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Presidential Term Limits and the International Community

Christina **Murray**

Eric **Alston**

Micha **Wiebusch**



IOB

Institute of Development Policy
University of Antwerp

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Please contact the author at michael.wiebusch@uantwerpen.be.

Institute of Development Policy

Postal address:	Visiting address:
Prinsstraat 13	Lange Sint-Annastraat 7
B-2000 Antwerpen	B-2000 Antwerpen
Belgium	Belgium

Tel: +32 (0)3 265 57 70
Fax: +32 (0)3 265 57 71
e-mail: iob@uantwerp.be
<http://www.uantwerp.be/iob>

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Christina **Murray** *

Eric **Alston** **

Micha **Wiebusch** ***

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* University of Cape Town

** University of Colorado Boulder

*** Institute of Development Policy (IOB), University of Antwerp; SOAS, University of London; United Nations University Institute on Comparative Regional Integration Studies (UNU-CRIS)



IOB
Institute of Development Policy
University of Antwerp

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ABSTRACT

Proposed changes to presidential term limits are almost always highly contested, and have attracted international and regional attention from many external actors including governmental organizations (IGOs), and international non-governmental organisations (INGOs). A central question that faces these external actors is the extent to which it is legitimate to take a position in presidential term limit debates. When they have engaged the question, external actors have increasingly focused on the relationship between stability, conflict prevention, constitutionalism and democracy. This chapter considers the policy concerning presidential term limits of three major IGOs, the UN, the AU and the OAS, each of which has had considerable involvement in countries where term limit changes have been linked to conflict. It further discusses the way in which IDEA, an IGO with a softer mandate, has responded to the debate on term limits, as well as the output of a number of other international actors like the Venice Commission, ECOWAS, DRI, the Carter Center and the West African Civil Society Forum (WACSOF). This review of international actors' responses to the question of presidential term limits suggests an increasing international consensus that, in countries with a history of authoritarianism and weak democratic institutions, presidential term limits can play an important role in strengthening democratic processes and reducing the likelihood of conflict. Importantly, justifications for raising concerns about the removal of term limits are gradually moving from the safer space of demanding that constitutionally established processes be used to more outspoken condemnation of proposals to remove or weaken term limits based on a recognition of the dangers of prolonged incumbency and its links to democratic backsliding.

Key Words: Presidential Term Limits; United Nations; African Union; Organization of American States; Venice Commission; NGO; International IDEA; international institutions

1. INTRODUCTION

Demands to introduce presidential term limits and attempts to change them are almost always highly contested and, particularly in recent years, have frequently brought citizens onto the streets in unprecedented demonstrations of opposition. As the case studies in this volume show, these movements are sometimes unexpected; many have proved themselves to be remarkably agile, responding imaginatively to the ever-changing political context in which they operate, often in the face of brutal resistance; and, although there are some remarkable success stories (Nigeria 2006; Zambia 2001; Ecuador 2018), many have failed. In addition, the potential for violence and concerns about ‘authoritarian back-sliding’ (Choudhry and Bisarya, 2014) have meant that attempts to repeal term limits or extend terms have attracted international and regional attention from many external actors including governmental organizations (IGOs – organizations directly involved in international governance like UN, OAS and AU as well as governmental organizations with a softer international role like Francophonie and International IDEA), international non-governmental organisations (INGOs) like Democracy Reporting International (DRI) and the Carter Center, neighbouring governments and other governments with strategic relations to the state. Involvement of governmental organizations with mandates including conflict prevention is usually not directly triggered by proposals to change term limits but by related violence or threats of violence. In their responses, these external actors find themselves frequently drawn into the question of term limits. Other international governmental organizations and NGOs concerned with promoting democracy are more likely to engage earlier and more directly with term limit debates. A central question that faces all these external actors is the extent to which it is legitimate to take a position in presidential term limit debates. Over the past twenty-five or so years, thinking on this question among external actors has increasingly focused on the relationship between stability, conflict prevention, constitutionalism and democracy. At the same time, although the policy of external actors on term limits and their justifications for engaging with them have become clearer, their ability to direct or even influence the actions of states has remained limited.

This chapter is primarily concerned with the way in which IGOs engage in term-limit debates and the arguments of principle and policy on which they rely when they do (or don’t). Our analysis is complemented by a shorter description of the activity of some INGOs in the area. Each of the organizations that we look at has an international profile but they differ widely in composition, mandate and the ways in which they work. Their differences make them difficult to categorise. For the purposes of this chapter, as indicated above, our primary distinction is between international governmental organisations (IGOs) that are composed of member states bound by an international agreement, and international nongovernmental organizations (INGOs) that, following the UN definition, include “Any international organization which is not established by inter-governmental agreement” (Ahmed and Potter 2006).¹ Within the large family of IGOs, we loosely distinguish those that play a direct role in international government at either the global or regional level and those that have a softer role, concerned more with exerting influence and providing support to both their members and other countries but without the ability or desire to bind member states to any particular ways of behaviour (like International IDEA). As is clear from the description of their activities below, many of the IGOs in the latter category are easily confused with NGOs because they behave in similar ways to NGOs.

[1] In American usage these institutions are part of the ‘international democracy support infrastructure.’ There it refers to infrastructure set up largely by Reagan in the early 1980s, including NDI, NED, IRI, Solidarity Centre and Center for International Private Enterprise (CIPE).

Although this chapter focuses on international organizations, it is important to recognise that they do not work alone: All the international organizations that we consider work in some or another form of partnership with domestic NGOs for aspects of their work (see, for example, Wapner 2008 on the UN). Moreover, as the case studies in this volume show, demands for the introduction of term limits and responses to attempts to change them start at home. International actors may enhance the legitimacy of different actors in these debates and, in cases where they lead to conflict, the attitude of regional or international actors may be influential, but it is rarely – if ever – that the issue is introduced by external actors.

The chapter proceeds as follows: In Part II we consider the policy concerning presidential term limits of three major IGOs, the UN, the AU and the OAS, each of which has had considerable and active involvement in countries in which term limit changes have been linked to conflict. Part II also deals briefly with ECOWAS because of its unusually assertive approach on term limit issues and the Venice Commission, the increasingly influential body established under the Council of Europe to provide advice on constitutional matters. Part II then moves to discuss the way in which IDEA, an IGO with a softer mandate, has responded to the debate on term limits. Part III briefly sketches the role of INGOs using DRI, the Carter Center and the West African Civil Society Forum (WACSOF) as examples. As we conclude, the case studies we offer reflect an emerging consensus among international actors that is consistent with the approach of IGOs and INGOs more generally as they seek to realize their broad mandates concerning democratic institutions, good governance, and stability.

2. INTERNATIONAL GOVERNMENTAL ORGANIZATIONS

2.1. The United Nations and its agencies

Formally the United Nations has the strongest mandate to prevent and resolve conflict of any international organisation. However, its very position as a world body inhibits its ability to fulfil this mandate. Although, over the half century since its formation it has led the development of international norms concerning rights and democracy, it is constrained by the need to secure consensus and, unsurprisingly, has no official view on presidential term limits. There are a number of obvious reasons for this: many stable democracies do not have term limits, a fair number of other member states of the UN have incumbent presidents who would not embrace term limits with any enthusiasm, but, most significantly, to many member states, adopting a formal stance on term limits would constitute a level of interference in domestic matters that is, on principle, unacceptable.

Nonetheless, over the past decade or so, the United Nations has been increasingly outspoken on matters relating to term limits. For example, on July 10, 2003, addressing the African Union Summit, Kofi Annan, then UN Secretary General, stressed the potential role of term limits in ensuring peaceful electoral turnover: “Democracy also means alternating government. The value of peaceful and periodic change in government has been proven time and again, in all parts of the world. Democracy is a constant struggle – but a struggle by peaceful means. If term limits are necessary to make this possible, so be it” (Annan, 2003). Of course, on this occasion Annan was not presenting a formal UN position nor was he directly engaged in discussions about a particular term limit controversy. But, Annan’s statement reflected a much more direct approach to presidential term limits than representatives of the UN had taken over the preceding years and it locates the question firmly on the democracy and conflict prevention agenda

(see also Annan, 2004; and Migiro, 2007). In 2017, in a report on elections and democratization, the new Secretary General, António Guterres, is bolder. Although he carefully acknowledges that there is no international norm governing term limits and adopts cautious wording, in an understated approval of the work of UN representatives in resisting changes to term limits, he suggests that such changes do not raise formal, legal issues alone but may affect political stability. Implicit in the statement is a soft warning to incumbents not to meddle with term limits too readily. Guterres states:

“There were a number of instances during the reporting period in which tensions around an election were in part caused by efforts to change or remove existing term limits. Although there is no international norm governing term limits as such, where they have been adopted, mostly in presidential or semi-presidential political systems, term limits can be important mechanisms to safeguard against “winner-take-all” politics. Under certain circumstances, the removal of or a change in term limits can undermine the confidence necessary for the political system to function well. The potential for amendments to a legal framework to undermine confidence is greater when they are introduced without following the prescribed process, if they are undertaken shortly before an election, or if the process is not based on a broad national consensus. All leaders are encouraged to consider these factors and their impact before pursuing a change in term limits.” (United Nations General Assembly, 2017.)

The increased discussion of term limits in UN reports tracks its increased engagement with term limit disputes in the field. Over the years, many UN officials in regional or country missions who were engaged either in conflict resolution or preventative diplomacy have found themselves in situations in which presidential term limit debates are closely intertwined with a broader conflict. Much of the activity of external actors in these situations happens quietly. Sometimes, however, a UN official may speak openly. For example, the situation in Burundi in 2017 prompted senior UN officials repeatedly to raise concerns in reports to the Security Council about removing the term limit agreed in the Arusha Accords and incorporated in the Burundi constitution (see, for example, United Nations Security Council, 2017). Similarly, in February 2018, supplementing many attempts by UN representatives in the Democratic Republic of Congo (DRC) to defuse the increasing tense situation, the Security Council held an informal meeting on the elections promised for December 2018. The statement released after the meeting referred to a December 2016 Accord among parties to the DRC conflict that included an understanding that Kabila would not stand again and noted that a public commitment by President Kabila not to stand again or amend the constitution “would be crucial to building confidence in the electoral process” (Mission Permanente de Côte d’Ivoire auprès de l’Organisation des Nations Unies, 2018). In both Burundi and DRC, opposition to the removal of term limits could be linked to earlier peace agreements, easing the question of interference in domestic affairs. But, in Togo there was no similar formal basis for the 2017 call of the UN Special Representative for West Africa and the Sahel to the government to introduce term limits. In that context, as in others, the UN did not view proposing term limits as intruding on domestic space but as a legitimate proposal to prevent the crisis from escalating (for example, Africa News, 2017).

Outside the principal organs of the UN (which include the General Assembly, Security Council, and Secretariat), the UN agency most directly involved in conflict prevention and constitutional change is the United Nations Development Programme (UNDP). For UNDP, legitimate constitutional arrangements underpin inclusive and stable democracy and so en-

gagement with constitutional issues is integral to its mandates to support sustainable human development and prevent conflicts (UNDP, 2014).

Generally, although UNDP produces guidance notes and is constantly elaborating its policy approach, it treats its mandate as practical and avoids asserting positions. Its practical approach means that it may be quite closely involved with debates about political and constitutional options, and, as many reports show, the question of presidential term limits is often raised in the activities that it promotes. One of UNDP's strengths is that, by and large, it operates outside the limelight, running large development projects that do not draw it as readily into high stakes political power disputes as often as the activities of political and peace-keeping missions. The relative freedom UNDP has in its activities also means that, to contribute to ongoing democratic debates, it convenes and reports on meetings and issues publications through which people are able to present views freely and in which discussion of term limits usually point to their role in building democracy and problems associated with their absence, especially the entrenched power of incumbents (UNDP, undated; Mkandawire, 2002). But, like other external actors, when it does issue reports in its own name, it is generally fastidious about linking its concern about the removal (or absence) of presidential term limits to the need to protect constitutionalism and/or avoid political instability.

2.2. The African Union and sub-regional governmental organisations in Africa

Africa has become a key landscape for presidential tenure reform, with more than twenty attempted or successful changes to presidential term limits over the past twenty years.² Since the AU was established in 2001, as the successor of the Organisation of African Unity (OAU), its mandate to promote and protect democracy has become increasingly shaped by questions related to presidential term limits.

After the Cold War, a consensus emerged at the continental level in favour of democratization and consolidation of democratic institutions. This was soon complemented by a narrative that highlights a transition within the AU system from focusing only on peace and stability, to increasingly emphasising respect for constitutionality and, gradually, to consider broader democratic legitimacy concerns as well. These developments led the AU to adopt a number of initiatives to improve the quality of democratic governance of its member states, including by monitoring and evaluating their governance and electoral systems through the African Peer Review Mechanism (APRM) and African Union Election Observation Missions (AUEOMs). When undemocratic practices persisted, the AU elaborated various norms and set up an increasingly robust enforcement and sanctioning apparatus on unconstitutional changes of government (Vandeginste, 2013). It thereby overcame some of the challenges faced by the OAU when the majority of member states upheld a strict interpretation of national sovereignty prohibiting any serious engagement in cases of domestic constitutional disturbance (Williams, 2007). AU norms and, in particular, the African Charter on Democracy, Elections and Governance (ACDEG)³ now explicitly ban a number of undemocratic scenarios, ranging from military coups,

[2] See for example the cases of Guinea (2001); Zambia (2001); Malawi (2002); Togo (2002); Congo Republic (2002); Gabon (2003); Uganda (2005); Chad (2005); Nigeria (2006); Cameroon (2008); Algeria (2008); Comoros (2009); Niger (2009); Djibouti (2010); Equatorial Guinea (2011); Senegal (2012); Burkina Faso (2014); Burundi (2015); Congo Republic (2015); Rwanda (2015); Democratic Republic of Congo (2015); Zambia (2017); Burundi (2018); Comoros (2018); South Sudan (2018); Benin (2018). See also Tull and Simons, 2017; Reyntjes 2016.

[3] The ACDEG has been signed by 46 of the 55 AU member states and ratified by 31. However, the AU has invoked it in non-signatory countries. Also, the anti-coup norm has been codified in other AU instruments including the AU Constitutive Act (2000) and the Lomé Declaration on the Framework for an OAU response to Unconstitutional

mercenary overthrows of government, and refusals to respect electoral outcomes, to constitutional amendments to prevent democratic changes of government (AU 2007b: Article 23).

The last situation is of particular interest because the *travaux préparatoires* of the ACDEG show that the drafters initially had the “[a]mendment or revision of constitutions and legal instruments, contrary to the provisions of the constitution of the State Party concerned, to prolong the tenure of office for the incumbent government” in mind (AU, 2006a). A consensus was clearly growing within the AU that term limit change needed to be addressed and possibly sanctioned. However, during the preparation of the ACDEG, Uganda (which had removed term limits in 2005) entered a reservation to the initial wording of Article 23 and, during the final meetings of the AU policy organs, other member states raised further objections (AU, 2006b; AU, 2007a). Article 23 now rather ambiguously sanctions cases in which there is “any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government”. The rejection of the earlier proposal reflects the different positions among AU member states, where some see removing or changing term limits as a direct challenge to the regional agenda of consolidating democratic institutions but others are wary of regional interference in what they see as internal affairs and, sometimes, more specifically, their agenda for prolonging power. In addition to the different interests of member states, the AU, like most regional organisations, is composed of different institutions with separate yet often overlapping mandates. These too differ in their responses to alteration of term limits, as we show below.

Even before the ACDEG was adopted, the AU’s executive arm and secretariat, the Commission, had adopted a clear position in favour of presidential term limits. Early in the development of the AU’s policy on democratic governance, the AU Commission went as far as to suggest that “[c]onstitutional and legal frameworks should determine the tenure and number of terms that a head of state and government can stand for elections” (AU, 2003).⁴ A similar position on term limits is found in the African Peer Review Mechanism (APRM). This continent-wide governance monitoring mechanism includes as an indicator of the rule of law and supremacy of the constitution “whether the constitution clearly provides a fixed term or terms of office for the executive” (APRM, 2012). The APRM also monitors “the existence of term limits in the constitution and a description of attempts (if any) to extend executive tenure by constitutional amendment” (APRM, 2012). These provisions led the APRM to criticise the removal of term limits in Uganda in 2005 with the cautious recommendation “to review the constitutional amendment that removed the two-term limits” with “the view of re-instating it (or not)” and to generate a “national consensus on term limits [...] to deepen democracy” (APRM, 2009a, p.26). In its Nigeria Report, the APRM similarly voiced its support for term limits when it hailed the Nigerian President Obasanjo’s failed attempt for a third term in office, as “a victory for Nigerian democracy” (APRM, 2009b, p.4). Reporting on Zambia, the APRM’s unhappiness with removing term limits was reflected in an acknowledgement of the important role of CSOs in “promoting democratic governance and culture between elections” as they took on “the main opposition voice against attempts by the ruling MMD and former President Chiluba to amend Constitution to allow him to run for a third term of office” in 2001 (APRM, 2013, p.55).

African Union Election Observation Missions (AUEOMs) have been more cautious in assessments of term limits change. The observation teams typically sketch the political and

Changes of Government (2000).

[4] The Assembly of Heads of State and Government subsequently directed the AU Commission to transmit this Communiqué to member states for consideration and comments (Assembly/AU/Dec.18 (II)).

legal context of the elections, including any term limits debates. However, mission reports are usually restricted to noting the controversy concerning the term limits without taking a position concerning their alteration or removal. For example, the AUEOM report on Senegal merely notes in a preliminary statement that the candidacy of the incumbent president, Wade, for a third term created a heavily polarised context. It does not express any position or recommendation concerning the situation, except urging for political dialogue to “promote consensus on critical political issues” (AU, 2012, p.6). This approach is in marked contrast, for example, with the European Union Election Observation Mission which urged Senegal to clarify whether term limits changes can be initiated by an incumbent president and to include respect for term limits in the oath of the president-elect (European Union, 2012, p.36). Similarly, although Algeria (2008) and Republic of Congo (2015) had removed term limits, the AUEOMs merely reported on boycotts by a number of opposition parties without any comment on the term limit issue itself (AU, 2014a; AU, 2016b). Reporting in 2017 on the Rwandan presidential elections, the AUEOM again withheld any assessment on the recent term limit change and simply noted the overwhelming popular support (around 98%) in the referendum for the change that allowed Presidential Kagame to run for another term (AU, 2017). The cautious approach of the AUEOMs may perhaps be explained by their narrow mandate to observe the electoral processes only and not any process by which term limits were changed, a restriction that does not apply to broader governance assessment mechanisms such as APRM or to the political organs of the AU.

Pressed by popular resistance to term limit alteration and frequent spill-overs into more profound constitutional and security crises, the political bodies of the AU are taking an increasingly pronounced role on term limits and surrounding processes of constitutional change. This has been most obvious in the practice of the PSC, as the main institution for developing a response in cases of unconstitutional changes of government. However, they are frequently still restrained by a necessary balancing act of what is legally possible and politically acceptable in terms of active engagement in term limits debates. For example, in Niger in 2009 preceding a controversial attempt to remove presidential term limits through a constitutional referendum, the President dissolved Parliament and the Constitutional Court which had contested the legality of this initiative. Although the PSC had endorsed the decisions from the Economic Community of West African States (ECOWAS) to impose sanctions including suspension because it considered the referendum in violation of the ECOWAS Supplementary Protocol on Democracy and Good Governance, the PSC did not actually impose sanctions (AU, 2009a). It was only when a military coup took place in 2010 that the PSC suspended Niger from all AU activities (AU, 2010b). The reason for this delayed response is likely because Niger had signed but not yet ratified the ACDEG, leaving the AU without the legal basis to impose sanctions under Article 23(5). However, the developments in Niger led the PSC to a more explicit position on term limits and in December 2009 it adopted the principles that “constitutions shall not be manipulated in order to hold on to power against the will of the people” and that “constitution-making or constitutional review processes shall not be driven by personal interests and efforts aimed at undermining popular aspirations” (AU, 2009b). In 2010, in its Declaration on Conflict Prevention, the AU Assembly of Heads of State and Government reminded member states of the need to “uphold the rule of law and to abide by their own Constitutions, especially with regard to constitutional reforms, bearing in mind that failure to respect these provisions could lead to situations of tension which, which in turn, could trigger political crisis” (AU, 2010a).

The commitment of the AU to these principles was tested in the case of Burkina Faso, a country that had ratified the ACDEG. The failed attempt by President Blaise Compaoré to

remove presidential term limits in 2014 prompted a popular uprising which led him to resign. In theory the PSC could have condemned both actions as unconstitutional: the attempt to change term limits could fall under ACDEG Article 23 as an attempt to revise the Constitution in a way that would infringe the principles of democratic change of government and the popular uprising could be read as an unconstitutional way of forcing out a democratically elected government. Although the AU did not explicitly label either action as an infringement of Article 23, it effectively condoned the popular uprising, thereby focussing more on broader democratic legitimacy concerns than on supporting the incumbent regime, a position that seems in line with its stance that constitutions should not be altered against the will of the people.⁵ But the AU did not directly and publicly confront the proposed term limits modification either (Witt, forthcoming). It was only when a military coup followed in context of leadership challenges within the transitional government that the PSC responded threatening suspension and targeted sanctions (AU, 2014c). As a result, it ended up addressing the effects of the political crisis in Burkina Faso but not its cause.

The PSC's response to the political crisis in Burundi in 2015 reflected even greater challenges as it failed to effectively enforce the AU's earlier position concerning changes to term limits. That case included a failed coup d'état and a humanitarian crisis, triggered by the decision of the incumbent president to run for a contentious third term. A military intervention to prevent grave abuses of human rights was proposed by the PSC but then abandoned by the Assembly of Heads of State and Government (AU, 2015b and 2016a). As the International Crisis Group commented, this decision "revealed a wide rift between member states and the AU Commission on how to address the crisis" (2016). Nevertheless, in this case the AU adopted a slightly more explicit position on the term limits issue than previously in Niger and Burkina Faso including, for example, an (unsuccessful) appeal by the AU Commission Chairperson to the president not to run for a third term (BBC, 2015a). After the Burundi Constitutional Court controversially decided that he could stand for another term (Vandeginste, 2016), the president presented himself as a candidate and won the elections. This was a great blow to the AU as it had emphasised constitutionality as its guiding policy and is likely to have anticipated a different ruling from the Court. Nevertheless, the AU did condemn the elections by, for example, deciding not to observe them because the necessary conditions for the organization of a free, fair, transparent and credible elections were not met (AU, 2015a).

The cases of Niger, Burkina Faso and Burundi make clear that any decisive AU action on term limits is still hindered by the ongoing lack of consensus in the AU. Moreover, once term limit changes are supported by domestic courts or a referendum, as for instance, in Burundi and Rwanda, the AU political bodies find intervention difficult to justify. Unlike the OAS, as we note below, these AU political actors typically show deference to domestic constitutional processes that have been validated by top domestic courts.

Clearly, the "principles of the democratic change of government" that the ACDEG seeks to protect are difficult to pin down. But it may be that yet another AU institution, the African Court on Human and Peoples' Rights, will facilitate this by elaborating on this provision on a case-by-case basis. The first hint of such a possibility was raised when a legal action was brought before the African Court in response to the initiative in Rwanda to launch a referendum on a constitutional amendment to allow President Kagame another term in office. The applicants alleged the violation of various rights, including the "freedom to participate in gov-

[5] This position is in line with ongoing debates within the AU on how to deal with popular uprisings against oppressive regimes, such as those in the Arab Spring (AU 2014b).

ernment” and a violation of the ACDEG provision “prohibiting amendments of constitutions to extend term limits for the presidency” (ACtHPR, 2017, par.8). They requested interim measures ordering President Kagame to respect term limits and to cancel the planned referendum. They also alleged that the campaign to amend the Constitution “has been conducted in a climate of fear” and that the question of the constitutionality of any amendments could not be dealt with by the Rwandan judicial system as the courts are not independent (ACtHPR, 2017, par. 34-35). The referendum took place before the case could be heard and so it was necessarily dismissed. Despite this, the fact that African citizens could turn towards a judicial regional body to address their concerns about undemocratic changes of term limits expands the range of AU responses to questions concerning term limits. Compared to political actors, the regional court may develop the necessary legitimacy to assess whether constitutional review processes are compliant with human rights and democratic standards enshrined in regional legal frameworks regardless whether they have been condoned by a domestic court.⁶

Overall, then, the AU still lacks the political support to effectively address cases of less dramatic “democratic backsliding”, such as the manipulation of term limits. Nevertheless, the general continental approach to presidential term limits has changed fundamentally since the 1990s. The AU itself is increasingly aware of the detrimental effects of changes to term limits for stability, peace and security. The continuous development of norms to improve the overall quality of governance of its member states reflects this as well as the softer approach of member states to the principles of sovereignty and non-interference. If this trend is combined with the AU’s concurrent initiatives to increase governance, democracy and human rights monitoring, as it transitions from *early warning* to *early action* within its conflict prevention agenda, we may see more robust continental engagement with term limits.

Sub-regional organisations in Africa dealing with presidential term limits

The AU is not the only African regional organisation promoting and protecting democratic governance on the continent. It shares this mandate with a number of sub-regional organisations, including ECOWAS, the Southern African Development Community (SADC) and the East African Community (EAC). While in hierarchical terms the AU stands above the sub-regional organisations, these organisations usually operate in tandem with the AU to deal with severe democratic challenges as seen in the case of Burundi (2015) where the EAC leads the thus far unsuccessful mediation mission. The question of presidential term limits has arisen in each of these sub-regional organisations. However, ECOWAS, which has been the most robust African actor in dealing with constitutional crises, stands out. It is distinguished by having only two member states without presidential term limits, Togo and The Gambia, and, in both, pressure to introduce term limits is growing. Broad support for term limits in the region and its experience in Burkina Faso seem to have promoted the ECOWAS Summit to propose a region-wide two-term limit in 2015. The proposal was defeated by the opposition of Gambia and Togo (BBC 2015b). Nonetheless, the Summit’s proposal was bold, and support for it (and anger at its failure) was expressed across the region and the continent, which means the issue could well return to the ECOWAS agenda in the coming years.

2.3. The Council of Europe and the Venice Commission

Although the European Union is the most sophisticated regional arrangement in

[6] Note, however, that as of 31 July 2018 only 30 out of 55 AU member states had ratified the Court’s Protocol and only eight states allow for direct access to the African Court on Human and Peoples’ Rights by individuals. These are Benin, Burkina Faso, Côte d’Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia.

the world, until recently it has seldom had to deal with matters of governance in large part because aspirant member states have had to establish that they can maintain certain standards of government, and particularly the rule of law (Tuori, 2016). Disputes about presidential term limits have not ever been on EU's domestic agenda and it seems unlikely that they will arise in the near future. However, they do confront the EU in its foreign relations. In this context the public approach of the EU has been cautiously legalistic rather than political. Although it has noted that “[i]n countries that have consistently respected term limits and allowed for change, societies have become more resilient and institutions more credible”, it has focused on respect for constitutions and constitutional process (Council of the European Union, 2015; Zamfir, 2016).

On the other hand, the Council of Europe, a much larger regional body established shortly after the end of World War II and which includes all EU members and another 19 members, does engage with matters of governance: its core mandate is to protect human rights, democracy and the rule of law in Europe. At the end of the Cold War, when the restored and new democracies in Eastern Europe sought integration in Europe and the countries of Western Europe sought to bring these countries into line with their democratic, rule of law and human rights practices, the Council established the European Commission for Democracy through Law, commonly known as the Venice Commission, as its main advisory body on constitutional matters. The Venice Commission has no decision-making powers, it cannot impose standards or expel members, but, as Volpe puts it, over the past 28 years, it has built an extraordinary ‘reputational authority’ (2016, p. 109) and is sometimes said to have crafted a European understanding of democracy.

Equally remarkable is the Venice Commission's global reputation. It has become rather active outside Europe, particularly in the former Soviet Republics and this work has included responses on proposals to change term limits as in reports on Azerbaijan, Belarus and the Kyrgyz Republic (Venice Commission, 2004, 2009, 2010). In those reports the Commission repeatedly raises concerns about the removal of term limits or their amendment to allow further or longer terms – or responds very positively to their introduction (Kyrgyz Republic, Venice Commission, 2010). In 2009 reporting on Azerbaijan, it describes the removal of term limits as a “very negative development in terms of democratic practice, given the context prevailing in Azerbaijan” (2009).

The wider influence of the Commission is clearly signified by a request to it in 2017 by the OAS for an opinion on presidential term limits and the OAS' subsequent use of the opinion. The request was probably triggered by a decision of the Bolivian Constitutional Court permitting President Evo Morales a fourth term under a constitution that, as originally drafted, permitted only two terms and the OAS specifically asked the Commission to include in its report an assessment of term limit change by constitutional interpretation as opposed to other (legal) means such as constitutional amendment. The Venice Commission report was released in early 2018. In addition to considering the compatibility of term limits with rights, the Commission used the opportunity provided by request for a report to state its general view on term limits. It says: “As a conclusion and 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 has clearly expressed its critical approach towards constitutional provisions allowing for more than one re-election of the head of state in presidential or semi-presidential systems” (2018, para 63).

On the issue of the role of courts in interpreting term limits in ways in which are per-

ceived as modification, the Venice Commission is also emphatic. The context in Bolivia, which was then the most recent example of term limit modification by judicial interpretation in South America, was that in 2014 the Bolivian Constitutional Court had ruled that Morales' first term under the old constitution did not count towards his two-term limit. Once Morales reached the end of that judicial reprieve, his supporters petitioned the Constitutional Court to overturn the constitutional term limit restriction, claiming that such a restriction violated Morales' right to participate in politics, as defined in the American Convention on Human Rights, of which Bolivia is a signatory. The right to political participation in the Convention allows limitations to the right to political participation in stipulated situations only, and term limits is not one of them (Vivanco & Pappier 2017). In November 2017, the Court issued a ruling that favoured the political rights in the Convention over the term limits in the Constitution, permitting Morales to run for a fourth term, barring further constitutional interpretation on the matter within the country (BBC Mundo, 2017). In its report the Commission firmly rejects the human rights arguments, finding among other things, that there is no human right to stand for re-election and that restrictions on re-election do not unreasonably limit the right of voters to choose their representatives – elections are intended to promote democracy and accountability, and term limits promote those goals.

Significantly, then, although a hallmark of the work of the Venice Commission is insistence on respect for the rule of law and constitutionalism, it has not restricted its assessment of proposals to change term limits to procedural and formal constitutional matters but has consistently located the issue in the broader context of the constraint and balance of powers and associated stability.

2.4. Organization of American States

The mandate of the Organization of American States defines a scope of activities intended to strengthen and promote peace, security, and representative democracy. Within this mandate, its activities range from electoral and rights monitoring (with associated research and media announcements) to direct negotiations with governments and heads of state regarding democratic instability and political reforms. As we sketch below and as in the case of the UN and AU, the OAS' engagement in cases of the breakdown in democratic institutions or violent conflict often occurs in a context where term limits have been weakened or removed, even if the term limit change is not itself the formal trigger for its action (Honduras and Nicaragua are examples). But the record of the OAS also reflects its specific concern surrounding the rather numerous examples in the region of changes to widely accepted understandings of specific term limit provisions via constitutional interpretation, as opposed to the prescribed constitutional amendment procedure. In these South American cases, as, for example, in Burundi, top courts declare term limits inapplicable (because the constitutionally identified terms had not been served) or invalid (usually because the term limit is said to infringe the allegedly superior rights to vote and stand for public office). In another parallel with the UN and AU, although the OAS leadership engages in public advocacy regarding term limits, it has not taken concrete action regarding the behaviour of members outside circumstances in which there is significant conflict or breakdown in the extant democratic institutions.

The first two purposes of the OAS, as listed in its charter, are “[t]o strengthen the peace and security of the continent” and “[t]o promote and consolidate representative democracy, with due respect for the principle of non-intervention” (Article 2). These purposes themselves suggest the ubiquitous tension facing international actors in relation to the question of

presidential term limits: while concerning from the perspective of representative democratic institutions, term limits are at some level a question for domestic constitutional or legislative processes and, as such, they are a domestic political question that may engage the principle of non-intervention. The principle of non-intervention is particularly important to the OAS in this context because courts (and usually top courts) have been more active in term-limit disputes in the region than elsewhere (Almagro, 2018). Nonetheless, despite this tension, the OAS' concern about weakening or removing presidential term limits has become increasingly apparent in recent years.

The stance of the OAS Secretary-General Almagro can be seen in a November 2017 speech at a university in Los Angeles, California: "In recent years we have witnessed no fewer than four countries in the region overturn constitutionally mandated term limits of the Executive through the judiciary, not by the ballot box" (Almagro, 2017). This public statement was preceded by the OAS' request to the Venice Commission for an opinion on democratic rights with respect to term limits generally (discussed above). Interestingly, the request for the Venice Commission report does not appear to have been intended merely to inform internal decision-makers at the OAS. After its release, Almagro relied on its "authority" in a more targeted form of advocacy. For example, he both tweeted and released an official statement declaring "Re-election is not a human right, and preventing re-election does not limit the rights of candidates or voters" (OAS, 2018c). The OAS also asserted that the Venice Commission report was not a "political opinion" and instead was a document with "full legal validity" (OAS, 2018c).

As we note above, the OAS request to the Venice Commission was probably prompted by events in Bolivia but, the OAS' subsequent, targeted intervention is unlikely to provoke the Bolivian Constitutional Court to revisit its interpretation of the term limit provision in the Bolivian Constitution. However, the Venice Commission report and the position taken by the OAS may have preventive value, reducing the likelihood that similar arguments will be pursued in other courts in the region and, more broadly, making populist arguments based on democracy less credible. Whether or not the Venice Commission intended its report to serve as a document argued to have "full legal validity", the OAS interpretation had considerable purchase in media reports surrounding its release as two news headlines show: "According to the OAS, presidential re-election is not a human right" (Bolivia Prensa, 2018); "Venice Commission indicates that presidential re-election is not a human right" (UrgenteBo, 2018).⁷

However, such advocacy on the part of the OAS on term limits themselves is still comparatively rare. In contrast, the OAS has had a notable presence in political contexts that have been greatly influenced by presidential term limit removals, as the cases of Honduras and Nicaragua show. A coup in 2009 led to the suspension of Honduras from the OAS, but a 2015 ruling of the Constitutional Chamber of the Honduras Supreme Court that presidential term limits were unconstitutional did not provoke any documented response from the OAS. Interestingly, the 2009 coup was precipitated by then-President Zelaya polling Hondurans about calling a Constituent Assembly, a move widely viewed as intended to remove the stringent term limits Zelaya was then facing (Achtenberg 2018).

In Nicaragua, the trigger for material OAS intervention was suspected rights infringements, with documented cases of violence. President Daniel Ortega served as president from 1985-1990 and has now been in power continuously since 2006. After his 2006 election, he faced two barriers to further re-election. First, the Constitution stated that no president could

[7] Title translations ours.

serve consecutive terms. Before the 2011 elections, a friendly Supreme Court decision allowed him to run again, on the grounds that the ban on consecutive re-election violated his right to equal treatment before the law (Economist 2011). Second, following success in the 2011 election, Ortega once again faced a bar to re-election, now due to a numerical limitation on the number of terms in total anyone could serve as president. This time he successfully orchestrated a constitutional amendment through the legislature that removed the final constitutional bar to indefinite re-election (Al-Jazeera 2014).

Despite entreaties from opposition figures and in the press that the OAS engage with the democratic decline in Nicaragua (Partlow, 2016; Rogers, 2017; Stuenkel & Feldman, 2017), it was not until 2018, with growing violent protests against the government and increased reports of repressive responses by the Ortega regime, that the Organization began to engage directly and openly with the nation. In April 2018, OAS Secretary General went to Nicaragua for a set of closed-door meetings with President Ortega to set the stage for negotiations regarding electoral reforms that the OAS had proposed in a private report in 2017 (Rogers, 2017), but the announcement that the government would enter the reform negotiations (Telesur, 2018b) did not quell unrest in the country. As the violence intensified, the OAS released a number of general statements of increasing concern about the situation (OAS, 2018b; OAS, 2018d; OAS, 2018e) and, in June 2018, the Inter-American Commission for Human Rights (IACHR), a commission of the OAS, submitted a report to the OAS' Permanent Council detailing the mounting abuses perpetrated against protesters by government actors there (IACHR, 2018). The OAS responded promptly, calling among other things for a mutually agreed upon timeline for elections (OAS, 2018a). All sides see this as necessarily involving early elections, a proposal that the Ortega administration has firmly rejected (Telesur, 2018a) and, since then, in a clear reaction to OAS involvement, the Ortega regime has emphasized the importance of national sovereignty (Telesur 2018c).

As these examples show, like many regional and international organizations, the OAS is present in a variety of nations for a number of reasons emanating from its broad mandate in support of democratic governance. Thus, disentangling activity on presidential term limits from broader activity in a political context greatly defined by a term limit debate or extension, is difficult. Nonetheless, like the AU, it has not usually been pro-active as term limits are dismantled. Nonetheless, it has increasingly expressed public opposition to weakening or removing presidential term limits when such a change occurs via judicial decision. In contrast, in places where term limit changes occur through a process of valid constitutional amendment, the OAS may be less likely to predicate its direct involvement on term limits changes alone, but the concentration of executive power and rights deprivations that such changes can signal can be sufficient to justify formal OAS intervention within the broader auspices of its mandate that permit support to representative democratic institutions.

2.5. International IDEA

As we note in the introduction to this chapter, within the large family of IGOs, we loosely distinguish between those that play a direct role in international government at either the global or regional level and those that have a softer role, concerned more with exerting influence and providing support to both their members and other countries but without the ability to bind member states to any particular ways of behaviour. Many of those in the latter group that are engaged in matters concerning good governance and democracy are relatively outspoken in executive term limit debates. Thus, for example, the Organization for Economic Co-operation

and Development (OECD), Francophonie and International IDEA, among many others, have spoken out about presidential term limit changes.

Here we focus on IDEA or, in full, the International Institute for Democracy and Electoral Assistance, because it is among the most active international organizations providing technical and substantive assistance to constitutional, electoral and other democratic processes. Formally, IDEA is an IGO, as it is an organisation made up of member states. However, like other ‘softer’ IGOs and many INGOs, it seeks to achieve its goals through influence and its interactions around the globe are very different from IGOs involved in international governance, like the UN, AU and OAS. The relative freedom IDEA has in its activities and possibly the nature of its membership – 32 countries strongly committed to democratic principles – has meant that it has a far more clearly defined and normative stance on term limits than other IGOs.

IDEA’s 2018-2022 Strategy sets out its mission: “International IDEA advances democracy worldwide, as a universal human aspiration and an enabler of sustainable development, through support to the building, strengthening and safeguarding of democratic political institutions and processes at all levels” (IDEA 2018, 9). In implementing its mission, IDEA is concerned, among other things, with ‘current threats to democracy’ (IDEA 2018, 9) and, for IDEA, this guides its attitude to presidential term limits: the Strategy expressly lists term limit extensions as an example of democratic ‘backsliding’, one of the major challenges to democracy it identifies for the coming four years (International IDEA 2018, 11).

IDEA’s activities over the past decade or so already reflect its understanding of term limits as important constitutional restraints on the abuse of executive power. Particularly through research and analysis, reports and public statements, it has shown deep concern over, if not often outright condemnation of, the weakening or removal of presidential term limits in nations around the world.

The idea of ‘backsliding,’ referred to in IDEA’s 2018-2022 Strategy, is given much more detailed treatment in a chapter on threats to constitutional democracy from within in a general report intended to identify the aspects of constitution-building that best facilitate improvements in the rule of law: “Presidential term limits are often the first casualty of authoritarian backsliding, and in many jurisdictions have been extended or abolished entirely through constitutional amendments” (Choudhry and Bisarya, 2014, 190).⁸ An earlier, more general guide, IDEA’s “A Practical Guide to Constitution-Building” notes presidential term limits as among three institutional options that have emerged to “de-concentrate executive power” but does not go so far as to make explicit normative arguments as to the desirability of the institution in all contexts. Nonetheless, the general stance provided by IDEA in the Guide is quite favourable: “Although term limits, on the surface, restrict the full democratic choice of the people as to whom they want to have in office, they are one of the most important devices that support democratic transformation and strength in electoral authoritarian regimes or infant democracies.” (Böckenförde, Hedlin and Wahiu, 2011, 166).

Other more recent IDEA reports also provide extensive treatment of term limits. In the *Global State of Democracy*, a 2017 report exploring the resilience of democracy, IDEA both discusses term limit extensions in specific contexts and again identifies extended or indefinite re-election as a troubling example of democratic backsliding (IDEA 2017). A 2018 region-specific

[8] Interestingly, this chapter serves to clarify the ideal role of regional organizations such as the African Union and the Organization of American States with respect to presidential term limit extensions, among other types of “authoritarian backsliding”. IDEA’s 2016 report on the role of regional organizations in protecting constitutionalism also references presidential term limits throughout (Wiebusch, 2016, 8; 23; 39; 46-48).

analysis, “Constitution-building Processes in Latin America,” emphasizes a number of reasons incumbents have an electoral advantage: “the greater resources and skills of incumbents as opposed to challengers, and the risk aversion of voters” (Negretto and Couso, 2018, 24). Similarly, the three most recent years of the organization’s annual review of constitution-building processes all note proposed and realized term limits changes, often with detailed discussion of the problematic context in which these changes were occurring (Abebe et al, 2017; Bisarya et al, 2016; Allen et al, 2015). IDEA’s 2016 report on the role of regional organizations in protecting constitutionalism, is just one example of its engagement with those IGOs directly involved in international governance and the report references presidential term limits throughout (Wiebusch, 2016, 8; 23; 39; 46-48).

These rather detailed reports are primarily intended for an audience of specialized practitioners and scholars. However, much of IDEA’s work is very much more practical involving both international advocacy and direct support for building democracy in the field. For example, addressing a much broader audience, the Secretary-General of IDEA (and past Prime Minister of Belgium), Yves Leterme, published an editorial in a Swedish newspaper summarizing the highlights of the “Global State of Democracy Report” and, again using the term ‘backsliding’, describing term limit extensions or removals as part of recent pattern of attempts to dismantle democracy from within (Leterme and Eliasson, 2017b).⁹ Leterme’s public stance is mirrored by other senior members of IDEA. For example, a board member has publicly critiqued indefinite re-election as a “deformation of democracy” (Bitar, 2017) and the Director for Latin America & the Caribbean regularly provides regional political analysis treating proposed and actual term limit extensions as problematic (Zovatto, 2014, 2016, 2017).

In regional and national events IDEA regularly provides opportunities for (often critical) discussion of PTLs as its summary report of a 2016 meeting in Abuja, Nigeria, shows. (International IDEA 2016, 5; 10; 22-25). Similar context-specific analysis of term limits also appears in the informational sources that IDEA supports, like ConstitutionNet (Lamoussa, 2018; Landau, 2015). As we suggest above, IDEA has one of the most defined and normative stances on term limits among international organizations, likely due in part to its composition of states that support democratic governance, its comparatively narrow mandate focused on rule of law and democratic processes, and to the fact that, unlike the UN, AU and OAS for example, it does not make decisions that bind states. But, its ‘soft’ role as an organisation that provides international assistance to democracy, also means that it is even more difficult to assess its influence than it is in relation to the political IGOs. Certainly, it has engaged with many countries that are confronted with disputes concerning term limits. It has shown an ability to garner the trust of a range of actors, sometimes including politicians, through its ability to provide open forums for discussion. Also, like most of the organizations we discuss in this chapter, it frequently forms local partnerships, with domestic NGOs for its in-country work. Work with local partners immediately increases the capacity of those institutions and IDEA’s influence may be felt indirectly in this way. Moreover, IDEA has observer status at the UN, and its materials on design of constitutional and democratic institutions are widely used in the numerous areas in which the United Nations and its various agencies are engaged suggesting that its influence is likely broader than the formal record we document here.

[9] An English translation of the editorial is also provided on IDEA’s website (Leterme and Eliasson 2017a).

3. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

A growing number of INGOs focus on building democracy and good governance internationally. Both when concerned specifically with constitutional design and when working more broadly on good governance, political stability and development, many of these organisations have engaged with the question of presidential term limits and, generally speaking, they are more emphatic in voicing their concern with the manipulation of term limits than those IGOs directly engaged in international governance like the UN, AU and OAS. Of course, as with governmental organizations, the organizations that we classify as INGOs for the purposes of this chapter vary hugely in their structures, the work they do and, importantly, their relationships to governments. Following the UN definition referred to above, they are not-for-profit organisations and they do not answer directly to any government. Many INGOs are independent and non-partisan (like the Annan Foundation, and Democracy Reporting International). Nonetheless, like the German political foundations and the American-based National Democratic Institute (NDI), International Republican Institute and Carter Center in America, they may be more or less closely linked to a particular political programme. Moreover, many receive government funding for at least part of their work or specific projects; some, like the German Berghof Foundation, receive considerable funding from the governments of the country in which they are established; and, perhaps exceptionally at the extreme end of the continuum, the United States Institute of Peace (USIP) that is run independently but established by statute in the United States, is legally restricted to receiving funding from the United States government only. These (varying) features of INGOs influence the work that they do and the response of different actors in the countries in which they operate. Like domestic NGOs, their need to attract and satisfy funders frames the positions that they take to some extent. In addition, and again like many domestic NGOs, INGOs must pay attention to their relationship with their host governments. Nonetheless, as the examples of the Carter Center, DRI and the Annan Foundation below show, many have been emphatic in their response to situations that they perceive to involve a manipulation of term limits contrary to fair democratic practices.

The record of the Carter Center and DRI provide characteristic examples of INGOs engagement with presidential term limits over the past two decades. Both have worked extensively in countries where presidential term limits were introduced relatively recently and then subject to challenge and both have repeatedly emphasised the importance of rotation of power and term limits, particularly in emerging democracies. Thus, the Carter Center raised persistent concerns in Peru in the early 2000s about what it described as “an orchestration aimed to ensure a specific legal outcome on the issues of the President standing for re-election – irrespective of the merits of the legal arguments”. It concluded that “[t]hese steps over an extended period damaged the credibility of the political process, undermined public confidence and guaranteed heightened controversy in the elections” (Carter Center, 2000). In South Sudan, where term limits were removed from the transitional constitution, the Carter Center repeatedly asserted that term limits are recognised best practice (see for example Carter Center, 2012). In both contexts and others, the Center builds its advocacy for executive term limits on their contribution to stable political arrangements. DRI’s approach is similar but it has also asserted the importance of term limits more generally. So, in a 2012 publication on avoiding antidemocratic consolidation of power, presidential term limits are the very first safeguard it proposed to check executive power (Democracy Reporting International, 2012). Similarly, in a thoughtful briefing paper on elections, the influential Annan Foundation is emphatic:

“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” (Halff, 2016).

The West African Civil Society Forum (WACSOF) provides a further perspective on the possible role of INGOs. As its name suggests, it is a regional body composed of civil society organisations (CSOs), however, its activities are not directed to the countries in the region but to ECOWAS. Its aim is “to provide a CSO compliment for ECOWAS’ efforts towards deepening regional integration and fostering stability and development in West Africa” (West Africa Civil Society Forum). It has worked to coordinate the approach of civil society in West Africa on term limits and was particularly active in 2015 when the ECOWAS proposal to require members states to adopt term limits was on the table in efforts “to convince ECOWAS member States to consider and adopt a common provision on this issue” (West Africa Civil Society Institute, 2015). Its large 2015 meeting on term limits was funded by the Open Society Initiative for West Africa, providing an example of a relatively common practice: an INGO with a base in the global north operating through funding arrangements with NGOs in the global South.

Most importantly in the context of this chapter, WACSOF highlights another role of INGOs and certain IGOs: Their contribution to bringing citizens and governments to a gradual acceptance of new norms. WACSOF does this by providing a forum that facilitates CSO support for policies that may become regional norms; other IGOs and INGOs, like IDEA and DRI, provide analysis and research that strengthens arguments for firmer, more principled positions; some INGOs, like the Carter Center, put a considerable amount of energy into responding in specific cases. Although, as we note above, first reactions to attempts to change term limits are virtually always domestic, as citizens grouped in many different ways respond to what they perceive as threats to democracy, these international organizations, often working with domestic NGOs, can add credibility to arguments against term limit changes.

4- CONCLUSION

The review in this chapter of international actors’ responses to the question of presidential term limits suggests an increasing international consensus that, in democracies with a history of authoritarianism and weak democratic institutions, presidential term limits can play an important role in strengthening democratic processes and reducing the likelihood of conflict. Importantly, the converging international position on term limits reflected in the organizational case studies in this chapter can be traced through many other international organizations as well. Importantly too, justifications for raising concerns about the removal of term limits are gradually moving from the safer space of demanding that constitutionally established processes be used to more outspoken condemnation of proposals to remove or weaken term limits based on a recognition of the dangers of prolonged incumbency and its links to democratic backsliding. The softening of states’ stance on sovereignty and non-intervention has clearly played a role in this development; even in the UN, AU and OAS, whose members are highly sensitive to any suggestions that their system of government could be judged, term limit matters are now regularly found on the agenda. Of course, as the case studies in this chapter show starkly, developing policy does not translate directly into changed behaviour. However, even here the past decades have seen change and, if progress is made on the broader agenda of democratic consolidation, constitutionalism and development, respect for term limits may be secured as well.

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ABOUT THE AUTHORS

Christina Murray is a Senior Adviser on the Standby Team of Mediation Advisers in the United Nations Department of Political Affairs, and Emeritus Professor of Human Rights and Constitutional Law at the University of Cape Town. In 1994 she was elected to the panel of seven experts that advised the South African Constitutional Assembly. Since then she has combined academic and practical work on matters relating to constitutionalism, the rule of law, and democratic institutions. She was a member of the commission that prepared the current Kenyan constitution and the 2012 Fiji Constitution Commission and more recently has worked in Yemen, Zimbabwe, Sudan, Libya, and Somalia among other places. Her recent research focuses on constitution-making processes and political settlements, and constitutional design.

Eric Alston is a Scholar in Residence in the Finance Division and the Faculty Director of the Hernando de Soto Capital Markets Program in the Leeds School of Business at the University of Colorado Boulder. He also serves as a Research Associate with the Comparative Constitutions Project. Alston's research and teaching is centered in the fields of law and economics and institutional and organizational analysis, which he applies to research questions in the development of rights along frontiers, the design and implementation of constitutions, and questions of legal/institutional transitions more generally. His outreach and service activities include educational materials, instructional workshops, and comparative expertise to constitutional drafting processes and peace negotiations worldwide, working with organizations like International IDEA and the International Development Law Organization.

Micha Wiebusch is a researcher at the Institute of Development Policy (IOB) of the University of Antwerp and at the Law Department of the School of Oriental and African Studies (SOAS), University of London. He is also an associate research fellow at the United Nations University Institute on Comparative Regional Integration Studies (UNU-CRIS) in Bruges. His research considers the norms and practices of the African Union on promoting and protecting democracy, human rights and constitutionalism in Africa. He has worked at the African Union Commission in the Department of Legal Affairs and as a constitutional expert for African Union Election Observation Missions.



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University of Antwerp