



Eroding presidential term limits through unconstitutional constitutional amendments in Africa: A comparative legal analysis of selected African jurisdictions

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ABSTRACT

In several African states, constitutional amendments have been used to erode presidential term limits, facilitating democratic backsliding under the guise of legality. Although these amendments may conform to formal constitutional procedures, they often undermine foundational democratic principles and the spirit of constitutionalism. This article examined how incumbents strategically manipulate constitutional amendment processes to abolish or extend term limits, thereby consolidating personal rule. It assessed the utility of the doctrine of unconstitutional constitutional amendments, particularly the Basic Structure Doctrine, as a judicial mechanism to resist such anti-democratic manoeuvres. Drawing on a comparative analysis of selected African jurisdictions, including Uganda, Rwanda, Benin, Kenya, and the Central African Republic, the study evaluated the varying judicial responses to term limit circumvention. The findings reveal contrasting judicial approaches. While courts in Benin and the Central African Republic have invoked foundational constitutional values to invalidate such amendments, others have exercised restraint or deferred to executive authority. The article advocates for the formal recognition of the Basic Structure Doctrine within African constitutional frameworks, the entrenchment of presidential term limits, and the enhancement of judicial independence. It further calls for civic education and the cultivation of political norms that support leadership alternation. By offering doctrinal and policy-based insights, the article contributes to the discourse on constitutional resilience and judicial protection of democracy in Africa.

Keywords: Presidential Term Limits, Constitutional Amendments, Judicial Review, Basic Structure Doctrine.

INTRODUCTION

In recent decades, many African leaders have leveraged formal constitutional procedures to extend their hold on power, subverting the democratic presidential limits meant to check their rule. This phenomenon, often termed a “constitutional coup,” occurs when incumbents obey the letter of the law by amending the constitution through prescribed procedures but violate its spirit, producing anti-democratic outcomes.¹ A prime target of such manoeuvrers has been the presidential term limit, widely

¹ David Landau, “Abusive Constitutionalism,” *UCDL Rev.* 47 (2013): 189.

regarded as a cornerstone of modern democracy and a safeguard against indefinite personal rule.² Term limits were adopted across Africa in the 1990s as a democratic guardrail, intended to ensure leadership rotation and prevent the entrenchment of power.³ However, enforcing these limits has proven difficult. Presidents have pushed through amendments to abolish or weaken term limits, enabling themselves to remain in office beyond the initially mandated maximum.⁴

Comparative research reveals that nearly one-third of presidents who reached a term limit since the 1990s have attempted to undermine or evade that limit, through complete abolition or term extensions.⁵ Although some of these attempts succeed, often in political systems with weak opposition or subdued civil society, many others face resistance from legislatures, publics, or judicial courts and ultimately fail.⁶ The divergent outcomes suggest that constitutional design and the broader political context, such as the competitiveness of elections and the strength of institutions, determine whether a would-be “president-for-life” would be able to remove dismantle term limits or is compelled to respect them. In response to this trend, constitutional scholars have increasingly considered the doctrine of unconstitutional constitutional amendments, also known as the Basic Structure Doctrine, a potential bulwark of democracy.⁷ This judicial doctrine holds that even a procedurally proper constitutional amendment may be invalidated by the courts if it fatally undermines fundamental principles of the Constitution, such as democracy, the separation of powers, or term limits themselves.⁸

This paper examines the erosion of presidential term limits in Africa and evaluates how the Basic Structure Doctrine can countermeasure such democratic erosions. Part I provides a concise overview of the problem of constitutional coups and democratic backsliding, focusing on the role of executive term limits and their evasion. Part II synthesises relevant literature on presidential term limits, highlighting why term limits are vital to constitutional democracy and how their removal undermines democratic norms. Part III analyses the Basic Structure Doctrine, tracing its origins and rationale in comparative constitutional law and discussing key case law that illustrates its effectiveness in curbing the erosion of executive term limits. Part IV offers a comparative analysis of select African countries where term limits have been eroded. It demonstrates incumbents' various legal and extra-legal strategies to extend their tenures. Part V then examines how courts in Africa and beyond have applied the Basic Structure Doctrine to resist term-limit erosion, including an assessment of notable judicial decisions from countries such as Benin, Uganda, the Central African Republic, and Kenya. The paper concludes with policy and legal recommendations for entrenching executive term limits and empowering institutions, particularly courts, to guard against anti-democratic constitutional changes.⁹

METHODOLOGY

This paper adopted a qualitative doctrinal and comparative constitutional methodology. The doctrinal approach formed the foundation of the study and involved the systematic examination and interpretation of constitutional provisions, judicial decisions, constitutional amendment procedures, and relevant legislative and scholarly materials relating to presidential term limits and constitutional change. This methodology is particularly appropriate because the study is primarily concerned with legal doctrine, constitutional interpretation, and judicial reasoning, rather than empirical or quantitative analysis. The

² Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford university press, 2017).

³ Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*.

⁴ Micha Wiebusch and Christina Murray, “Presidential Term Limits and the African Union,” *Journal of African Law* 63, no. S1 (2019): 131–60.

⁵ Clement E. Vose, *Constitutional Change: Amendment Politics and Supreme Court Litigation Since 1900* (Lexington, MA: Lexington Books, 1972).

⁶ Mark E Brandon, “The ‘Original’ Thirteenth Amendment and the Limits to Formal Constitutional Change,” *Responding to Imperfection: The Theory and Practice of Constitutional Amendment* (Princeton University Press, 1995).

⁷ Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* (Oxford: Oxford University Press, 2019).

⁸ Michael Bratton and Nicolas Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective* (Cambridge University Press, 1997).

⁹ José Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (Cambridge University Press, 2007).

doctrinal method also enabled a critical evaluation of how constitutional norms and principles are interpreted, contested, and enforced within different constitutional systems.

To complement the doctrinal analysis, the paper employed a comparative constitutional methodology to examine similarities and divergences in the regulation and enforcement of presidential term limits across selected African jurisdictions. Comparative analysis facilitated the identification of broader regional patterns of constitutional manipulation, democratic backsliding, and judicial resistance, while simultaneously highlighting the distinctive constitutional and political contexts within which these developments occur.

The selection of jurisdictions was purposive and informed by legal and political considerations. The jurisdictions selected for analysis, namely Uganda, Rwanda, Benin, Kenya, and the Central African Republic, were chosen because their constitutional frameworks and judicial experiences reflect different approaches to presidential term limits, constitutional amendment procedures, and the protection of democratic constitutionalism within Africa's evolving constitutional landscape. The study intentionally includes jurisdictions that illustrate both successful and resisted attempts at erosion of executive term limits, allowing a balanced and analytically robust comparative assessment.

Uganda and Rwanda were selected on the basis that their constitutions were amended in ways that allowed incumbent presidents to extend or consolidate executive tenure through formally lawful constitutional processes. These jurisdictions demonstrate how constitutional amendment procedures may be strategically used to facilitate democratic backsliding while preserving the appearance of constitutional legality. By contrast, Benin represents one of the strongest African examples of judicial resistance to presidential term-limit manipulation. The Beninese Constitutional Court has consistently interpreted constitutional democracy and presidential term limits as forming part of the Constitution's foundational structure, thereby providing an important example of substantive constitutional review and judicial protection of democratic governance.

Kenya was included because of its evolving constitutional jurisprudence concerning the limits of constitutional amendment power, particularly in the Building Bridges Initiative (BBI) litigation, which generated significant debate regarding the applicability of the Basic Structure Doctrine and the extent to which certain constitutional principles may be regarded as implicitly unamendable. The Central African Republic was selected because its Constitution expressly entrenches presidential term limits as unamendable, thereby providing an important constitutional contrast to jurisdictions in which term limits remain formally amendable. The Constitutional Court's enforcement of these entrenched provisions further offers valuable insight into the role of constitutional courts in safeguarding democratic constitutionalism against executive overreach.

Collectively, these jurisdictions provide significant variation in constitutional design, amendment procedures, judicial assertiveness, and political context. This variation enables the paper to critically assess the effectiveness of constitutional safeguards and to evaluate the potential role of the doctrine of unconstitutional constitutional amendments in protecting democratic constitutionalism in diverse African constitutional systems.

DISCUSSION

Constitutional Coups and Democratic Backsliding: The Significance of Presidential Term Limits

Presidential term limits are fundamental to contemporary constitutional democracy, especially in Africa's relatively young democratic systems.¹⁰ By capping the number of years or executive terms a president may serve, term limits seek to prevent power monopolisation and promote regular leadership rotation.¹¹ They help level the political playing field by mitigating incumbency advantages and encouraging the emergence of new leaders and opposition alternatives.¹² As such, many scholars

¹⁰ Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of Basic Structure Doctrine*, 1st ed. (New Delhi: Oxford University Press, 2010).

¹¹ András Sajó and Renáta Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism* (Oxford University Press, 2017).

¹² Kurt A. Raaflaub and Robert Wallace, *Origins of Democracy in Ancient Greece* (Berkeley, Los Angeles, and London: University of California Press, 2007).

consider term limits a guard against personalist rule and a mechanism to foster accountability, good governance, and respect for the rule of law.¹³ During the wave of democratisation that swept Africa in the 1990s, most new or revised constitutions incorporated two-term limits for the head of state, often as a response to decades of “President-for-Life” regimes in the post-colonial era.¹⁴ Where observed, these term limits have enabled peaceful power transfers; for example, they have enabled opposition victories in some cases and the voluntary exit of long-serving presidents, thereby reinforcing democratic norms.¹⁵

The mere existence of term limit provisions on paper has not guaranteed their compliance in practice.¹⁶ In many African states, enforcing term limits has proven daunting. Incumbent presidents, especially those with dominant-party support and in states with weak institutional checks and balances, often resist stepping down when their terms of office lapse.¹⁷ The lure of continued power and fears of losing immunity or influence tempt leaders to seek ways around the restriction.¹⁸ As a result, the continent has witnessed numerous attempts to circumvent or eliminate presidential term limits.¹⁹ In some instances, leaders argue that stability and development require their continued leadership; in others, they claim unique personal legitimacy or exploit ambiguities in the law to reset the clock on their tenure.²⁰ Regardless of justification, the pattern is clear: term limits are fragile when confronted by incumbents determined to extend their rule.

Patterns of Term Limit Erosion in Africa

The erosion of executive term limits in Africa manifests itself through various legal and political manoeuvres. A common strategy is constitutional amendments. Presidents marshal their party's supermajority in parliament, often two-thirds, as many constitutions require, to pass an amendment eroding or loosening the term-limit clause.²¹ These amendments maintain a facade of legality and procedural regularity, yet they fundamentally alter the constitution's democratic character by removing a key restraint on executive power.²² In other cases, leaders have engineered referenda to approve term-limit changes, sometimes amid heavy state propaganda or the repression of dissent, to claim a direct popular mandate for their continued rule.²³ Even without formal constitutional change, some presidents have exploited technicalities to secure a “third term” while nominally complying with the law, for example, by arguing that their first term under a new constitution did not count toward the two-term limit, as seen in Namibia and Burundi.²⁴ Such interpretations, often backed by compliant courts or negotiated settlements, effectively grant an extra term beyond the text's original intent.²⁵

By late 2010, more than a dozen African heads of state had successfully removed or modified term limits.²⁶ Notorious examples include President Yoweri Museveni of Uganda, who in 2005 pushed through the elimination of Uganda's two-term limit and later scrapped a presidential age limit, enabling him to remain in power since 1986.²⁷ President Paul Biya secured a 2008 constitutional amendment

¹³ Becky Cain, “Term Limits: Not the Answer to What Ails Politics,” in *The Politics and Law of Term Limits*, ed. Edward H. Crane and Roger Pilon (Washington, DC: Cato Institute, 1994), 59–66.

¹⁴ Charles Manga Fombad and Christina Murray, *Fostering Constitutionalism in Africa* (PULP, 2010).

¹⁵ Fombad and Murray, *Fostering Constitutionalism in Africa*.

¹⁶ Daniel N Posner and Daniel J Young, “The Institutionalization of Political Power in Africa,” *Journal of Democracy* 18, no. 3 (2007): 126–40.

¹⁷ Fombad and Murray, *Fostering Constitutionalism in Africa*.

¹⁸ Tom Ginsburg, James Melton, and Zachary Elkins, “On the Evasion of Executive Term Limits,” *Wm. & Mary L. Rev.* 52 (2010): 1807.

¹⁹ Daniel Vencovsky, “Presidential Term Limits in Africa,” *Conflict Trends* 2007, no. 2 (2007): 15–21.

²⁰ Saoyo Tabitha Griffith, *Prospects and Challenges of Enforcing Presidential Term Limits in Africa through Regional Instruments* (University of Pretoria (South Africa), 2012).

²¹ Landau, “Abusive Constitutionalism.”

²² Gábor Halmai, “Unconstitutional Constitutional Amendments: Constitutional Courts as Guardians of the Constitution?,” 2012.

²³ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

²⁴ Oita Etyang and Tengetile Tezzy Nhlengethwa, “The Attrition of Democratic Gains in Africa: An Appraisal,” *Journal of Language, Technology and Entrepreneurship in Africa* 8, no. 1 (2017): 48–69.

²⁵ Ginsburg, Melton, and Elkins, “On the Evasion of Executive Term Limits.”

²⁶ Boniface M. Dulani, “Personal Rule and Presidential Term Limits in Africa” (Michigan State University, 2011).

²⁷ Charlotte Heyl and Mariana Llanos, “Presidential Term Limits in Africa and Latin America: Contested but Resilient,” *GIGA Focus Global* 2 (2020).

abolishing term limits in Cameroon, entrenching his decades-long rule.²⁸ Chad's Idriss Déby (2005) and Djibouti's Ismail Omar Guelleh (2010) similarly amended their constitutions to remove presidential term caps.²⁹ In Algeria, a 2008 amendment under President Abdelaziz Bouteflika lifted the two-term limit, allowing him to run for a third term.³⁰ Rwanda's President Paul Kagame orchestrated a 2015 constitutional change approved by referendum that reset his term count and extended term lengths, potentially permitting him to stay in office until 2034.³¹ Even in countries with rigid constitutions, political will has found a way: Rwanda's 2003 Constitution required a referendum for any amendment on presidential terms and ostensibly entrenched this procedure, yet Paul Kagame's government complied with those formalities and removed the limit with overwhelming legislative and public support.³² These cases illustrate how overwhelming ruling-party majorities and patronage networks can be deployed to achieve constitutional changes that concentrate power in the incumbent's hands.³³

Not every attempt to evade term limits succeeds on the African continent. Some presidents have been thwarted by institutional checks or widespread backlash. In Nigeria, for example, an attempted constitutional amendment in 2006 to allow President Olusegun Obasanjo a third term was defeated in the Senate after public outcry and opposition from the ruling party.³⁴ Similar bids to revise term limits in Malawi (2002) and Zambia (2001) fell short of the needed parliamentary supermajority amid civil society resistance and intra-party splits.³⁵ Burkina Faso's long-ruling president, Blaise Compaoré, tried in 2014 to amend the constitution to extend his 27-year rule. However, massive civil protests forced him to resign and kept the two-term limit intact.³⁶ These instances of failed "third term" bids underscore those robust democratic forces, such as public protest, a free press, vigilant opposition, and occasionally dissent within the regime, that can halt a constitutional coup in its tracks.³⁷

The Doctrine of Unconstitutional Constitutional Amendments: Origins and Rationale

The Basic Structure Doctrine posits that the power of constitutional amendment is not absolute.³⁸ Even where a constitution's text does not explicitly shield any provision from constitutional amendments, there are implicit substantive limits on amendments derived from the constitution's basic principles and overarching design.³⁹ In other words, an amendment that emasculates the fundamental "identity" or core values of the Constitution can be deemed invalid, even if it was passed in compliance with all formal procedures.⁴⁰ This doctrine is often referred to as the Basic Structure Doctrine, originating in the Supreme Court of India's famous 1973 decision in *Kesavananda Bharati v. State of Kerala*.⁴¹ In that case, facing a series of constitutional amendments that curtailed fundamental rights and judicial review, the Indian Supreme Court pronounced that Parliament's amending power did not extend to destroying or altering the "Basic Structure" of the Constitution.⁴² The ruling established that certain foundational principles, such as the supremacy of the Constitution, republican democracy, secularism, and separation of powers, are so central that no amendment can abrogate them without, in effect, replacing the Constitution entirely.⁴³

²⁸ Dulani, "Personal Rule and Presidential Term Limits in Africa."

²⁹ Heyl and Llanos, "Presidential Term Limits in Africa and Latin America: Contested but Resilient."

³⁰ Leslie Parry, Samal Tauyekel, and P. Tress, "Presidential Term Limits in Africa," *Comparative Politics and Development* 8 8 (2021).

³¹ Parry, Tauyekel, and Tress, "Presidential Term Limits in Africa."

³² Anja Osei, Hervé Akinocho, and Stephen Mwombela, "Presidential Term Limits and Regime Types: When Do Leaders Respect Constitutional Norms?," *Africa Spectrum* 55, no. 3 (2020): 251–71.

³³ Heyl and Llanos, "Presidential Term Limits in Africa and Latin America: Contested but Resilient."

³⁴ Alex Altman, "A Brief History of Term Limits," *Time*, October 3, 2008, <http://content.time.com/time/nation/article/0,8599,1846988,00.html>.

³⁵ Heyl and Llanos, "Presidential Term Limits in Africa and Latin America: Contested but Resilient."

³⁶ Filip Reyntjens, "A New Look at the Evidence," *Journal of Democracy* 27, no. 3 (2016): 63.

³⁷ Reyntjens, "A New Look at the Evidence." 63.

³⁸ Cain, "Term Limits: Not the Answer to What Ails Politics."

³⁹ Raaflaub and Wallace, *Origins of Democracy in Ancient Greece*.

⁴⁰ Bratton and Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*.

⁴¹ *Kesavananda Bharati v. State of Kerala*, 4 SCC 225 (Supreme Court of India, 1973).

⁴² *Kesavananda Bharati v. State of Kerala*, 4 SCC 225 (Supreme Court of India, 1973).

⁴³ *Kesavananda Bharati v. State of Kerala*, 4 SCC 225 (Supreme Court of India, 1973).

Since *Kesavananda*, several other judiciaries have embraced the basic structure doctrine with variations. Courts in countries like Bangladesh, Pakistan, and Nepal have invoked the doctrine to strike down amendments they found incompatible with the constitution's core or the spirit of its preamble.⁴⁴ In all these countries, the basic structure doctrine posits that certain fundamental features of the Constitution cannot be altered or abrogated by parliamentary amendments. These core principles, often including constitutional supremacy, democracy, federalism, secularism, and the independence of the judiciary, are considered essential to the Constitution's identity and cannot be modified. In Latin America, the concept has parallels in the "constitutional substitution" doctrine. For example, the Constitutional Court of Colombia held that certain fundamental elements of the 1991 Colombian Constitution cannot be substantively altered under the guise of amendment; any change that "substitutes" (rather than merely modifies) the constitution is impermissible.⁴⁵ Thus, when Colombian President Álvaro Uribe sought a third consecutive term in office, the Colombian Constitutional Court in 2010 struck down a proposed amendment that would have allowed it, reasoning that lifting the two-term limit would subvert the democratic principle and separation of powers to such a degree as to amount to a constitutional replacement.⁴⁶ The court warned that a 12-year tenure (three consecutive terms) for one person could create an "unduly strong and unchecked president" and distort the checks and balances envisaged by the constitution.⁴⁷ The court preserved the constitutional order by nullifying the attempt to remove term limits, and Uribe stepped down at the end of his second term.⁴⁸

The doctrine rests on a philosophical premise: A constitution is more than a collection of amendable rules; it embodies a deeper normative commitment, conferring legitimacy and identity.⁴⁹ The people's sovereignty is typically exercised in giving themselves the constitution, and the amendment procedures are delegated powers that cannot be used to betray that original sovereign will.⁵⁰ As scholars have argued, allowing a temporary political majority to erode fundamental democratic safeguards permanently would undermine the very idea of constitutionalism.⁵¹ Yaniv Roznai, a leading authority on this doctrine, contends that an amendment power is meant to maintain and perfect the constitution, not to annihilate its essential features.⁵² If certain core principles (for example, the republican form of government or basic human rights) were amended out of existence, "the life of the constitution has come to an end," and a new, illegitimate order would emerge.⁵³ In this view, a constitutional amendment that destroys the democratic character of the state is not a lawful act of constitutional change but a usurpation, hence sometimes described as a constitutional coup d'état carried out under legal cover.⁵⁴

A few African constitutions have started to include express entrenchment of term limits or other fundamentals.⁵⁵ For example, the Central African Republic's 2016 Constitution explicitly prohibits any amendment of the presidential term-limit provision.⁵⁶ Such a clear textual bar significantly strengthens a court's hand in striking down a contrary amendment, as seen when the Central African Republic's Constitutional Court in 2022 rejected President Faustin-Archange Touadéra's bid to amend the term-limit clause, citing the constitution's unamendability and the "national consensus" underpinning that clause.⁵⁷ In many other cases, however, constitutions do not explicitly protect term limits from

⁴⁴ Inam A. Teja, "The Big Men of Africa: Origins, Tactics, and Implications of Rule by Mugabe and Museveni," *Liberated Arts* 4, no. 4 (2018).

⁴⁵ Constitutional Court of Colombia, Decision C-141/10, March 2, 2010.

⁴⁶ Constitutional Court of Colombia, Decision C-141/10, March 2, 2010.

⁴⁷ Constitutional Court of Colombia, Decision C-141/10, March 2, 2010.

⁴⁸ Constitutional Court of Colombia, Decision C-141/10, March 2, 2010.

⁴⁹ Bratton and Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*.

⁵⁰ Augustin Loada, "La Limitation Du Nombre de Mandats Présidentiels En Afrique Francophone," *Revue Électronique Afrilex* 3 (2003): 139–74.

⁵¹ Loada, "La Limitation Du Nombre de Mandats Présidentiels En Afrique Francophone."

⁵² Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*.

⁵³ Teja, "The Big Men of Africa: Origins, Tactics, and Implications of Rule by Mugabe and Museveni."

⁵⁴ Teja, "The Big Men of Africa: Origins, Tactics, and Implications of Rule by Mugabe and Museveni."

⁵⁵ Bratton and Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*.

⁵⁶ Bratton and Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*.

⁵⁷ Deborah Nyangulu, "Big Men and Consequences of Sovereignty in Contemporary African Novels," *Research in African Literatures* 49, no. 1 (2018): 104.

amendment.⁵⁸ In these systems, courts have resorted to implied limits drawn from the constitutional text, structure, and history.⁵⁹ The Basic Structure or unconstitutional amendment doctrine is essentially a means of indicating an unwritten eternity clause: it allows judges to infer that certain principles (such as the existence of term limits as a check on a perpetual presidency) are so fundamental that they cannot be legislated away without undoing the constitutional order.⁶⁰

Key Jurisprudence on Unconstitutional Amendments and Executive Term Limits

A growing body of comparative and African jurisprudence illustrates how the unconstitutional amendment doctrine has been applied to protect term limits and related democratic structures.⁶¹ The landmark decision of the Colombian Constitutional Court invalidating an amendment for a third presidential term has been noted.⁶² Similarly, the Dominican Republic's Constitutional Tribunal ruled in 2015 that the constitution's two-term limit could not be removed, a decision that reinstated term limits after a prior removal, emphasising the inviolability of democratic alternation.⁶³ In Latin America, these moves are part of a broader trend to resist the "competitive authoritarianism" that can emerge when leaders perpetuate themselves in power behind a veneer of legality.⁶⁴

The doctrine has begun to make inroads in Africa through bold court decisions in a few countries. Perhaps the most pioneering example is Benin.⁶⁵ The Constitution of Benin (1990) does not expressly entrench its two-term presidential limit as unamendable. Yet the country's Constitutional Court has treated that limit as part of the constitution's untouchable core.⁶⁶ In 2011, the Beninese Constitutional Court intervened when the government attempted to call a referendum to abolish presidential term limits and to raise the presidential age ceiling.⁶⁷ It formulated a home-grown basic structure doctrine, reasoning that the presidential term limit was integral to the "national consensus" on which the 1990 constitution was founded.⁶⁸ Even though the text did not explicitly forbid such an amendment, the court held that removing term limits would undermine an essential principle of the constitution, given Benin's historical experience with dictatorship and the consensus for democratic renewal in 1990.⁶⁹ By invoking the preamble's commitment to democracy and the lessons of history, the court concluded that the two-term limit was a structural pillar of the Beninese constitutional order and could not be amended by Parliament or referendum.⁷⁰ Accordingly, it struck down the proposed referendum as unconstitutional, preserving the term limit. The Benin decision is remarkable for going beyond the text – it effectively read an implicit eternity clause into the constitution based on foundational principles.⁷¹

Niger's 1999 Constitution had a two-term limit, which President Mamadou Tandja sought to circumvent in 2009 by dissolving Parliament and calling a referendum to approve a new constitution allowing him to remain in power.⁷² Niger's Constitutional Court initially declared Tandja's move unconstitutional, arguing that the existing constitution did not allow alteration of term limits by referendum in that manner, asserting that the people's sovereign choice for term limits could not be

⁵⁸ Parry, Tauekel, and Tress, "Presidential Term Limits in Africa."

⁵⁹ Nyangulu, "Big Men and Consequences of Sovereignty in Contemporary African Novels."

⁶⁰ Nyangulu, "Big Men and Consequences of Sovereignty in Contemporary African Novels."

⁶¹ Loyd T. Chigowe, "One Step Forward, Two Steps Backwards: The Threat of Third Termism on Democracy, Rule of Law and Governance in Africa," *Speculum Juris* 34 (2020): 13.

⁶² Kristin McKie, "The Politics of Institutional Choice across Sub-Saharan Africa: Presidential Term Limits," *Studies in Comparative International Development* 52, no. 4 (2017): 436–56.

⁶³ McKie, "The Politics of Institutional Choice across Sub-Saharan Africa: Presidential Term Limits."

⁶⁴ Jack R Mangala, "Presidential Term Limits, the Never-Ending Debate," in *The Politics of Challenging Presidential Term Limits in Africa* (Springer, 2020), 1–33.

⁶⁵ Mangala, "Presidential Term Limits, the Never-Ending Debate."

⁶⁶ Posner and Young, "The Institutionalization of Political Power in Africa."

⁶⁷ Posner and Young "The Institutionalization of Political Power in Africa" 126–140.

⁶⁸ Posner and Young "The Institutionalization of Political Power in Africa" 126–140.

⁶⁹ Heyl and Llanos, "Presidential Term Limits in Africa and Latin America: Contested but Resilient."

⁷⁰ McKie, "The Politics of Institutional Choice across Sub-Saharan Africa: Presidential Term Limits."

⁷¹ Adeolu Durotoye, "Resurgent Backsliding and Democracy in Africa," *International Journal of African and Asian Studies* 18 (2016): 39–46.

⁷² H Kwasi Prempeh, "Africa's 'Constitutionalism Revival': False Start or New Dawn?," *International Journal of Constitutional Law* 5, no. 3 (2007): 469–506.

unilaterally overturned.⁷³ Tandja responded by dismissing the court and proceeding with the referendum, plunging the nation into a crisis that ended only when a military coup removed him.⁷⁴ The fallout led to Niger's 2010 Constitution, which pointedly makes presidential term limits immutable: it provides that the provisions that limit the president to two terms may not be revised at all. This explicit safeguard reflects the hard lesson learned – and aligns with the unconstitutional amendment doctrine's logic, enshrining term limits beyond even supermajority politics.⁷⁵

In the Central African Republic, as noted, the Constitution of 2016 declares the presidential two-term limit unamendable, and the Constitutional Court aggressively enforced that in a high-profile ruling in September 2022.⁷⁶ President Touadéra, then in his second term, had set up a commission to draft constitutional changes amid indications he might seek to extend his tenure.⁷⁷ The CAR Constitutional Court struck down the establishment of that constitutional revision commission, invoking both the textual unamendability of term limits and broader principles of constitutionalism.⁷⁸ The court warned that circumventing term limits through such amendments would amount to “abusive constitutionalism”, the misuse of constitutional powers and procedures to achieve anti-constitutional ends.⁷⁹ It reaffirmed that the two-term limit is an essential part of the constitutional order, beyond the reach of ordinary amendment, thereby preempting any attempt by the President to prolong his rule lawfully.⁸⁰ This decision in CAR exemplifies a judiciary willing to guard the constitutional charter's democratic core, even against the sitting head of state.⁸¹

Perhaps the most complex example comes from Uganda, where courts have engaged with the basic structure doctrine but with mixed results.⁸² Uganda had introduced a two-term presidential limit in its 1995 Constitution, only to see it removed in 2005 under President Yoweri Museveni. Subsequently, the only remaining check on Museveni's tenure was an age limit (75 years) for presidential candidates.⁸³ In 2017, as Museveni (in power since 1986) approached the age of 75, Parliament, dominated by his party, passed a constitutional amendment eliminating the age limit. The amendment also attempted to extend the term of the current Parliament itself from 5 to 7 years.⁸⁴ These changes were challenged in court, leading to a significant 2018 ruling by the Ugandan Constitutional Court.⁸⁵ The Court explicitly adopted the basic structure doctrine of Indian jurisprudence, declaring that there are implied limits on Parliament's power to alter the constitution even in the absence of explicit unamendable clauses.⁸⁶ In a 4–1 majority decision, the court struck down the amendment provision that extended the MPs' terms, finding it a blatant violation of the constitution's fundamental tenets of good governance and an instance of self-dealing by the legislators.⁸⁷ The judges decried this attempt as unconstitutional, as it undermined the accountability of leaders to the electorate (by postponing elections) and violated the spirit of the constitution's separation of powers.⁸⁸ This marked the doctrine's use to prevent incumbents from entrenching themselves by tinkering with term lengths.⁸⁹

At the same time, the Ugandan court upheld the removal of the presidential age limit, allowing Museveni to run for additional terms.⁹⁰ The judges treated the age-limit amendment as not

⁷³ Prempeh, “Africa's Constitutionalism Revival,” 456.

⁷⁴ Prempeh, “Africa's Constitutionalism Revival,” 456.

⁷⁵ Osei, Akinocho, and Mwombela, “Presidential Term Limits and Regime Types: When Do Leaders Respect Constitutional Norms?”

⁷⁶ Osei, Akinocho, and Mwombela, “Presidential Term Limits and Regime Types: When Do Leaders Respect Constitutional Norms?”

⁷⁷ Prempeh, “Africa's Constitutionalism Revival,” 456.

⁷⁸ Posner and Young “The Institutionalization of Political Power in Africa” 126-140.

⁷⁹ Posner and Young “The Institutionalization of Political Power in Africa” 126-140.

⁸⁰ Teja, “The Big Men of Africa: Origins, Tactics, and Implications of Rule by Mugabe and Museveni.”

⁸¹ Teja, “The Big Men of Africa: Origins, Tactics, and Implications of Rule by Mugabe and Museveni.”

⁸² Iyabo Obasanjo, “Curing Africa's Big-Man Syndrome: Individual versus Population Approach?,” *Foreign Policy Journal* 1 (2013).

⁸³ Obasanjo, “Curing Africa's Big-Man Syndrome: Individual versus Population Approach?”

⁸⁴ J Shola Omotola, “Third-Term Politics and the de-Institutionalisation of Power in Africa,” *Africa Review* 3, no. 2 (2011): 123–39.

⁸⁵ Posner and Young “The Institutionalization of Political Power in Africa” 126-140.

⁸⁶ Omotola, “Third-Term Politics and the de-Institutionalisation of Power in Africa.”

⁸⁷ Elisabete Azevedo-Harman, “Parliaments in Africa: Representative Institutions in the Land of the ‘Big Man,’” *The Journal of Legislative Studies* 17, no. 1 (2011): 65–85.

⁸⁸ Azevedo-Harman, “Parliaments in Africa,” 68.

⁸⁹ Azevedo-Harman, “Parliaments in Africa,” 68.

⁹⁰ Gideon Maltz, “The Case for Presidential Term Limits,” *Journal of Democracy* 18, no. 1 (2007): 128–42.

fundamentally altering the basic structure, which is a controversial conclusion.⁹¹ In effect, the court's application of the doctrine was limited – it intervened to quash the egregious self-extension of parliamentary tenure. However, it did not overturn the amendment that facilitated the president's indefinite re-election.⁹² Museveni thus stood for re-election in 2021 (which he won, extending his rule to a fourth decade), underscoring the challenges courts face in drawing the line between allowable constitutional change and change that eviscerates democracy.⁹³ Nonetheless, the Ugandan case is instructive: it demonstrates a court willing to assert an implicit constitutional principle (that certain amendments, especially those serving incumbents' self-interest, are not permissible), even if political constraints or judicial philosophy led to a compromise outcome.⁹⁴ It also shows that the basic structure doctrine does not need to be “all or nothing” – courts might invalidate the most egregious parts of an amendment while letting other parts stand, a strategy that some have criticized as incoherent. Still, others defend it as pragmatic in a fraught political context.⁹⁵

Another notable episode occurred in Kenya with the 2021–2022 Building Bridges Initiative (BBI) case.⁹⁶ Although not directly related to presidential term limits, the BBI case revolved around a comprehensive package of constitutional amendments backed by the President and the opposition leader, which, among other changes, sought to alter the executive structure and create new offices.⁹⁷ Kenya's 2010 Constitution does not explicitly bar fundamental changes, but in 2021, the Kenyan High Court seized on the basic structure concept to invalidate the BBI amendments.⁹⁸ The High Court (and later the Court of Appeal) held that the Kenyan Constitution contains specific unamendable “core structure” features, and that any amendment amounting to a fundamental transformation would require invoking the primary constituent power of the people (through a more involved process, perhaps a constitutional convention or a more robust public participation than a normal amendment).⁹⁹ Although the phrase “basic structure doctrine” was not explicitly cited in the High Court's judgment, its reasoning mirrored that doctrine.¹⁰⁰ On appeal, the Kenyan Supreme Court in 2022 rejected the applicability of the basic structure doctrine in Kenya, asserting that all provisions of the constitution were legally amendable as long as procedures were followed.¹⁰¹ Nevertheless, the Supreme Court still struck down the BBI on different grounds (chiefly procedural faults and the lack of presidential authority to initiate amendments).¹⁰² The BBI saga is illuminating: it shows a judiciary grappling with protecting the “constitutional core” against far-reaching changes.¹⁰³ The lower courts' willingness to impose unwritten limits was a bold step towards a substantive review of amendments; the Supreme Court's pull-back reflects caution and deference to the text. Even so, Kenyan jurists suggested that there are fundamental constitutional principles and values that cannot be overridden by mere compliance with formal procedures.¹⁰⁴ In the future, if a Kenyan president attempted to remove presidential term limits (currently two terms) through amendment, the reasoning of the High Court and Court of Appeal suggests that at least some judges might deem such an act unconstitutional in substance, even if procedurally compliant.¹⁰⁵ The BBI case thus contributes to an emerging transnational judicial conversation on constitutional change and its limits.¹⁰⁶

⁹¹ K. N. Obse, “The Emerging Regional Regulation of Domestic Constitutional Law in Africa” (University of Graz, 2015).

⁹² Emmanuel Gyimah-Boadi, *Political Parties, Elections and Patronage: Random Thoughts on Neo-Patrimonialism and African Democratization*, 2007.

⁹³ Maltz, “The Case for Presidential Term Limits.”

⁹⁴ Maltz, “The Case for Presidential Term Limits.”

⁹⁵ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

⁹⁶ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

⁹⁷ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

⁹⁸ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

⁹⁹ Maltz, “The Case for Presidential Term Limits.”

¹⁰⁰ Obse, “The Emerging Regional Regulation of Domestic Constitutional Law in Africa.”

¹⁰¹ Obasanjo, “Curing Africa's Big-Man Syndrome: Individual versus Population Approach?”

¹⁰² Teja, “The Big Men of Africa: Origins, Tactics, and Implications of Rule by Mugabe and Museveni.”

¹⁰³ Teja, “The Big Men of Africa: Origins, Tactics, and Implications of Rule by Mugabe and Museveni.”

¹⁰⁴ Staffan I Lindberg, *Democracy and Elections in Africa* (JHU Press, 2006).

¹⁰⁵ Nic Cheeseman and Staffan I. Lindberg, *Democracy and Elections in Africa* (Baltimore: Johns Hopkins University Press, 2011).

¹⁰⁶ Cheeseman and Lindberg, *Democracy and Elections in Africa*.

Promise and Perils of the Basic Structure Doctrine

The emergence of the Basic Structure Doctrine in Africa is a response to a clear pattern of democratic erosion, but it is not without controversy.¹⁰⁷ Proponents argue that empowering courts to invalidate anti-democratic amendments provides a crucial safety valve for constitutional democracy.¹⁰⁸ Without it, a transient political majority or an autocrat with a compliant legislature can legally entrench itself and undermine checks and balances, leaving no lawful recourse within the system.¹⁰⁹ In this view, judicial review of amendments upholds deeper constitutionalism and defends the long-term interests of “the People” against factional or self-serving projects of rulers.¹¹⁰ Indeed, the supporters of the doctrine contend that it ultimately reinforces popular sovereignty: the people established certain basic principles at the founding moment or through fundamental democratic struggles.¹¹¹ They did not intend to grant any government the power to undo those through ordinary amendments.¹¹² Scholars like David Landau have explicitly supported a judicially enforceable basic structure doctrine to block amendments that subvert fundamental democratic structures such as term limits.¹¹³ The cases from Benin, CAR, and elsewhere illustrate how courts can act as a bulwark, preventing what has been termed a “self-coup” (autogolpe) whereby an incumbent legally seizes perpetual power.¹¹⁴ The judiciary's role becomes especially pivotal when political safeguards fail or are co-opted. An independent court applying this doctrine can safeguard the constitutional order when it is most vulnerable, such as when an incumbent tries to rewrite the rules to lock in their dominance.¹¹⁵

However, critics of the doctrine raise significant concerns. One critique is that it is a judge-centred approach lacking a clear basis in positive law, and that it may usurp the sovereignty of the people or their elected representatives.¹¹⁶ In many countries, the constitution explicitly prescribes how it can be amended and does not list unamendable clauses; for unelected judges to declare a duly enacted amendment null and void can be seen as an anti-democratic act.¹¹⁷ Dixon and Landau, while sympathetic to the need to protect democracy, caution that if courts overzealously invoke implicit limits, those limits might come into tension with the principle of popular rule.¹¹⁸ There is a paradox, as Landau notes: judges did not grant an explicit veto power over amendments by the constitution itself, and ended up claiming an “enormous power” that could be viewed as an overreach.¹¹⁹ This is especially delicate in societies where the independence of the judiciary is in question. Critics fear that courts could misuse a doctrine of this nature for political ends, or conversely, executives might undermine the judiciary (through intimidation or removal) if it stands in their way.¹²⁰ Another concern is the slippery slope: If some amendments are invalid because they contradict democracy, who decides which principles are inviolable? Detractors argue that without clear textual guidance, judges might insert their values as “fundamental,” potentially blocking progressive or widely supported reforms under the guise of protecting the constitution.¹²¹

¹⁰⁷ Devra C Moehler and Staffan I Lindberg, “Narrowing the Legitimacy Gap: Turnovers as a Cause of Democratic Consolidation,” *The Journal of Politics* 71, no. 4 (2009): 1448–66.

¹⁰⁸ Moehler and Lindberg, “Narrowing the Legitimacy Gap: Turnovers as a Cause of Democratic Consolidation.”

¹⁰⁹ Ginsburg, Melton, and Elkins, “On the Evasion of Executive Term Limits.”

¹¹⁰ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

¹¹¹ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

¹¹² Stef Vandeginste, “Burundi’s Electoral Crisis: Back to Power-Sharing Politics as Usual?” *African Affairs* 114, no. 457 (2015): 624–636.

¹¹³ ECOWAS, *Protocol on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security* (Dakar: ECOWAS, 2001).

¹¹⁴ Vose, *Constitutional Change: Amendment Politics and Supreme Court Litigation Since 1900*.

¹¹⁵ Vose, *Constitutional Change: Amendment Politics and Supreme Court Litigation Since 1900*.

¹¹⁶ Brandon, “The ‘Original’ Thirteenth Amendment and the Limits to Formal Constitutional Change.”

¹¹⁷ Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions*.

¹¹⁸ Rosalind Dixon and David Landau, “Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment,” *International Journal of Constitutional Law* 13, no. 3 (2015): 606–38.

¹¹⁹ Brandon, “The ‘Original’ Thirteenth Amendment and the Limits to Formal Constitutional Change.”

¹²⁰ Landau, “Abusive Constitutionalism.”

¹²¹ Halmai, “Unconstitutional Constitutional Amendments: Constitutional Courts as Guardians of the Constitution?”

In the African context, these debates are not abstract. The legitimacy of courts to police constitutional change depends on their perceived independence and integrity.¹²² In countries where courts are seen as extensions of the executive, the doctrine will have no force.¹²³ Indeed, regimes bent on removing term limits often seek to capture the judiciary or change judicial personnel (for example, replacing uncooperative judges) to avoid legal obstacles.¹²⁴ By contrast, in countries where courts have a tradition of asserting their authority (like Benin or South Africa), the public may be more receptive to judges invalidating an anti-democratic amendment as an act of constitutional guardianship.¹²⁵ There is also the reality that such judicial decisions often provoke political backlash.¹²⁶ A president whose agenda is frustrated by a court might attempt to ignore the decision, rally supporters against the “undemocratic” court, or find extra-constitutional means to achieve his goals.¹²⁷ For instance, when Niger’s court stood in the way of President Tandja, Tandja dissolved the court, a stark reminder that legal doctrines alone cannot constrain a determined autocrat without institutional and popular support.¹²⁸

In evaluating the promise of the unconstitutional amendment doctrine, it is essential to recognise it as one tool among many.¹²⁹ It works best with other defences of democracy: a vigilant civil society that raises alarm over term-limit tinkering, robust opposition parties that refuse to cooperate in self-serving amendments, and an informed public that values constitutionalism.¹³⁰ Scholars have noted that an engaged civil society can be crucial to confronting the challenges posed by term-limit amendments. Additionally, creative solutions such as dignified exit packages or immunities for retiring leaders have been proposed to reduce the personal incentives to cling to office.¹³¹ However, if an incumbent is bent on prolonging power and the political environment allows it, a court’s invocation of implicit limits might be the last line of defence for democracy.¹³²

The proper application of the doctrine requires judiciousness. Courts must carefully articulate why a given amendment crosses the line from ordinary change to a destructive alteration of the constitutional order.¹³³ This often involves a qualitative judgment about how the change impacts core democratic features. For instance, one could argue that removing a two-term limit fundamentally alters the nature of electoral competition and the principle of rotational leadership, thereby undermining the constitution’s democratic essence.¹³⁴ On the other hand, changing a minor administrative detail of government, even for entrenchment motives, might not meet the threshold of a basic structure violation.¹³⁵ As a result, courts that have ventured into this area have tried to establish standards and thresholds.¹³⁶ The Kenyan High Court suggested that only “structural amendments” or those that amount to dismemberment (as opposed to amendment) would trigger the need for an extra-constitutional procedure.¹³⁷ The Ugandan Constitutional Court, by striking some parts of an amendment but not others, implicitly ranked the severity of changes.¹³⁸ Such nuances underscore that the doctrine is not a blunt

¹²² Wiebusch and Murray, “Presidential Term Limits and the African Union.”

¹²³ Wiebusch and Murray, “Presidential Term Limits and the African Union.”

¹²⁴ Dulani, “Personal Rule and Presidential Term Limits in Africa.”

¹²⁵ Osei, Akinocho, and Mwombela, “Presidential Term Limits and Regime Types: When Do Leaders Respect Constitutional Norms?”

¹²⁶ Reyntjens, “A New Look at the Evidence.”

¹²⁷ Chigowe, “One Step Forward, Two Steps Backwards: The Threat of Third Termism on Democracy, Rule of Law and Governance in Africa.”

¹²⁸ Chigowe, “One Step Forward, Two Steps Backwards: The Threat of Third Termism on Democracy, Rule of Law and Governance in Africa.”

¹²⁹ Dixon and Landau, “Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment.”

¹³⁰ Boniface Opalo, “Term Limits and Democratic Consolidation in Sub-Saharan Africa: Lessons from Burundi,” *Constitution Net*, 2022, <https://constitutionnet.org/news/term-limits-and-democratic-consolidation-sub-saharan-africa-lessons-burundi> (accessed September 1, 2022), 2.

¹³¹ Catherine S Namakula, “The Efficacy of Presidential Term Limits in Africa,” *Dar Es Salaam, Tanzania, Mandela Institute for Development Studies (Minds), Discussion Paper*, 2016.

¹³² Cain, “Term Limits: Not the Answer to What Ails Politics,” 89.

¹³³ Denis M Tull and Claudia Simons, “The Institutionalisation of Power Revisited: Presidential Term Limits in Africa,” *Africa Spectrum* 52, no. 2 (2017): 79–102.

¹³⁴ Tull and Simons, “The Institutionalisation of Power Revisited: Presidential Term Limits in Africa.”

¹³⁵ Bratton and Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*.

¹³⁶ *Kesavananda Bharati v. State of Kerala*, 4 SCC 225 (Supreme Court of India, 1973).

¹³⁷ Parry, Tauekel, and Tress, “Presidential Term Limits in Africa.”

¹³⁸ Parry, Tauekel, and Tress, “Presidential Term Limits in Africa.”

instrument to reject all amendments leaders propose; it is a safeguard for the most egregious assaults on the constitutional order.¹³⁹

Comparative Analysis of Term Limit Erosion and Resistance in African States

To ground the discussion, we highlight a few representative African cases that demonstrate how term limits have been eroded in practice and how the unconstitutional amendment doctrine or analogous reasoning has been invoked to counteract this trend.

Uganda

President Yoweri Museveni exemplifies the trajectory of term-limit erosion. After Uganda's 1995 Constitution instituted a two-term limit, Museveni reached the limit in 2005.¹⁴⁰ By exploiting his dominant National Resistance Movement party, he secured a constitutional amendment removing term limits, allowing him to run again.¹⁴¹ This was accomplished through parliament and was not struck down by the courts at the time. Uganda's judiciary was not prepared to challenge it at the time in question.¹⁴² Subsequently, with term limits gone, Museveni continued to be re-elected. In 2017, anticipating the age cap would disqualify him in the 2021 election, Museveni also had the age limit (75 years) abolished.¹⁴³ This time, the Ugandan Constitutional Court in *Male Mabirizi v. Attorney General* (2018) took a bolder stance to push back the constitutional amendment: it invalidated the attempt by MPs to extend their terms as unconstitutional, invoking the basic structure doctrine to assert limits on amendment power.¹⁴⁴ However, as noted above, the court upheld the removal of the presidential age limit, thereby giving Museveni the green light to remain in contention for the presidency.¹⁴⁵ The split outcome shows both the potential and limits of judicial action, that while the court curbed the most blatantly self-serving aspect of the amendment and signalled that not everything can be changed by fiat, it did not ultimately prevent the core objective of the amendment (Museveni's extended rule) from being achieved.¹⁴⁶ Museveni won a sixth term in 2021, and Uganda's experience now stands as a cautionary tale of how incremental constitutional changes can cumulatively dismantle a democratic safeguard.¹⁴⁷ However, the 2018 judgment also stands as an example that even a long-subservient judiciary can awaken to articulate constitutional first principles, possibly laying the groundwork for future limits enforcement.¹⁴⁸

Benin

Benin. In stark contrast to Uganda, Benin has so far maintained its two-term presidential limit, primarily due to a proactive Constitutional Court.¹⁴⁹ As discussed above, in both 2006 and 2011, when efforts emerged to extend or abolish term limits under Presidents Mathieu Kérékou and Thomas Boni Yayi, the Beninese Constitutional Court indicated that such amendments would conflict with the Constitution's fundamental values.¹⁵⁰ In its 2011 advisory opinion, effectively a decision nullifying the planned referendum, the Court anchored its reasoning in the idea of a "national consensus" forged at Benin's 1990 National Conference that ended decades of autocracy.¹⁵¹ It stressed that the presidential term limit was a core element of the new democratic order. It highlighted Benin's painful history of personal rule,

¹³⁹ Nyangulu, "Big Men and Consequences of Sovereignty in Contemporary African Novels."

¹⁴⁰ McKie, "The Politics of Institutional Choice across Sub-Saharan Africa: Presidential Term Limits."

¹⁴¹ Durotoye, "Resurgent Backsliding and Democracy in Africa."

¹⁴² Durotoye, "Resurgent Backsliding and Democracy in Africa."

¹⁴³ Prempeh, "Africa's 'Constitutionalism Revival': False Start or New Dawn?"

¹⁴⁴ *Male Mabirizi v. Attorney General*, Application No. 6 of 2022 (arising from Reference No. 11 of 2021), East African Court of Justice.

¹⁴⁵ *Male Mabirizi v. Attorney General*, Application No. 6 of 2022 (arising from Reference No. 11 of 2021), East African Court of Justice.

¹⁴⁶ Omotola, "Third-Term Politics and the de-Institutionalisation of Power in Africa."

¹⁴⁷ Omotola, "Third-Term Politics and the de-Institutionalisation of Power in Africa."

¹⁴⁸ Obse, "The Emerging Regional Regulation of Domestic Constitutional Law in Africa."

¹⁴⁹ S. Sijoria, "Unconstitutional Constitutional Amendment: Limiting Amendment Power in India, Colombia and Benin" (Central European University, 2021).

¹⁵⁰ Sijoria, "Unconstitutional Constitutional Amendment: Limiting Amendment Power in India, Colombia and Benin."

¹⁵¹ Gabriel L. Negretto, *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America* (Cambridge: Cambridge University Press, 2013).

thereby framing term limits as an existential guarantee of “Never Again” to dictatorship.¹⁵² By interpreting the constitutional text in light of its spirit and historical context, the Court in Benin made it practically impossible for any incumbent to extend their stay beyond two terms legally.¹⁵³ This jurisprudence has been influential beyond Benin’s borders; it is often cited in African constitutional discourse as a model of judicial fortitude in defence of democracy.¹⁵⁴

Central African Republic

The Central African Republic’s situation combines explicit constitutional design with firm judicial implementation.¹⁵⁵ Learning from a turbulent history of coups and authoritarian regimes, drafters of the 2016 CAR Constitution entrenched the two-term limit by declaring it unamendable.¹⁵⁶ Thus, when President Touadéra sought to initiate changes, the Constitutional Court swiftly struck the effort down in 2022.¹⁵⁷ The Court’s decision is notable for using strong language condemning the president’s attempt as “abusive constitutionalism,” naming the practice of using legal means for anti-democratic ends.¹⁵⁸ It reaffirmed that the letter of the constitution was not only against Touadéra’s plan but also its spirit, as the term limit was tied to national aspirations for stability and democracy after years of conflict. This case underscores how clear constitutional safeguards, combined with a courageous court, can ward off a constitutional coup. It also offers a blueprint: one recommendation emerging from the CAR experience is that making term limits explicitly unamendable can bolster judges’ resolve to enforce them since they can point directly to constitutional text supporting their decision, immunizing them somewhat from charges of overreach.

Kenya

While Kenya has not yet faced a direct attempt to remove presidential term limits, the BBI Case (2021) demonstrated Kenyan courts’ willingness to engage the issue of implied unamendability.¹⁵⁹ The High Court and Court of Appeal effectively said that specific changes, presumably including any fundamental alteration like removing term limits, would require invoking the primary constituent power outside the normal amendment process.¹⁶⁰ Even though the Supreme Court later rejected the formal doctrine, the episode put political elites on notice that at least part of the judiciary sees the constitution’s democracy-protecting features as sacrosanct.¹⁶¹ Notably, Kenya’s constitution was the product of a highly participatory process; the courts made references to the idea that the people, in adopting the 2010 Constitution, consciously chose specific structures (e.g. an independent judiciary, a decentralized system, term limits, etc.) that could not be casually undone without betraying that original act of constituent power.¹⁶² Thus, while the final word from the Supreme Court was ambivalent, the Kenyan jurisprudence contributes to a narrative of rising judicial scrutiny on hyper-amendment.¹⁶³ For any

¹⁵² Negretto, *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*.

¹⁵³ Mila Versteeg, “The Politics of Presidential Term Limit Evasion,” *Columbia Law Review* 114, no. 3 (2014).

¹⁵⁴ Carlos Bernal, “Unconstitutional Constitutional Amendments in the Case Study of Colombia: An Analysis of the Justification and Meaning of the Constitutional Replacement Doctrine,” *International Journal of Constitutional Law* 11, no. 2 (2013): 339–57.

¹⁵⁵ Adem K Abebe, Rosalind Dixon, and Tom Ginsburg, “Introduction to Comparative Constitutional Law in Africa,” in *Comparative Constitutional Law in Africa* (Edward Elgar Publishing, 2022), 1–14.

¹⁵⁶ Abebe, Dixon, and Ginsburg, “Introduction to Comparative Constitutional Law in Africa.”

¹⁵⁷ Sandrine Vohito, “COVID-19 and Unamendable Limits on Duration of Presidential and Legislative Terms in the Central African Republic,” accessed June 8, 2025, <https://constitutionnet.org/news/covid-19-and-unamendable-limits-duration-presidential-and-legislative-terms-central-african>.

¹⁵⁸ Vohito, “COVID-19 and Unamendable Limits on Duration of Presidential and Legislative Terms in the Central African Republic.”

¹⁵⁹ Gautam Bhatia, “The Hydra and the Sword: Constitutional Amendments, Political Process, and the BBI Case in Kenya,” *Global Constitutionalism* 14, no. 2 (2025): 349–70.

¹⁶⁰ Bhatia, “The Hydra and the Sword: Constitutional Amendments, Political Process, and the BBI Case in Kenya.”

¹⁶¹ Yaniv Roznai and Tamar Hostovsky Brandes, “Democratic Erosion, Populist Constitutionalism, and the Unconstitutional Constitutional Amendments Doctrine,” *Law & Ethics of Human Rights* 14, no. 1 (2020): 19–48.

¹⁶² Cain, “Term Limits: Not the Answer to What Ails Politics.”

¹⁶³ Liesl Louw-Vaudran, “Term-Limit Changes the Biggest Threat to Democracy in Africa?,” <https://issafrica.org/iss-today/term-limit-changes-the-biggest-threat-to-democracy-in-africa>, June 25, 2025.

Kenyan president contemplating term-limit extension in the future, the legal uncertainty introduced by the BBI decisions might be a deterrent or at least an issue to contend with.¹⁶⁴

The African Continent's Successes and Failures

In Africa, other instances abound. In Burundi, President Pierre Nkurunziza's controversial bid for a third term in 2015 was justified by a twisted legal argument that his first term, elected by parliament, did not count, which the constitutional court reportedly, under duress, upheld. The ensuing crisis, including a failed coup and widespread violence, illustrated the destabilizing effect of term-limit disputes. In Namibia, a calmer example, founding President Sam Nujoma was allowed a third term through a one-off constitutional amendment in 1998, but the two-term norm was then restored; Namibia's democracy suffered less damage, partly because Nujoma stepped aside after that extra term.

Senegal saw an attempted circumvention when President Abdoulaye Wade claimed the term limit did not apply to him (due to a revised constitution) and ran for a third mandate in 2012, which sparked public ire and ultimately a decisive electoral defeat for Wade, reaffirming the two-term principle. As noted, Nigeria, Malawi, Zambia, and others had their showdowns, which ended with term limits intact due to legislative or public resistance rather than judicial intervention. These experiences highlight that the defence of term limits can come through multiple channels: public opinion and civil society can be as crucial as courtrooms in upholding constitutionalism.

A notable outlier on the continent is South Africa. This country does have a two-term presidential limit (adopted in the 1996 Constitution), but to date, no president has attempted to violate it. The norm of two terms has been respected (Nelson Mandela served one term voluntarily; his successors, Thabo Mbeki and Jacob Zuma, were forced out by their parties during their second terms rather than seeking a third). South Africa's strong party governance and the parliamentary system (where Parliament indirectly elects the president) have played a role, and its judiciary has not had to confront a term-limit case. However, scholars in South Africa continue to debate whether the South African Constitution contains implied limits on amendment powers. Given the country's strong commitment to democratic values in its founding document, it is conceivable that the Constitutional Court would view any attempt to repeal presidential term limits with serious concern.

In sum, the comparative landscape in Africa shows a tug-of-war between entrenched rulers and emerging constitutional norms. Term limit evasion is a form of democratic backsliding uniquely suited to incumbents who claim legality even as they undermine the competitiveness and uncertainty of elections. The unconstitutional constitutional amendment doctrine provides a legal framework for assessing, and potentially invalidating, such constitutional changes. However, its success depends on courts that are institutionally capable and willing to stand up to the most powerful office in the land. To date, the evidence from Benin to Uganda to the Central African Republic suggests that although challenging, this is both possible and already taking place in parts of the continent.

RECOMMENDATIONS

To curb the erosion of presidential term limits in Africa, it is vital to reinforce a political norm that views such manipulation of presidential term limits as illegitimate. Regional institutions and former leaders should actively promote respect for leadership alternation, while public education campaigns can help embed this norm among citizens. Judicial independence must be strengthened to empower courts to act as constitutional guardians. Transparent, merit-based appointments, adequate resourcing, and protection from executive interference are essential. Judicial training, including transnational exchanges, can further enhance the capacity to resist anti-democratic amendments. Courts should embrace the Basic Structure Doctrine, treating core democratic principles such as term limits as part of the constitution's basic structure. This doctrine, while powerful, must be applied cautiously and on a case-by-case basis to avoid judicial overreach. Constitutional reform should explicitly entrench term limits through

¹⁶⁴ Bhatia, "The Hydra and the Sword: Constitutional Amendments, Political Process, and the BBI Case in Kenya."

unamendable clauses or high-threshold amendment procedures. However, legal protections must be supported by robust institutions and a culture of constitutionalism. To reduce the incentive for entrenchment, states may consider offering political insurance to outgoing leaders, including personal security or dignified retirement benefits. Lastly, sustained civic education is crucial for building a citizenry capable of resisting democratic backsliding and defending constitutional norms.

CONCLUSION

In conclusion, the struggle over presidential term limits in Africa is a microcosm of the broader struggle for democratic governance and the rule of law on the continent. Even if procedurally valid, formal constitutional amendments can have profoundly anti-democratic effects, a reality that demands vigilance and innovative responses. The doctrine of unconstitutional constitutional amendments offers one such response by empowering courts to draw a line in defence of democracy's basic tenets. It should be embraced carefully but firmly, as part of a multifaceted strategy that includes political action and civic mobilization. The experience of countries discussed in this article shows both the feasibility and the necessity of halting "constitutional coups" before they unravel hard-won democratic gains by heeding these lessons, fortifying judicial independence, explicitly protecting democratic fundamentals, and nurturing a culture of constitutionalism. African states and their judiciaries can make presidential term limits stick, thereby preserving the promise of peaceful and regular leadership change as a norm rather than an exception. In the long run, this will strengthen democratic stability and the rule of law in the region, aligning with the aspirations for accountable governance that many African constitutions, at their inception, so eloquently espoused.

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