



**Taming Executive Power Through Constitutional Presidential Term Limits: Conversations  
from Uganda - 2005-2017**

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‘If you don’t leave power, power will leave you.’  
-Beninois President Mathieu Kerekou, in his retirement speech.

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## I. INTRODUCTION

Whereas the euphoric moment of 1995 when Uganda adopted its Constitution continues to reverberate through Uganda’s history as a watershed moment, nothing prepared Ugandans for what was to come 10 years later-. July 12, 2020 would have marked 15 years of President Museveni’s years in retirement as a former head of State of Uganda had it not been for the lifting of the Presidential term limits in the Constitution. By now, Uganda would be in the first term of its 2<sup>nd</sup> President after Museveni and power would have been transferred peacefully three times thus far. All this was reduced to a ‘would be’ story line. On that day, 12/July/2005, after haggles and quibbles, the Parliament of Uganda presided over by the then Speaker, the-current Vice-President Edward Ssekandi, voted to amend Article 105 (2) of the Constitution that provided for the President to rule for a maximum of 2 terms. Terms remained at 5 years, but the limit on the number of terms was removed.

The Ugandan experience was but one of the many examples of the scourge of constitutional amendments lifting term limits which took the African Continent by storm as incumbent rulers sought to extend their stay, often amidst protests from the populace. This retrogressive fire continues to spread. The situation has not been helped by the fact that this phenomenon is executed using formal institutions, and cannot be deemed extra-constitutional, at least on the face of it.<sup>1</sup> Since the early 1990s, over 34 Constitutions across the sub-Saharan Africa, provided for term limits. The zeal at incorporation of such provisions has not been marched in practice which entails protecting and respecting these provisions for them to be a deterrence against Constitutional manipulation to lift term limits. Riedl argues that such provisions have only been respected in one fifth of the countries despite their importance.<sup>2</sup>

The idea of leaving office after serving a particular tenure is meant to ensure that institutions outlive individuals and not vice versa. These term limits subordinate individual interests to institutional demands for the greater good of a country that then cannot be held to ransom by an individual. For this reason many scholars and practitioners of democracy have labelled this

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<sup>1</sup> J.Shola Omotola, *Third-Term Politics and the De-Institutionalization of Power in Africa*, *Africa Review* 3, 2, 2011: 123-139, at 124.

<sup>2</sup> Rachel Beatty Riedl, *The Advantages – and Drawbacks – of Presidential Term Limits as a Tool for Building Democracy in Africa*, March, 2014 in ???

notion ‘one of the defining features of democracy,’ while to others, it is not ‘...a guarantee of democracy, but a core principle of good governance.’<sup>3</sup>

Since 2005, more amendments have been undertaken; the most recent, in 2017, lifted the age limit cap for presidential candidates from the 75 years originally provided for effectively opening the door for life presidency for any willing and able candidate. Around both amendments and more particularly the one pertaining to term limits, there was extensive public discourse, sometimes tending to violent demonstrations in a quest to resist the amendments. Various sections of the Ugandan community both domestic and in the diaspora had their say. This paper revisits these conversations that continue. We undertake an historical inquiry into the discourse both immediately before, at the height of this debate and after the amendment had been passed by the Ugandan Parliament and the term limits lifted. Retracing these conversations is fundamental in the effort to consolidate democracy in Uganda but also as a reference point for other jurisdictions that are yet to have, or are in the middle of, this debate on control of executive power.

The first part of the paper is introductory- summarily dwelling on the conceptualization of the notion of presidential term limits in electoral democracies as a core value of democracy guaranteeing control of executive power. Under this part is also provided a bird’s view of the various mechanisms that have been adopted over time to facilitate lifting of the term limits in the various countries in Africa and particularly, in Uganda. The second part delves into the detailed conversations of compromise, complacency and resistance that characterized Uganda’s debate on the amendment of the Constitution. It seeks to highlight who said and did what, when, with what motivation and what was the impact then and for the future of Uganda’s democratization journey. The paper concludes with an examination of the impact of the presidential term limits amendments on democracy and more centrally on the control of power in Uganda.

## **I. PRESIDENTIAL ‘TERM LIMITS’ CONSTITUTIONAL AMENDMENTS; AT ATTEMPT AT CONCEPTUALISATION**

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This paper departs from the radical mantra that changes in any given Constitution should not happen at all lest authoritarian rulers to use the opportunity for their selfish agendas. The underlying rationale for constitutional amendment is that every political system needs to be modified over time as a result of some combination of ‘(a) changes in the environment within which the political system operates (including economics, technology, foreign relations) (b) changes in value systems distributed across the population (c) unwanted or unexpected institutional effects and (d) the cumulative effects of decisions made by the legislative,

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<sup>3</sup> Foday Darboe, 2018 at 37.

executive and the judiciary.’ However, what Africa is suffering from is the hijack of constitutional amendment processes, the attendant institutions and turning them into conduits of perpetrating hegemonic rulers.

As such, just like elsewhere in Africa, in Uganda’s history is plagued by an overbearing executive branch holding the other two branches of the judiciary and parliament at its beck and call. Indeed, much as, on paper in the Constitution, these formal institutions supposedly providing checks and balances are given immense powers to control the presidency, they are mere paper tigers in practice. Prempeh’s description of Africa’s powerful presidency is also true of Uganda. He notes that;

‘Africa found itself beset by the strange paradox of strong presidents sitting atop weak states—states that routinely lacked the requisite institutional capacities and resources to fulfill even their most basic foundations.’<sup>4</sup>

It appears that, with the realization that the oversight institutions had not been effective, to contain and control the presidency, a solution was sought in the Constitutions hence the enactment of term limits. There was a legitimate expectation that since term limits had worked elsewhere to propel stability and grow democracy, then there is no reason to disbelieve its potential workability in Africa.<sup>5</sup> Additionally, it seems, as has been argued by a number of commentators, the presidents ruling at the time of agitation for term limits in Africa sought to appear as statesmen, as compromising leaders but with the hindsight that they would manoeuvre their way when the time comes.<sup>6</sup>

Presidential term limits, for the purposes of this paper, entails ‘laws in national constitutions that limit the total number of years/terms that a president can stay in office.’<sup>7</sup> Depending on each country, this period oscillated between a 4-year or two 5-year terms and in some countries such as Rwanda, 7 year term. This wave to constitutionalize term limits would later hit the Continent like a bug as each country struggled to incorporate these provisions in the quest to come off as democratizing. Its proponents akin to a tornado movement projected it as the

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<sup>4</sup> Prempeh, 2008 at 111 as cited in Nic Cheeseman at 42.

<sup>5</sup> Nic Cheeseman, ‘*Should I Stay or Should I Go: Term-limits, elections, and political change in Kenya, Uganda and Zambia*’, June 2019, in Baturo, Alexander, and Robert Elgie, eds. *The Politics of Presidential Term Limits*. Oxford University Press, 2019

<sup>6</sup> Cheeseman, 2019, at 11.

<sup>7</sup> Foday Darboe, ‘*A Critical Analysis of Presidential Term Limits in Africa: A Mixed-Methods Case Study of Causes of Political Violence in Burundi*’, 2018 at 31. Doctoral dissertation. Nova Southeastern University. Retrieved from NSUWorks, College of Arts, Humanities and Social Sciences – Department of Conflict Resolution Studies. Accessible at [https://nsuworks.nova.edu/shss\\_dcar\\_etd/108](https://nsuworks.nova.edu/shss_dcar_etd/108) (Accessed on 1/06/2020).

magic wound that would finally arrest the runaway abuse of executive power by the Presidents in African nations. In fact, other equally critical non-legal means of providing checks and balances on the Executive by for example strengthening civil society and citizenry awakening were neglected. This is probably the first mistake in the struggle for control of executive power ushered in by the term-limits movement. What emerged then was the continued conceptualization and treatment of the notion of term limits as the core guarantor of democracy and therefore the main if not the only ingredient for the control of power especially in Africa. This argument failed to appreciate the reality that there are other quite diverse factors that too have a hold on the conduct of democracy and control of power. Indeed, some scholars rightly note that term limits is a core principle of good governance but certainly not the only one. At best, it is contributory. Uganda, as later depicted, is one of the countries that missed this intersectionality between a good law and an awakened citizenry to defend the law.

The wave for constitutional term limits did not last long though as the same zeal in embracing them was adopted in challenging them especially by the authoritarian leaders. Having realized that the term limits were a stumbling block to their ambitions of longevity in power, most African leaders sought ways through which to deal with what was now a legal problem before them. The most plausible and seemingly legitimate method to deal with their new found ‘problem’ that could not be imprisoned or shot dead was to pursue Constitutional amendments. Considering the manipulations that surround these amendments aimed at lifting term limits, some scholars have branded them ‘*constitutional engineering*’,<sup>8</sup> ‘*constitutional coups*,’ for they seek to defeat the spirit of the Constitution and Constitutionalism with almost no or at least by-passed and manipulated popular participation of the masses. To others, this is ‘*term limit manipulation*’<sup>9</sup> while some argue that this (act of amendment to lift term limits) is the epitomisation of ‘*the Big Man syndrome*.’<sup>10</sup>

In Africa, this plague has grown by emulation where the success of the change in Constitution removing term limits in one country has always inspired the same attempt in another country—the epitome of negative learning and copying of bad precedents. The list of such Presidents for life facilitated by amendment of the Constitution is long across Africa. It includes among others, Kwame Nkrumah of Ghana, Sékou Toure of Guinea, Cameroon’s Paul Biya, Uganda’s

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<sup>8</sup> Foday Darboe, 2018 at 31. Foday described this as ‘a process by which presidents or political leaders embark on changing presidential term limits in constitutions to benefit themselves. Constitutional engineering is very similar to constitutional coups.’

<sup>9</sup> Foday Darboe, 2018 at 31. Foday defines it as the ‘act of changing a Constitution to allow a president to extend his or her grip on power.’

<sup>10</sup> Foday Darboe, 2018 at 31. ‘A term used to describe oppressive, authoritarian, and corrupt leaders who rule their countries for a long time. In sum, power is bestowed on one person—the president.’

Yoweri Museveni, Jean-Bédél Bokassa of Central African Republic and Hastings Banda of Malawi. Majority of them used their power to cajole, manipulate, buy off or make concessions with their respective members of the legislature to ensure that the Presidential term limits are lifted in their favour. The increasing prevalence of this scourge is exemplified by the fact that in the past twenty years alone, almost half of the African countries have attempted and succeeded while others have been resisted by the people in their quest to amend these Presidential term limits provisions.<sup>11</sup> This dishonest agenda has permeated Africa like a pestilence with varying degrees of success in the various countries.

The Constitutional engineering around the Continent has been achieved through the deployment of various maneuvers depending on the prevalent political situation in the particular country. There are varied examples of countries in East Africa deploying one or all of the mechanisms summarized below in the table.

<b>Type of Maneuver for Constitutional Amendment</b>	<b>Institution Targeted/ Section of the Public</b>	<b>Example of a Country</b>
1. Parliamentary Vote for lifting of Presidential Term limits.	Parliament (facilitated by mob-(in) justice of the incumbent leader’s party majority to sail through the amendments.	Uganda
2. ‘Manipulative’ judicial interpretation of the Constitution.	The incumbent leaders depend on the capture of the judiciary through appointment of party leading /cadre judges to fulfill their agenda.	Burundi
3. Holding of ‘manipulative’ referenda.	Manipulative and in some instances coercive cajoling of the public clothed in referendum to change the Constitution in the favour of the incumbent leader.	Rwanda

What is deplorable is the fact that all these term limits circumvention have been undertaken under the covering of the law-using legitimate institutions of the Parliament or Judiciary or

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<sup>11</sup> Most prominent examples include 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).

both especially where the amendments made in the former are confirmed by the later. The institutions that would have acted as sentries watching guard of the Constitution have often been co-opted into this vendetta of third term politics. Indeed in Uganda, there is convergence of thought and evidence to accentuate the above assertion. In particular, in 2005, Members of Parliament at the time all received a cash bounty of approximately UG. SHS. 5m (\$1300) and eventually voted in favour of lifting the term limits hence giving President Museveni an open ticket to stand for elections without hurdles. Some scholars maintain this was a bribe.<sup>12</sup>

## **PART II:**

### **THE TERM LIMITS CONVERSATIONS IN UGANDA: BETWEEN COMPROMISE AND RESISTANCE**

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The quest for lifting the term limits in Uganda was commenced in March, 2003 during the ruling party-National Resistance Movement National Conference convened at Kyankwanzi Political Training Institute, outside the Capital-Kampala City. Conversations with insiders in the highly historical meeting reveal that lifting presidential term limits was never on the agreed agenda then but only to appear *'from nowhere'* as a central issue for discourse. Resultantly, the resolutions from that Conference were consequently approved by the National Executive Council (NEC) of the Movement. One of such resolutions was to amend the Article 105 (2) and lift the Presidential term limits. They were later submitted to the Constitutional Review Commission for consideration for incorporation in the proposed amendment to the Constitution albeit controversially.

The term limit conversations in Uganda were centred around two camps, with a peripheral third one that was almost inconsequential to the discourse. The two extremes were an anti-amendment group and a pro-amendment group with the third group opting to abstain totally from the discourse for the reasons that were best known to themselves but allegedly couched in survival politics. These conversations revolved around members of civil society, political parties and their members, political pressure groups, liberation war veterans<sup>13</sup> who to-date occupy a peculiarly powerful position in Uganda's political landscape and, lastly, the media. The discourse was centred around six fundamental issues that would later become the focus as the debate took on a national character. Additionally, and as depicted below, these conversations occurred both within and outside the NRM party. They reflect both resistance

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<sup>12</sup> See Thadeus Mabasi and Kasimbazi Emma, *The Implications Of The "No Term /Third Term" Politics To Democracy And Constitutionalism In Africa: A Case Study Of Uganda,* 2013 at 9.

<sup>13</sup> These veterans also by default belong to the NRM ruling party having been part of the National Resistance Army (NRA) that took power in 1986.

and compromise of the various actors in relation to the amendment of the Presidential term limits.

## 2.1 *The Tales of both internal party and external resistance*

### a) *NRM internal resistance/dissenters discourse*

Whereas resistance was expected to this project of term limit constitutional amendment, not many political commentators within the country expected that much internal dissent from the ruling National Resistance Movement (NRM). The internal dissenters were very instrumental in embellishing the conversation with accounts of interactions that they seemed to have had with Mr. Museveni during the guerrilla warfare on the need to relinquish power in time. They infused into the national discourse three fundamental arguments that continue to rage till-now in Uganda: the historically elusive culture of statesmanship, Uganda's violent history and the role of the Constitution in averting a reversion to this history, and, thirdly, honest leadership that can be taken at its word. These conversations of resistance were propounded internally by prominent Ministers at the time. These included Eriya Kategaya, Minister of Local Government Jaberu Bidandi Ssali, and Ms. Sarah Kiyingi, former State Minister for Internal Affairs, former Ethics Minister Miria Matembe and Major Amanyu Mushega- former secretary general of the East African Community.<sup>14</sup>

Leading the pack was a trusted comrade of Mr. Museveni, Eriya Kategaya, rumoured to be the *de-facto* No.2 in government who resisted the amendment vehemently as a dent on Uganda's journey to democratization. His argument, directed to his bush war comrade, was for him to abandon the project, '*seize the moment*' and make history by being the first Ugandan President to hand over power peacefully. He too made his appeal relying on Uganda's historical trajectory where almost all ex-Presidents run away and died in exile-the tale of 'running Presidents'.<sup>15</sup> It is the need to break this cycle, this turbulent history, that had occasioned the provisions of the term limits in the Constitution of Uganda 1995, Kategaya argued. His argument was informed by the various instances in Uganda's history where change in power had been violent, involving coups and protracted guerrilla wars in 1966, 1971, 1979, 1985 and 1986. Kategaya's appeal for Museveni to make a legacy for himself by denouncing the amendment bill was later re-echoed by other commentators albeit to no avail. Tusasirwe was one such, who lamented that nothing was going to stop the President and his NRM structure to drop the agenda of removing term limits:

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<sup>14</sup> Eriasa Mukibi Sserunjogi, '*Ten years later: Revisiting term limits drama of 2005 - Part I*,' The Daily Monitor, 11/July/2015.

<sup>15</sup> Eriasa Mukibi Sserunjogi, '*Ten years later: Revisiting term limits drama of 2005 - Part I*,' The Daily Monitor, 11/July/2015.



‘It is however a sad commentary on the strength of our civil society, the reality of our sovereignty and the depth of our nationalism that the only way one can expect sense to prevail is if, like the biblical Saul, parliamentarians are converted by a bolt of light or if the donors bully us into doing what is good for us, or if the Head of State is moved by the fear of eroding his own legacy to do what is so obviously right.’<sup>16</sup>

To Kategaya, and a large majority across the country that aligned with his thinking, the rationale for the presidential term limits in Uganda was found in its over 50 years’ of turbulent political history haunted by an unquenchable thirst for power by its executive arm. To this end, his argument, which would later become the national narrative, resonates with the preamble to the 1995 Constitution which is instructive and worth noting. It rests the sanctity of the Constitution on ‘recalling our history which has been characterized by political and constitutional instability; recognizing our struggles against the forces of tyranny, oppression and exploitation.’<sup>17</sup>

Arguably majority of these instabilities were occasioned as a result of the longevity in power (life presidency) or efforts to execute the same by some of the past leaders - moreover brutally - such as General Amin Idd’s reign of terror between 1971 and 1979. The only way to power had become through military takeovers since there was no certainty of one leader willingly leaving power.<sup>18</sup> The Constitution commits every Ugandan to contribute to ‘building a better future by establishing a socio-economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress.’<sup>19</sup> For the above reasons the Constitution of the Republic of Uganda was ‘solemnly adopted, enacted and given to ourselves and our posterity...’<sup>20</sup>

Kategaya further opined that limiting the presidential term limits to two was actually averting leadership longevity in power, something that President Museveni had vehemently resisted, insisting that Africa’s biggest problem was leaders that overstayed their welcome in power. He implicitly promised a departure from this conduct should he capture power. The provision, Article 105 (2), that had been extensively debated during the constitutional making process

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<sup>16</sup> Benson Tusasirwe, *Political Succession in Uganda: Threats and Opportunities*, in Chris Maina Peter and Fritz Kopsieker, *Political Succession In East Africa: In Search For A Limited Leadership*, Kituo Cha Katiba and Friedrich Ebert Stiung, (Eds) 2006 at 100.

<sup>17</sup> The Preamble to the 1995 Constitution of Uganda.

<sup>18</sup> Mabasi and Kasimbazi, 2013, at 9.

<sup>19</sup> The Preamble to the 1995 Constitution of Uganda.

<sup>20</sup> Ibid.

had been incorporated by the Constitutional Commission ‘...because of the fear of unrestrained power that has had such detrimental effects on postcolonial politics in Africa.’<sup>21</sup>

Many veteran legislators and senior citizens of the country would later join Kategeya in accentuating the debate on Uganda’s history as the key reason against the amendment of the Constitution. They included Omara Atubo, who had been central in the crafting of the 1995 Constitution during the Constituent Assembly. Another internal dissenter and respected national politician, who was at the time the Minister of Local Government minister Jaberu Bidandi Ssali also maintained the same Kategeya argument of breaking Uganda’s violent history arising from long stay in power. Both Kategeya and Bidandi Ssali were fired by President Museveni on the eve of the parliamentary debate on the amendment bill. Later, Kategeya was re-admitted to Cabinet as first deputy prime minister and minister for East African Affairs until his death. The internal dissenters were later removed from Cabinet, further highlighting the high price paid by those that propelled a conversation that was against the amendment of the Constitution.

Among other dissenters was Colonel Fred Bogere, the army representative in Parliament at the time. The Colonel abstained from the vote. He reasoned that he was an active serving military personnel who had to remain neutral on what was clearly a nationally divisive issue. It later emerged that the General. Aronda Nyakairima (RIP), then Chief of Defence Forces averred that Colonel Bogere who had gone against the army’s collective position was to face the Army Council. Subsequently, Colonel. Bogere was dropped from Parliament and he has since stagnated on the same rank with no further deployment worth mentioning. Brigadier Henry Tumukunde, another army representative who had called for a secret ballot voting in Parliament on the amendment would later also leave parliament-recalled by Army by resignation. He was later placed under house arrest, tried and convicted of ‘spreading harmful propaganda’ and sentenced to ‘serious warning.’ The media summarized this period that characterized the term limits debate in 2005 as a time of ‘fallouts, turnarounds, and agitations.’<sup>22</sup>

*b) External resistance conversations-the ‘sad term’ phenomenon*

The need to counter the amendments led to the creation of pressure groups by the NRM oriented Members of Parliament prominent who included Ms. Salaamu Musumba and Major John Kazoora, called the Parliamentary Advocacy Forum (PAFO). Its main agenda was to

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<sup>21</sup> Aili Mari Tripp, ‘*The Politics of Constitution Making in Uganda*’, at 171. Accessible at [https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter6\\_Framing.pdf](https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter6_Framing.pdf) (Accessed on 28/05/2020).

<sup>22</sup> Eriasa Mukibi Sserunjogi, ‘*Ten years later: Revisiting term limits drama of 2005 - Part I*,’ The Daily Monitor, 11/July/2015.

oppose the lifting of term limits, and it would later join the Forum for Democratic Change (FDC) party. The other pressure group was the Young Parliamentarians' Association (YPA). Ms. Salaamu Musumba would later become very instrumental in coining what became a key catchphrase of the opposition: that the amendment to allow Mr. Museveni another term would plunge the country into a '*sad term*' (literally replacing '3<sup>rd</sup>' with 'sad'). To strike a chord with the common man, Ms. Musumba sought to depict the entire plan of amendment as sad in the context that Uganda would not see a peaceful transition soon, which had been a national aspiration especially to the old generation that had witnessed the turbulent era. Secondly, it was sad, because Ugandans had been deceived considering that Mr. Museveni had indicated that he would retire in 2001 paving way for a new leader.

Equally robust was the Civil Society Organisations (CSO) fraternity. Led by the Human Rights Network-Uganda, an umbrella organization of over 60 NGOs operating across the country, about 90 non-government organisations on 6<sup>th</sup>/03/2005 launched a campaign to oppose the Bill to lift presidential term limits. They too were riding on Uganda's history to augment the opposition to resistance. They opined that 'Lifting term limits is to ignore the very lessons we claim to have learnt. It is to ignore the lives lost and persons displaced through misrule.' The NGOs created a loose platform, which was non-discriminatory bringing together all human rights actors, and which they called the Coalition for Constitutional Amendments. The coalition would later present their views to the Legal and Parliamentary Affairs Committee that was scrutinizing the Bill.

#### *Academics weigh in; from open letters, seminars to Newspaper opinion pieces*

Other voices of resistance emerged from various members of academia, mainly from Uganda's oldest public Makerere University from the legal and political science perspective. Their input was both proactive - tackling issues that seemed complex for comprehension by the public - and also reactive in as far as they countered, with evidence, some of the narratives that were being spread by the pro-amendment camp of the NRM. Key in their conversation was their concern on the weakening of institutions in face of an overbearing executive with no term limits to tame its power. To many, 'an all-powerful president and the lack of independence has weakened the country's status as a democracy...' further entrenching 'patronage politics revolving around the incumbent.'<sup>23</sup> In the same vein, 'everything, the electoral commission,

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<sup>23</sup> Nakisanze Segawa, 'Ugandans Debate Term Limits As Election Approaches,' Global Press Journal, 2016. Accessible at <https://globalpressjournal.com/africa/uganda/ugandans-debate-term-limits-election-approaches/>. (Accessed on 6/07/2020).

the security agencies and the judiciary are institutionalized to serve the incumbent's purposes from the top, through the districts, down the parishes to the local councils.<sup>24</sup>

The conversations of resistance also took the form of open letters written directly to the President and run through the newspaper dailies. One was authored by prominent Professor of Law, and Director of Human Rights and Peace Centre, School of Law, Makerere University - Oloka Onyango. He wrote in reply to a scathing attack the President had made on academics, including Oloka, as 'mendacious.' This was in the immediate aftermath of the 2005 amendment lifting the term limits. Professor Oloka's discourse revolved around the aspect of age and diminishing returns of leaders; the historical troubles of Uganda and thirdly the quest for constitutional sanctity and constitutionalism in Uganda. On the intersection between age and presidential term limits, Oloka argued that;

'...after ten years in power, one was a veteran; after 15 you are an elder; at 20 you are nearly extinct, and at 20+ you have become a liability....The history of those leaders who have been in power for over 15 years has largely been a history of diminishing marginal returns (DMRs). In other words the longer in office, the more disastrous their performance. Correspondingly, the situation of their countries grows worse....By contrast, for all those African countries (without exception) that have introduced term limits...there has been progressive democratic (and economic) reform. By removing term limits, Uganda joined the ignominious company of a country like Chad, which despite its large oil reserves, is in both political and economic trouble.'<sup>25</sup>

## *2.2 Complacency Tales: the peoples' vote vs constitutional amendment narrative*

The other central facet of the conversation especially by the pro-amendment NRM camp revolved around the so called people's ability to counter executive power through the vote regardless of the absence of term limits in the Constitution. A key promoter was the then Minister of Defence Amama Mbabazi. During a talk at the Royal African Society in London on May 26, 2005, Mbabazi opined;

'The whole argument behind term limits is a disguise for personal ambitions. The unstated objective is not the defence of democracy but a desire to get into government and share in the so-called spoils of office. Since the people have absolute power to elect or not to elect

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<sup>24</sup> Nakisanze Segawa, 'Ugandans Debate Term Limits As Election Approaches,' Global Press Journal, 2016. Accessible at <https://globalpressjournal.com/africa/uganda/ugandans-debate-term-limits-election-approaches/> (Accessed on 6/07/2020).

<sup>25</sup> The New Vision, 'Oloka responds to the President on term limits,' 31<sup>st</sup>/ July/2006. Accessible at <https://www.newvision.co.ug/news/1143715/oloka-responds-president-term-limits>

their presidents in a free and fair elections at regular intervals. Term limitation serves no useful purpose.<sup>26</sup>

This Mbabazi narrative became the rallying point for a wider majority of the supporters of the lifting of presidential term limits. They contended that a limitation is against the people's right to choose out of free will their leaders. This school of thought further contended that what can safeguard Africa and so Uganda's democratic achievements is not limits on presidential terms but the people. They exercise this power periodically, through the ballot, the results therefrom being a representation of popular will and sovereignty. Before the amendment process was completed, to further wrap the manifestly selfish agenda in the name of the people, President Museveni is reported to have said:

'I have been hearing people talking of a third term. This is not the correct way to put the issue. The correct way to put it is, probably, to talk of removing the limit of two consecutive year presidential terms so that the question of who leads the country depends on the popular vote, as is the case in some countries in the world.'<sup>27</sup>

After the amendment, the President Museveni, almost in a boasting posture, praised the above narrative. He noted that '...For us in Uganda, we rejected this business of term limits. If I am in power because I am voted by the people, then I am there by the will of the people.'<sup>28</sup> Professor Oloka would later rebut that argument, as earlier noted. He averred that,

'The historical record demonstrates that the longer a President stays in office, the harder it is to remove him or her in a democratic fashion...The naked truth is that incumbents exercise a considerable degree of control over electoral processes. The more desperate they become, the lower the likelihood that those processes will be free and fair. This point is amply demonstrated by our own recent history. In 2001, our Supreme Court was split (4-3) on the fairness of the presidential election, although they ultimately declared you (Museveni) winner. By contrast, in 2006, a unanimous court (7-0) concluded that the electoral process was completely unsatisfactory. The implication of the later judgment is clear; the longer you stay in office, the worse the electoral processes are becoming.'<sup>29</sup>

Clearly, as the good professor argued, the convenient argument (of people's vote) ignores the much documented unfairness that defines most elections in Africa, and Uganda in particular.

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<sup>26</sup> Eriasa Mukibi Sserunjogi, 'Ten years later: Revisiting term limits drama of 2005 - Part I,' The Daily Monitor, 11/July/2015.

<sup>27</sup> Benson Tumasirwe, 'Political Succession in Uganda: Threats and Opportunities,' in Chris Maina Peter and Fritz Kopsieker, 'Political Succession In East Africa: In Search For A Limited Leadership,' Kituo Cha Katiba and Friedrich Ebert Stiftung, (Eds) 2006 at 93.

<sup>28</sup> Foday Darboe, 2018 at 27.

<sup>29</sup> The New Vision, 'Oloka responds to the President on term limits,' 31<sup>st</sup>/ July/2006. Accessible at <https://www.newvision.co.ug/news/1143715/oloka-responds-president-term-limits>

It ignores the lack, in practice, of independence of what are supposed to be independent electoral bodies that are only so in name often infiltrated by the incumbent party/leader sympathizers and its leaders appointed by the executive.

*The authoritarian stability and individual exceptionalism narrative*

Other tales were clad in alleged people aspirations and demands for keeping Mr. Museveni through changing the Constitution. These were largely accentuated by the Members of Parliament from the ruling NRM. They maintained that they had consulted the masses they represent and it was clear that they ‘...decided that it was President Museveni they wanted.’<sup>30</sup> These were joined by statesmen of high standing with a leaning to the NRM, on the basis of the exceptionalism of the person of the President and the need to retain him for bringing stability to the country. These included John Nagenda, a senior presidential adviser on media relations, who said, ‘For a case like Uganda and its history, a leader comes who is so exceptional, and the masses don’t want him to go.’<sup>31</sup> Dorothy Mpiima belonging to the NRM found reason to support the amendment because apparently it was the people’s voice.<sup>32</sup>

‘We have kingdoms in Uganda and I am proud of my king...If we think that he should be around for as much as he wants, what is wrong with that? I hold respect for my colleagues for reflecting and representing the opinions of the masses at that time when presidential term limits were removed.’

Tusasirwe has recorded other bizarre conversational narratives during the debate in the quest to justify the lifting of the term limits. One such goes that there was need to reward President Museveni for having sacrificed his life to govern Uganda for so long, and the best way of doing that was to permit him continuity in the presidency through lifting the term limits.<sup>33</sup> Secondly, was the argument that the President was still capable to run the country. Topping the above was the third that some members of academia described as insulting.<sup>34</sup> It went that Uganda had no alternative leaders at all not from the NRM ruling party and certainly not from the opposition parties. It was either Museveni or the country would plunge into failed state mode arising out of a leadership crisis.

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<sup>30</sup> Nakisanze Segawa, ‘Ugandans Debate Term Limits As Election Approaches,’ Global Press Journal, 2016. Accessible at <https://globalpressjournal.com/africa/uganda/ugandans-debate-term-limits-election-approaches/> (Accessed on 6/07/2020).

<sup>31</sup> Nakisanze Segawa, ‘Ugandans Debate Term Limits As Election Approaches,’ Global Press Journal, 2016. Accessible at <https://globalpressjournal.com/africa/uganda/ugandans-debate-term-limits-election-approaches/> (Accessed on 6/07/2020).

<sup>32</sup> Nakisanze Segawa, ‘Ugandans Debate Term Limits As Election Approaches,’ Global Press Journal, 2016. Accessible at <https://globalpressjournal.com/africa/uganda/ugandans-debate-term-limits-election-approaches/> (Accessed on 6/07/2020).

<sup>33</sup> Tusasirwe, 2006 at 95.

<sup>34</sup> Tusasirwe, 2006 at 95.

This was countered by the academics, urging that ‘while open terms help a country to keep a good president, they hamper it in getting rid of a bad one, especially within a context where the mechanisms to control him or her are weak, as is the case here. The objective of term limits is not to stop the good presidents of this world from ruling well; it is to stop the bad ones from continuing to rule badly and to avoid the arrogance, inertia and complacency that inevitably come with overstaying in power. Term limits also guard against the dangers that arise when good presidents overstay in office.’<sup>35</sup>

### *2.3 Constitutional sanctity, constitutionalism, ‘people love’ and liberation war credentials*

Also central to this conversation was constitutionalism and respect for the Constitution. The argument was accentuated by the notion that the longevity in power of the executive is a retrogression in the journey of constitutional development especially for young, somewhat fragile democracies such as Uganda. Again voices of the academics were very vehement on this particular aspect, one noting that;

‘Constitutionalism is about accepting the rules of the game as written and agreed upon, whether those rules favour you, or not. If the goalposts are changed whenever the tide goes against those in power then we have simply returned to the stage when Apollo Milton Obote abrogated the 1966 Constitution, rather than face the possibility of losing his job as Prime Minister. The 2005 amendments to the 1995 Constitution were the non-violent equivalent of Obote’s abrogation. My short point is that in the final analysis, constitutionalism is based on trust, not on the document in which the Constitution is embodied, because...nothing in that document is sacred. Just as it is not the quoting of biblical verses that shows whether you are a true Christian...’<sup>36</sup>

In response to the above argument was another equally drum-awakening aspect of the conversation: namely that there was no need to limit the presidency/executive since the other two organs of government-i.e. the judiciary and the legislature did not have term limits. So why discriminate and limit the executive? But as Tusasirwe explains, this argument too was weak and simply dishonest:

‘Unlike the presidency, the legislature is not a one person institution. Its decisions, resolutions and actions are group matters. If some of the members became hopelessly incompetent, senile or dangerous, the danger they pose is absorbed by the other members of the group. It is most unlikely that an individual member of parliament can pose a

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<sup>35</sup> The New Vision, ‘*Oloka responds to the President on term limits*,’ 31<sup>st</sup>/ July/2006. Accessible at <https://www.newvision.co.ug/news/1143715/oloka-responds-president-term-limits>

<sup>36</sup> The New Vision, ‘*Oloka responds to the President on term limits*,’ 31<sup>st</sup>/ July/2006. Accessible at <https://www.newvision.co.ug/news/1143715/oloka-responds-president-term-limits>

substantial threat to the entire nation. Likewise the decision of a single judge is subject to a system of appeals, not so with the exercise of presidential power. Besides, even if it were wrong for parliamentarians and judicial officers to have unlimited terms, this wrong would not justify a similar wrong in respect of the presidency.<sup>37</sup>

Proponents of the lifting of term limits further maintained that it was critical to continue with the reigning leader arguing that this is the perfect solution for post-conflict states that make up most of Africa. They argued that in such situations of state fragility, ‘authoritarian stability’ is critical to avoid the state falling apart due to remnant seeds of future conflicts that remain unwedded out. It was further clothed plausibly in the ‘...the need to complete or sustain an ongoing reform agenda.’<sup>38</sup>

And of course the above had been built around the so-called dedicated nature of the leader who must be given an opportunity to complete the development plans he had started, and the time to complete his/her dreams for his/her country. This, coupled when used by or on behalf of incumbents who have a background of liberation war legacies such as Ugandan President Museveni breeds what some scholars termed an ‘exaggerated sense of having liberated Ugandans from bad governance, his feelings of indispensability for Uganda’s prosperity...’<sup>39</sup> President Museveni has been both a promoter and sole beneficiary of this narrative. When pressed on why the amendment of the Constitution was a priority, he noted implicitly about him needing more time for accomplish his development agenda that;

‘We are in very serious business, dealing with the destiny of our people and that what will determine what we’ll do ... Whatever we do, we do it in the partnership with the people; we don’t do it alone ... We want a flexible constitution because we have got issues that we must deal with, which may not be time-bound, which may need more time’<sup>40</sup>

The dishonesty of the incumbent leaders in relation to third term politics has often been laid bare in their manipulative insistence on ‘respecting the constitution.’ In their script, it’s always the people pressuring them to stand again, and thus the amendments are depicted as simply a response to the will of the masses and not necessarily of the incumbent ruler who would, if it was possible, willingly retire into private life. The argument that the people had asked and pressured these rulers to stay around and as thus change the Constitution was simply

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<sup>37</sup> Tusasirwe, 2006 at 96.

<sup>38</sup> J Shola Omotola, *Third-Term Politics and the De-Institutionalization of Power in Africa*, *Africa Review* 3, 2, 2011: 123-139, at 132.

<sup>39</sup> Tangri, R. and Mwenda, A.M, *President Museveni and the politics of presidential tenure in Uganda*. *Journal of Contemporary African Studies* 28 (1): 31-49, 2010 as cited in Cheeseman, 2019, at 16.

<sup>40</sup> The New Vision, 30<sup>th</sup>/ October/ 2005 as cited in Cheeseman, 2019, at 16.



dishonest. If anything these calls ‘were purchased-politically arranged.’<sup>41</sup> These machinations further affirm the centrality of ‘the politics of ‘crowd renting’ in the quest for, and the consolidation of, power in Africa’ and the institutionalization of a new form of neo-patrimonial rule.<sup>42</sup>

The other quite simplistic aspect of this conversation was the continued opportunistic reference to the United Kingdom, Germany and Russia as some of the world fronted democracies but without presidential/prime minister term limits. The proponents of this argument, led by the President, further sought to depict the term limits as foreign and not therefore a homegrown idea in Uganda. This argument found favour amongst the naïve populace that is manipulated to see this fact as discriminatory and undermining the ability and indeed the right of Africans to also exercise their rights of choice of leadership as they wish without being lectured on what is workable and not.

The above pro-amendment narratives were expounded in a tightly suppressed media terrain, militarized politics and shrinking civic space, devoid of free expression and critics from other sections of the public, and worked tremendously in pushing such constitutional amendment agendas across Africa.

#### *2.4 The undemocratic tendencies of NRM and its facilitation of the amendment*

Various commentators on Uganda’s journey to the lifting of presidential term limits and its impact have sought to shift the conversation to the authoritarian character of the NRM and its leader, perhaps warning generations to come that they cannot expect honey from a python! The conversation from this angle is particularly key in highlighting the atmosphere within which the debate on term limits took place.

There is evidence that during the debate for opening up of the term limits, the NRM government maintained and was favoured by a combination of ‘...tight constraints on civil society groups, the absence of a well-organized opposition (due to state restraints at associational and assembly freedoms), and a pliant international community...’<sup>43</sup> Additionally, there was Museveni’s strong grasp on the party, leaving no room for rogue members of parliament when the time for voting came. All members of the party however senior, who were suspected of being against lifting the term limits were purged by the President using his immense authority as party leader. On the eve of the vote, the internal opposition had been decisively subdued. When the day came, on the bill’s first reading, 53 votes were cast against

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<sup>41</sup> Omotola, 2011 at 124.

<sup>42</sup> Omotola, 2011at 124.

<sup>43</sup> Cheeseman, 2019, at 17.

the bill while majority of 223 votes opted for lifting the amendment of the Constitution. It had been manipulatively crafted, yet legally delivered, including giving a concession - re-introducing the very multi-party politics that the NRM had castigated as sectarian, backward and anti-African, and had banned for 19 years. Aili Mari Tripp captures and infuses this reality of this double standards in the conversation aptly;

‘In an about-face in 2005, multiparty-ism suddenly became acceptable in a quid pro quo arrangement that allowed Museveni to stay in power. In December 2004, the government presented Parliament with 119 constitutional amendments, including amendments that would lift limits on the president’s service of two terms (Article 105.2), lift the restriction on political parties (Article 269), change the political system to a multiparty system (Articles 69–74), and impose sanctions on cultural leaders (kings and chiefs) who violated the constitution.’<sup>44</sup>

It is a sad tale of ‘undemocratic outcomes emerging from a constitution-making process (that led to the 1995 Constitution) that was touted as unprecedented in its participatory character.’<sup>45</sup> The impact of lifting the term limits in Uganda continues to-date but perhaps no one best foresaw the reach of this act like Tumasirwe. On the eve of the lifting of the term limits he opined that;

I suggest to you that if the Constitution is amended to remove term limits, which will be one of the final stages in wiping out constitutionalism as we had started to know it. Thereafter, there will be absolutely nothing to prevent the Executive from tinkering with the laws whenever they seem to be inconvenient. I also suggest to you that once the Constitution is amended on such indefensible grounds, there will be no further hope for any peaceful opposition.’<sup>46</sup>

Years later, and no doubt encouraged by the success of the constitutional amendment lifting term limits, in 2017, the remaining buffer provision against life presidency of Article 102 of the Constitution was also amended. The Article prohibited anyone above 75 years standing for the presidency. This could have effectively locked out President Museveni in the 2026 polls. What did he do? His story is summarized aptly by Nic Cheeseman:

Upon winning re-election in 2016, and aware that he would be 77 by the time of the next polls, the president quickly set about removing the constitutional age-limit of 75.

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<sup>44</sup> Aili Mari Tripp, *The Politics of Constitution Making in Uganda*, at 171. Accessible at [https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter6\\_Framing.pdf](https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter6_Framing.pdf) (Accessed on 28/05/2020).

<sup>45</sup> Aili Mari Tripp at 158.

<sup>46</sup> Tumasirwe, 2006 at 100.

Following the well-established pattern discussed above, he initially sought to disassociate himself from the campaign, entrusting backbench MPs to introduce the debate into the National Assembly. And as in 2005, the president was able to use his control over the NRM to force through a constitutional amendment in December 2017 that not only removed the age-limit but also extended the length of the presidential term so that he does not need to contest another election until 2023.<sup>47</sup>

After the amendment, the incumbent President can stand for as many times he wants and at whatever age he prefers. One can perhaps argue and rightly so, that the presidential term limits amendment laid ground for the future dismantling of Constitutionally guaranteed safeguards on executive power.

#### **IV. CONCLUDING REMARKS ON THE IMPACT OF THE PRESIDENTIAL TERM LIMITS PROVISIONS AND THEIR INADEQUACY IN CONTROLLING POWER**

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The repercussions of these amendments or attempts at the amendments have been far reaching, in many cases leading to further destabilization of the countries. In Uganda, as has been shown, the first 2005 amendment laid ground for further desecration of the Constitution all in perpetration of the Mr. Museveni's individual desires to holding on to power. Using the court to stop these selfish amendments has continued to be unreliable in most countries, as their judiciaries are under state capture in these often one party dominant countries; as such judicial officers cannot rule against the ruling party aspirations.

Armstrong has summarized the extra-legal factors that impact on the incumbent remaining or leaving office, namely,

‘First, presidents might voluntarily step down or choose to stay in office without much or any resistance from their political allies or opponents. Second, the effectiveness of individual opposition leaders will determine whether a president can stand for a third term. Third, strong institutional pressures from political parties, government institutions, and civil society might force a president into retirement, while weak institutional pressures (or institutional support) might allow a president to cling to power. Fourth, pressures from the context immediately surrounding the term limits debate – presidential popularity, economic performance, and parliamentary majorities at the time of the debate – might affect the outcome. Fifth, exogenous pressure – or a lack thereof – from foreign states and international financial institutions might influence a president's ability to remain in power.’<sup>48</sup>

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<sup>47</sup> Cheeseman, 2019 at 25. The Presidential term was eventually restored to 5 years by the Constitutional Court of Uganda.

<sup>48</sup> Armstrong, 2011 at 9. Pressures and Presidential Term Limits. Accessible at <https://polisci.northwestern.edu/documents/undergraduate/ben-armstrong.pdf>.

Uganda's conversations on the third term politics and executive control can be a mixture of sadness, frustration and selfishness. Yet again, there are voices of hope, reason and objectivity that emerged, and are still heard, pushing forward the democratization agenda and respect for the Constitution. Uganda's case is littered with various perspectives that were accentuated in the quest for lifting of the term limits. Similarly, many views emerged from other stakeholders resisting the amendment mainly propounding the need to respect the Constitution and making a departure from the country's violent past.

What is very clear from the third term politics across Africa, and particularly in Uganda, is that the words of the Constitution restricting presidential terms and thereby controlling executive power continue to be wasted ink, leading to dashed hopes amongst Africans. The situation speaks of the dangers of over-glorification of the constitution without developing a culture of constitutionalism, for a constitution alone cannot guarantee progression of the democratization process and control of executive power. Additionally, constitutional provisions, however fundamental, cannot be implemented especially if they are likely to affect incumbent leaders without complementary vigilance from the populace. This means that the building of the civic capacity of the populace and strengthening of the civil society as the main guarantors and protectors of the Constitution are central to breathing life into term limit provisions.

The above becomes more pertinent when one considers the level of corruption and patronage in Uganda, and indeed Africa's, politics. In almost all the African countries where these provisions have been amended, the conduit has been corruption of the Parliament—a manifestation of the hegemonic-patronage system often robustly built by incumbent leaders sustained by institutionalized corruption of the praise singers. No measure of the law can dismantle such a system without a corresponding force from an empowered populace applying every legal means within its power to reclaim back its loaned power to the executive in this social contract. The dismantling and eventual restructuring of the patronage set-up of most African states should also provide a path of redemption to the judiciary which is under capture. This institution is central to the upholding of constitutional guarantees as the keeper and custodian of rights and freedoms, a task it can only execute if it is independent and free from all political entanglements of the executive.

One of such conduits could be through the executive being barred legally from having a hand in the appointment and eventual selection of judicial officers. In this way, their allegiance once on the bench would be to the law and by extension to the aspirations of the populace. But also, as we have seen above, the importance of an organized, consistent and focused

opposition grouping in the form of either political parties or loose reform movements cannot be over-emphasized. These could come in handy in providing direction and rallying the masses behind the cause of defending the constitution to counter the machinations of amendment.