

Kofi Annan
FOUNDATION

Towards a **fairer, more peaceful world.**

Changing term limits: an electoral perspective

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Electoral Integrity
Initiative



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“Sadly, some leaders have come to believe that no matter how they win an election, it is merely a formality that allows them to continue ruling however they want.”

Kofi Annan

Changing term limits: an electoral perspective by Maarten Halff ¹

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I. In the spotlight: term limits

“Term limits” are those limits set by law, normally a country’s constitution, on the number of terms an elected public office holder may serve. The restriction can apply to the number of terms that may be held consecutively, or it may be an absolute – that is, lifetime – restriction.

Initiatives to change or sidestep presidential term limits are often presented as a response to popular demand, yet tend to be deeply polarizing. A number of recent instances have led to significant unrest and even violence. Notable examples are Burkina Faso in 2014, where an initiative to allow the President to run for a third term led to his fall, and Burundi in 2015, where a military coup failed but strong opposition continued against the President’s third bid, launched after a favourable ruling by the Supreme Court. In Senegal, too, the Supreme Court ruled in 2012 that the President’s initial term was not covered by the two-term limit, allowing him to run for a further term. A constitutional amendment in the Democratic Republic of the Congo was initially rejected in 2014, but is expected to be revived. There is speculation that constitutional changes will be sought in Rwanda to allow a third term for the President.

Opinion on the legality of changing term limits tends to be sharply divided not only in the country concerned but also among the international community. In an effort to fine-tune policy debate, this paper looks at the normative framework relating to term limits and their removal. It recommends that, in the absence of clear international norms, the issue be approached as a matter of maintaining confidence in a country’s electoral process and political system. This means focusing on the process by which term limits might be amended or interpreted.



II. Why term limits?

“There is a need to consolidate the democratic gains of the last two decades - many of the countries that embraced democracy in the last 20 years now struggle to consolidate democratic governance.”

Deepening Democracy: A strategy for Improving the Integrity of Elections Worldwide; final report of the Global Commission on Elections, Democracy and Security.

There is no internationally binding norm relating to term limits as such. The International Covenant on Civil and Political Rights (ICCPR) refers to periodic elections, but this relates to the frequency of the ballot, not the number of times a candidate may gain office through such a process. In fact, the ICCPR protects the right of all to participate in elections as a candidate, allowing eligibility restrictions under certain circumstances only.

There are references to “democratic values” and “principles” in a number of non-binding regional political commitments, but in the absence of definitions, they cannot be understood to include a requirement for term limits. A few regional instruments refer to the importance of democratic change, but these documents, too, do not mention restrictions on incumbents to run for office. ² **A recent proposal to agree within the ECOWAS region on limiting presidential office holders to two terms did not receive sufficient support at a summit meeting in May 2015.** At present, it is only in the context of the Council of Europe that a specific norm has been formulated: the Council’s Venice Commission has expressed support for term limits under certain circumstances, invoking the importance of democratic checks and balances. ³

It is not surprising then that country practice varies considerably, reflecting specific political contexts as well as different tenets of democracy. Some countries have term limits, many don’t. They are mostly to be found in the context of presidential or semi-presidential systems.

Proponents see term limits as an important element of democratic accountability, a guarantee that political power and access to state resources will not remain in the hands of one person or group. They are also seen as a means to level an electoral playing field that might otherwise be dominated by incumbents, and a way to focus office holders’ attention on governing rather than campaigning. Furthermore, term limits may ensure that a Presidency does not become a long-term place of impunity because of legal immunities that may come with the office. Others, in contrast, may argue that they would constitute an unjustified restriction on someone’s fundamental right to run for office, with no overriding benefits for the system at large.

Just as term limits are context-specific and as there are no international norms that prescribe their use, there is nothing inherently laudable or objectionable about removing (or introducing) them. Constitutions are not cast in stone; political systems and state structures evolve. In democracies around the world, new and mature, constitutions are amended to adapt to changing visions of national identity, the role of the state, and the rules of the political system. Nevertheless, **when it comes to amending a constitution, context, process and timing are key to a broadly accepted outcome.**

III. Changing term limits: constitution, consensus, confidence

International democratic practice varies as to the process by which constitutions – including provisions about term limits – may be amended. Constitutions typically provide for their own rules of amendment. International law sets broad parameters only. The ICCPR protects the right of all citizens to participate in political and public affairs, but this is not seen as an obligation for states parties to hold, for example, a referendum on constitutional amendments. Some regional instruments contain guidelines on the content of the amendments, stating that they should not undermine the constitutional democratic order.⁴

Constitutional amendments are frequently sensitive and contentious. Even where they are not, they involve issues of broad, national importance.

Regional political commitments stress that a fundamental matter such as constitutional reform be the result of a broad-based national consensus.⁵ Clearly, a constitutional amendment that does not follow the prescribed process or is non-consensual is likely to polarize and to fuel conflict. Furthermore, the timing matters: a change proposed shortly before an election may arouse more suspicion than at other times.⁶

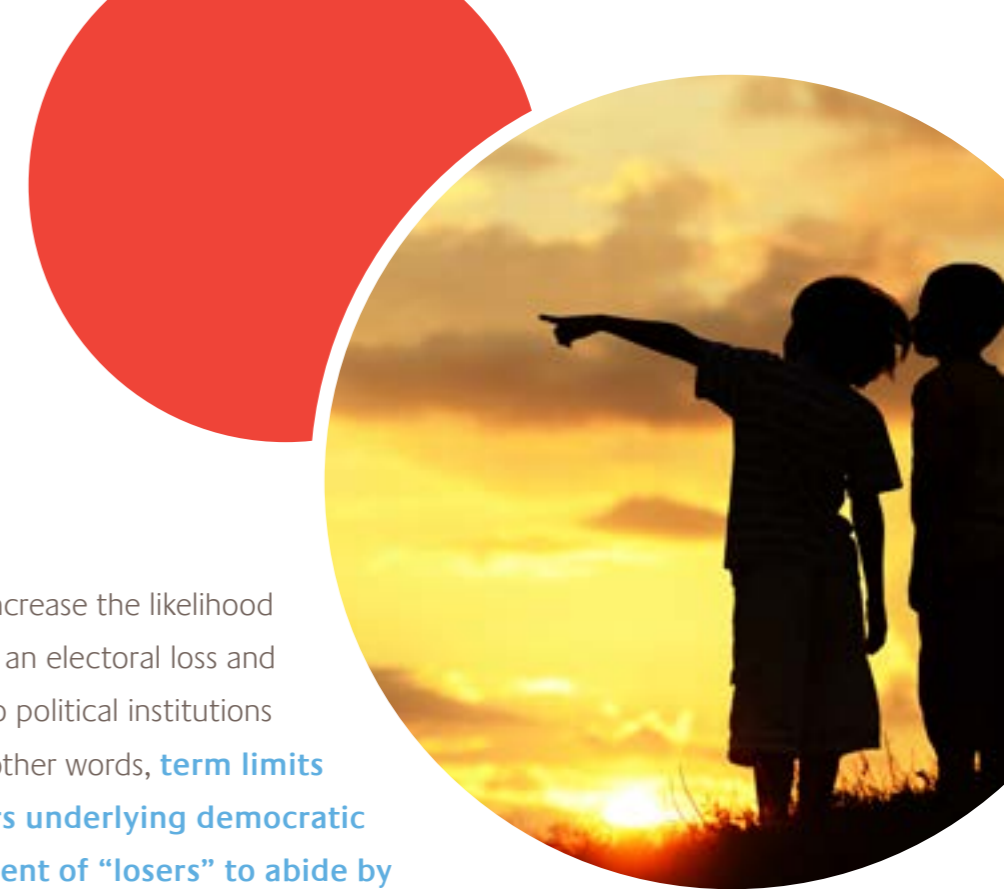
Initiatives to remove – or “evade” – term limits can have a significant impact on the confidence in electoral processes, and on peace and stability in a country. The context matters. Where they exist, term limits can be important mechanisms to lower the stakes around elections, to safeguard against “winner-take-all politics”, and to ensure trust in the

political system. This can increase the likelihood that political actors accept an electoral loss and continue to give support to political institutions until the next election. In other words, **term limits can be important factors underlying democratic legitimacy and the consent of “losers” to abide by the outcome and to continue engagement within the existing political system.**

Conversely, the removal or favourable interpretation of term limits – as a way to hold on to power, or a tool of political manipulation, real or perceived – can undermine this confidence and the necessary consent for the political system to function well. This lack of trust – before, during or after an election – can have destabilizing effects and can fuel conflict, as has been seen in recent incidents.

Clearly not every country is the same in this respect: the extent to which term limits are a necessary feature for the acceptance of electoral outcomes will depend on the prevailing political trust, as well as on other confidence-building aspects engrained in the political system, such the distribution of political and economic power and the role of the opposition.⁷

In addition to context, the process matters. The way in which office holders will seek to change – or interpret in a favourable manner – their own term limits is key. Such changes or interpretations will inevitably



be perceived as self-serving, unless it is made clear that the changes will take effect for future office holders, only. The potential for confidence to be undermined by a removal of term limits would be greater if the amendment does not follow the prescribed process, if it takes place shortly before an election, and if it is not based on a broad national consensus.

Similarly, the use of legal loopholes or interpretations to legitimize an extension of a term limit – for example by arguing that a president’s tenure in office prior to the promulgation of a constitution does not count as a term under that document – may well be perceived as a self-serving and unilateral attempt to hold on to power. Just as with formal constitutional amendments, legitimacy in these cases may not just be a matter of following the rules; a legal interpretation is unlikely to provide credibility if there is little trust in the judiciary.



IV. Strengthening confidence in elections

A successful election is one in which there is broad public confidence in the process and its outcome peacefully accepted. Respect for democratic principles and rights, and a professional, transparent and impartial conduct of the process are critical for this. But the foundation of public confidence is broader than the rules and conduct of an election itself. It is directly related to the electoral stakes shaped by the political system overall and the potentially negative effects of not winning an election.

A debate about term limits – and the process of lifting them – would therefore benefit from focusing on their political effect, that is, on the incentives for opposition groups and (potential) losers to participate in an election and to remain engaged in the broader political system. A balance needs to be struck; attention to an opposition’s engagement should not be misunderstood as an incentive to boycott a process for political gain. Overall, a primary goal is to avoid the possibility of violence and conflict. **The key to bringing about fundamental changes to the political order, if any, is to do so through a process of broad dialogue and consensus, and to avoid efforts that can be seen as a manipulation of the process and an attempt to cling to power.**

“When elections lack integrity, citizens’ confidence in governance is reduced, and elections become flashpoints for violence”

Kofi Annan

V. Indication of sources for this brief

1 Maarten Halff, Electoral Assistance Division, United Nations. The views expressed herein do not necessarily represent those of the United Nations or the Kofi Annan Foundation. **2** For example, the Lomé Declaration on the Framework for an OAU [Organization for African Unity, as it was then called] Response to Unconstitutional Changes of Government of July 2000 (AHG/Decl.5 (XXXVI)), provides for the “principle of democratic change”. According to article 23 of the African Charter on Democracy, Elections and Governance(2007), “[a]ny amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government” is to be considered as an “illegal means of accessing or maintaining power” and constitutes “an unconstitutional change of government”, which shall draw “appropriate sanctions” by the African Union. **3** “Due to the risks, for the balance of powers and even for democracy as such, involved in the possibility for the incumbent to be re-elected more than once, the Venice Commission reiterates its critical approach towards constitutional provisions allowing for more than one re-election of the head of state in presidential or semi-presidential systems.” European Commission for Democracy through Law (Venice Commission), Report on Democracy, Limitation of Mandates and Incompatibility of Political Functions, CDL-AD (2012) 027rev, 31 January 2013, paragraph 70. Applied to the specific case of a member state of the Council of Europe, the Commission pointed out that in a presidential or semi-presidential system where the powers of the president are almost unrestricted, a provision that the president may be re-elected only once may be “the only effective check on presidential powers”. CDL-AD (2007) 045, paragraph 37. **4** For example, article 23 of the African Charter, quoted in note 1 above, on constitutional revisions that would infringe on the principle of democratic change. **5** For example, in the African Charter on Democracy, Elections and Governance: “State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum” (article 10(2)).

6 See, for example, article 2 of the Protocol on Democracy and Good Governance, signed by ECOWAS member states in 2001, which provides that “no substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of political actors.” The Bamako Declaration of the Organisation Internationale de la Francophonie of 3 November 2000 notes that “[d]emocracy is incompatible with any substantial change in the electoral system introduced arbitrarily or surreptitiously, and there must be a reasonable interval between the adoption of any amendment and its entry into force”. The Venice Commission has stated that “the fundamental elements of electoral law ... should not be open to amendment less than one year before an election”; Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, CDL-AD(2002)023rev. **7** The Venice Commission, for example, took a critical view of the removal of presidential term limits in Belarus, through a referendum held in 2004, pointing to the “distorted balance of power” in that country. Similarly, in Azerbaijan in 2009, the Commission was of the view that “the elimination of the limits appeared to be a serious set-back on Azerbaijan’s road to a consolidated democracy”. CDL-AD (2009) 010.

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