

## PROMOTING DEMOCRATIC GOVERNANCE THROUGH CONTROL OF POWER

Notes for presentation to in person session on Presidential term limits for journalists

24 May 2023

The theme of our event today is **how should journalists deal with this issue?** It is our function as Katiba Institute to put the case here for retaining term limits. But for you the aim may be a bit different. We would of course be delighted if Kenyan journalists took a firm view against any extension of presidential terms. But it is also your role to inform Kenyans. And to take – and express - a strong view may go against that role. First you may yourself be blinded to certain aspects by your enthusiasm. And secondly some readers may be turned off by over-partisan journalists. Maybe sometimes journalists may be constrained by their owners in the positions they take.

I have to say that I sometimes feel that Kenyan newspapers are being too much taken over by “op-eds” – that is by opinion, to the detriment of actual news and factual reporting. The founder of the UK newspaper that I read (online) – the Guardian – said “Facts are sacred but Comment is free”. Of course facts are rarely “pure” – even what you selected to report, and how you report it will convey a message. But it still remains important to make it as clear as possible when something is factual and when comment, and try to keep them distinct.

When preparing for this event as well as making my own notes and doing my own research I set Chat GPT the task of answering “How should Kenyan journalists deal with the issue of presidential term limits?” Of course I got a response in seconds. It was not profound, and not Kenya-specific in any way. But I thought you would be interested to hear a few of its suggestions.

Chat GPT said

“Objective Reporting: Journalists should strive for unbiased and objective reporting. Provide accurate information about the debate surrounding presidential term limits, including different perspectives and arguments presented by various stakeholders.

“Public Awareness: Educate the public about the significance of presidential term limits, highlighting their impact on democracy, governance, and political stability. Explain the experiences and lessons from other countries that have implemented or amended term limits.

“Investigative Journalism: Investigate any attempts to manipulate or subvert the constitutional provisions on term limits. Uncover potential conflicts of interest, corruption, or power consolidation associated with the issue.”

I would not disagree with any of those.

Here are a few of my own thoughts.

1. **Don't be tempted to think it is a simple matter to be resolved by one or two quick responses.** It has been argued over for 2000 years. The ancient Romans limited the terms of their consuls. And very fully argued at the time the US Constitution was drafted (and they did

not introduce limits then but much later). And there is much later experience. Locally I think Uganda probably has the best record of debate on the issue. There was a vigorous discussion while the US Constitution was being debated (albeit in secret). *The Federalist Papers*, with contributions by Alexander Hamilton and James Madison, included material on this issue. Hamilton was against term limits. Here is a short extract from Federalist Paper No. 72:

“Nothing appears more plausible at first sight, nor more ill-founded upon close inspection, than a scheme which in relation to the present point has had some respectable advocates, I mean that of continuing the chief magistrate in office for a certain time, and then excluding him from it, either for a limited period or forever after. This exclusion, whether temporary or perpetual, would have nearly the same effects, and these effects would be for the most part rather pernicious than salutary.”

Hamilton suggests that in such a system incumbents would feel tempted to make the most of the office while they have it, or to take extreme measures to change the rules. It would promote instability, deprive the people of valuable services. And, he writes, “Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?”

2. **Don't think it is not a real issue.** Some American professors did a study published in 2020. They found that since 2000 about one-third of incumbents tried to extend when they were ending their terms- and when they excluded what they called “strong democracies” it was about 50%. And not by coups but by legal means (including changing their constitutions).
3. **Be sure you understand the issues and are really confident about your position.** Be sure you know the arguments **on both sides** and know how to combat them.
4. **Think about history here and in other countries.** What happens when regimes stay too long? In the Arab world from 2011 (the Tunisian revolution), in Iran maybe, in China now. In fact I think we can say that very often when people have no limit - either because they never had a limit or because it has been done away with – it may be really hard to get rid of them. And yet they often turn out to be ineffective, stay too long, and in the end may precipitate a rebellion – which is not a healthy way to change government. Think of Kenya. Why (how) did Jomo stay on until he was clearly (from our perspective) incapable? Why did Moi stay so long? And think of others. Paul Biya, Nguema of Equatorial Guinea, Sassou Nguesso of Congo Brazzaville. We often speak of the advantage of the incumbent. Having no limit gives a permanent benefit to the incumbent. There is something addictive about power – people can't stand opposition. Opposition members leave the country, mysteriously disappear, fade into obscurity, are bought out, their parties are declared illegal, they are found to be foreigners, or otherwise unqualified to stand (perhaps by being prosecuted and sentenced to a period that disqualified them from office, or even just disgraces them, like being accused of homosexual activities) . Leaders also often have strong personalities which, coupled with the aura of office, puts everyone else in the shade.
5. **It can happen with Prime Ministers, too.** Even though they do not usually have formal term limits. Malaysia, Singapore, now Cambodia. Are examples. Hun Sen has been PM in the last for 26 years. But maybe it is less of a risk with prime Ministers.

## 6. Chat GPT:

“Research and Analysis: Conduct in-depth research to understand the historical, legal, and political context of presidential term limits in Kenya. Analyze the implications and potential consequences of both maintaining or changing the existing term limits. AND

“Comparative Analysis: Compare and contrast the term limit policies and practices in other countries within the region or globally. Assess the impact of different approaches to term limits on democratic governance and political stability.”

7. **Some people have been over-confident that it can't happen here.** It is perhaps easy to say “It is hard to change the Constitution- you need two thirds of each house plus Yes in a referendum.” But we all know that MPs can often be bribed. And many constitutions have been changed by referendum on this issue. How did that happen? Was it because the current leader was very popular? Was it because of fear of instability? Was it because there was no real alternative visible to the current leader? Votes in referendums are often about something other than the apparent question before the people (remember 2005 in Kenya – were people really voting about the Constitution?). I found an article on The Conversation by a Kenyan working in an US academic institution. He said “Voters are unlikely to accept any efforts to interfere with what is a robust and effectively functioning constitutional system.” Do you believe that – that the voters are confident that the system is “robust and effectively functioning” or that they would vote for the status quo? I suspect that people find change more interesting than stability. That’s why coups are so often greeted with enthusiasm I think.
8. **Beware of spurious arguments.** For example about “African tradition”. I remember that Nnamdi Azikiwe, first Governor General and then President of Nigeria in a parliamentary system, insisted that Africans did not understand the idea of a leader without real power. . Yet he was Ibo. A community without traditional chiefs. He was talking nonsense.
9. **The idea of the benevolent dictator is largely a myth.** [I did not actually say this but it was in my notes and another speaker did say it, effectively. I just want]d to note my agreement).
10. **And if you want to allow a particular wonderful person to stay on – how about the less wonderful people who will benefit from the rule in future?** You make constitution to last not for a particular wonderful person.
11. **Finally, Can one argue that if the rest of the Constitution remains untouched things should be OK?** We still have Parliament, and independent offices and commissions and the judiciary. It is true that long term rulers who turn into dictators usually bring other constitutional institutions to heel also. No independent judiciary. Banning of political parties (no independent electoral commission/ Registrar of parties) prosecuting other party leaders (no independent DPP). But reflect. I feel that undermining the constitution does not happen in one respect only.

By **Jill Cottrell Ghai**