the electoral bodies and courts. For example, a court decision sealed Nigeria's victory over Obasanjo's efforts to amend the Constitution so as to remove term limits.
- There may be a need to address presidential supremacy by mitigating the power of the presidency. This would enhance development of other state institutions.
- A mechanism to review the performance of state institutions could be introduced among members of the African Union, so as to prioritise institutional capacity development on the continent.
- A practical, regional resolve on the question of presidential term limits is worthy of consideration. Permitted exceptions should also be clearly stipulated, and their categorisation closed.
- Facilitate the status of retired presidency as a well-resourced and useful office.
- African countries need to familiarise themselves with liberal principles of democracy and governance, and overcome the glorification of individuals. History has its place in the life of a nation.
- The challenges posed by the enforcement of term limits lead to a natural progression that needs to be supported by the improvement of human development indicators. Term limits require time to find root in turbulent political terrains. Increased public debate on the subject would entrench it in the philosophy of society.
- Government programmes that are good and relate to core functions of society should be adopted by the state and their continuity facilitated by subsequent governments as contractual obligations. Credit would extend to a government that contributes to the implementation of a programme, as much as one that initiates it. This will mitigate the risk of prolonged stays of governments.

INSTRUMENTS EXAMINED INCLUDE:

- Arusha Peace and Reconciliation Agreement for Burundi, Signed on 28 August 2000.
- Charter of the Organisation of African Unity (OAU Charter), Entered into force on 25 May 1963, Addis Ababa, Ethiopia.
- OAU/AU Declaration on the Principles Governing Democratic Elections in Africa AHG/Decl. 1(XXXVIII).
- Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government' (hereinafter referred to as the Lomé Declaration), adopted at the 36th Ordinary Session of the Assembly of Heads of States and Governments of the OAU held in the Togolese capital, Lomé, in the period from 10 to 12 July 2000.
- The African Charter on Democracy, Elections and Governance, adopted in Addis Ababa by the 8th ordinary summit of the AU in January 2007
- Constitutive Act of the African Union (The Constitutive Act), adopted on 11 July 2000, Lomé, Togo.

REFERENCES

- Author Unknown. *Africa's New Arena of Contestation for Democratic Change*, 25 January 2016. Last accessed from <https://solomondersso.wordpress.com/2016/01/25/africas-new-arena-of-contestation-for-democratic-change/> (6 July 2016).
- Betrand, Elöise (2014), Extension Discord: Will the military of Burkina Faso include the opposition in the Interim Government? *Good Governance*. Last accessed from http://gga.org/stories/editions/aif-29-africas-opposition-in-pieces/extension-discord/#.VHwu_jcowgo.facebook (22 June 2016).
- Blunt, P., and Jones, M.L. (1997), Exploring the limits of Western leadership theory in East Asia and Africa. *Personal Review*, 26 (1-2), 6.
- Chengeta, Thompson, A. (2011), *Critical Analysis of the Concept of 'Democracy' in Africa with Particular Reference to Majoritarianism and the Rights of Minorities*. Last accessed from <http://dx.doi.org/10.2139/ssrn.2312331> (6 July 2016).
- Doorenspleet, Renske, Nijzink, Lia, (eds), *One-Party Dominance in African Democracies*, Boulder: Lynne Rienner Publishers, 2013.
- Dulani, Boniface (2015), African publics strongly support term limits, resist leaders' efforts to extend their tenure. *Afrobarometer Dispatch* No. 30. Last accessed from http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno30.pdf (22 June 2016).
- George, Madaline (2016), *A Look at Presidential Term Limits in Central Africa Ahead of Elections. Commentary on International and Comparative Law and Global Affairs by Washington Law Professors, Alumni and Students*. Last accessed from http://afrobarometer.org/sites/default/files/press-release/global/ab_r6 (6 July 2016).
- Hengari-Tjiurimo, A. (2015), *Presidential Term Limits: A New African Foreign Policy Challenge*, Policy Briefing 138, June 2015, SAIIA. Last accessed from <http://www.saiia.org.za/policy-briefings/849-presidential-term-limits-a-new-african-foreign-policy-challenge/file> (22 June 2016).
- Issaka K.S. (2009), *The AU and the Challenge of Unconstitutional Changes of Government in Africa*, ISS Paper 197. Last accessed from <https://www.issafrica.org/acpst/papers/the-au-and-the-challenge-of-unconstitutional-changes-of-government-in-africa> (22 June 2016).
- Khisa, Moses (2014), *The Challenged Life of the Challenger, Good Governance Africa*. Last accessed from <http://gga.org/stories/editions/aif-29-africas-opposition-in-pieces/the-challenged-life-of-the-challenger> (22 June 2016).
- Klaas, Brian (2015), *Two Elections and you're out? Good Governance Africa*. Last accessed from <http://gga.org/stories/editions/aif-32-shaky-foundations/two-elections-and-you2019re-out> (22 June 2016).
- Kwasi, Prempeh, 'Presidents Untamed', in Diamond, Larry, and Plattner, Marc F. (eds), *Democratisation in Africa: Progress and Retreat*, 2nd edition, John Hopkins University Press, Baltimore, 2010.

Nduwimana, Patrick (2014), No Room to Move: Political Space Shrinks as the Government undermines the Opposition at every turn. *Good Governance Africa*. Last accessed from <http://gga.org/stories/editions/aif-29-africas-opposition-in-pieces/no-room-to-move> (21 June 2016).

Ogot, Gwada (2012), The Push for Executive Term Limits in Africa: Tracing the Peoples Efforts to Entrench Democratic Values, The Citizens Coalition for Electoral Democracy in Uganda, CCEDU 2012. Last accessed from <http://www.ccedu.org.ug/publications/other-publications/27-term-limits-booklet.../file.html> (22 June 2016).

Opalo, Ken (2015), Term Limits and Democratic Consolidation in Sub-Saharan Africa: Lessons from Burundi. *Constitutional Net*. Last accessed from <http://www.constitutionnet.org/news/term-limits-and-democratic-consolidation-sub-saharan-africa-lessons-burundi> (22 June 2016).

Peabody, G. Bruce, George Washington (2001), Presidential Term Limits, and the Problem of Reluctant Political Leadership, *Presidential Studies Quarterly*, 31 (3), 440.

Posner, Daniel N., and Young, Daniel J. (2015), Term Limits and the Transfer of Power, p. 2. Last accessed from <http://danielnposner.com/wp-content/uploads/2015/12/Posner-Young-chapter-151123.pdf> (22 June 2016).

Lebas, Addrienne (2016), Term Limits and Beyond: Africa's Democratic Hurdles, *Current History*. Last accessed from http://www.currenthistory.com/CurrentHistory_LeBas.pdf (5 July 2016).

Nduwimana, Patrick (2015), No Room to Move: Political Space Shrinks as the Government undermines the Opposition at every turn. *Good Governance Africa*. Last accessed from <http://gga.org/stories/editions/aif-29-africas-opposition-in-pieces/no-room-to-move> (20 June 2016).

Sete, Teguadda (2015), *Overcoming Constitutional Term Limits and Protests in Africa*. Last accessed from <http://theowp.org/reports/overcoming-constitutional-term-limits-and-protests-in-africa/> (22 June 2016).

Skelton, Rose (2012), Senegal's Democratic Stress Test, *Good Governance Africa*. Last accessed from <http://gga.org/stories/editions/aif-1-teetering-towards-democracy/senegals-democratic-stress-test> (20 June 2016).

Tangian, Andranik (2014), *Mathematical Theory of Democracy*, Heidelberg: Springer, 2014.

Vencovsky, Daniel (unknown) *Presidential Term Limits in Africa: Conflict Trends*, p. 16. Last accessed from <http://accord.org.za/wp-content/uploads/2007/04/ACCORD-Conflict-Trends-2007-2.pdf> (21 June 2016).

Wilmot, Claire (2015), *How and Why Term Limits Matter: African Arguments*. Last accessed from <http://africanarguments.org/2015/10/05/how-and-why-term-limits-matter/> (20 June 2016).

Winsor, Morgan (2016), *Seychelles Cuts Presidential Term Limits, Going Against Recent Trend in Africa*. Last accessed from <http://www.ibtimes.com/seychelles-cuts-presidential-term-limits-going-against-recent-trend-africa-2348695> (20 June 2016).