



ACP-EU JOINT PARLIAMENTARY ASSEMBLY
ASSEMBLÉE PARLEMENTAIRE PARITAIRE ACP-UE

Committee on Political Affairs

23.9.2016

DRAFT REPORT

on constitutional limits on presidential terms

Committee on Political Affairs

Co-rapporteurs: Tulia Ackson (Tanzania)
Ignazio Corrao (European Parliament)

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PROCEDURAL PAGE

At its meeting of 7 December 2015, the Bureau of the ACP-EU Joint Parliamentary Assembly authorised its Committee on Political Affairs to draw up a report, pursuant to Article 2(8) of its Rules of Procedure, on constitutional limits on presidential terms.

At its meeting of 17-18 March 2016, the Committee on Political Affairs appointed Ignazio Corrao and Tulia Ackson (Tanzania) as co-rapporteurs.

The Committee on Political Affairs considered the draft report at its meetings of

At the latter meeting, it adopted the accompanying draft motion for a resolution.

The following were present for the vote:

The resolution was tabled for adoption on

MOTION FOR A RESOLUTION

on constitutional limits on presidential terms

The ACP-EU Joint Parliamentary Assembly,

- meeting in Nairobi (Kenya) from 19 to 21 December 2016,
- having regard to the Treaty on European Union, and in particular Article 2, Article 3(5) and Article 21(1), (2)(a) and (3) thereof,
- having regard to the revised Cotonou Partnership Agreement and in particular Article 1, Article 2, Article 8(5), Article 9, Article 11(1), Article 28(2)(a), Article 29(1)(a) and Article 33(1) and (2) thereof,
- having regard to its resolutions of 18 May 2011 on challenges for the future of democracy and respecting constitutional order in ACP and EU countries, of 27 November 2013 on the respect for the rule of law and the role of an impartial and independent judiciary, and of 13 June 2016 on the pre-electoral and security situation in the Democratic Republic of the Congo,
- having regard to the resolutions of the European Parliament of 9 July 2015 on the situation in Burundi¹, of 21 January 2016 on the EU's priorities for the UNHRC sessions in 2016², of 10 March 2016 on the Democratic Republic of the Congo³ and of 12 May 2016 on Djibouti⁴,
- having regard to the statement of 3 December 2015 by the High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the Commission, Federica Mogherini, on the constitutional review in Rwanda,
- having regard to the statement of 7 April 2016 by the High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the Commission, Federica Mogherini, on the political situation in the Democratic Republic of the Congo after the presidential election,
- having regard to the EU Strategy for Africa of 12 May 2005,
- having regard to the EU Annual Report on Human Rights and Democracy, adopted by the Council of the European Union on 22 June 2015,

¹ Texts adopted, P8_TA(2015)0275.

² Texts adopted, P8_TA(2016)0020.

³ Texts adopted, P8_TA(2016)0085.

⁴ Texts adopted, P8_TA-(2016)0220.

- having regard to the Universal Declaration of Human Rights and in particular Article 19, Article 20(1) and Article 21(1)(3) thereof,
- having regard to Article 21 and Article 25 of the International Covenant on Civil and Political Rights,
- having regard to the UN Economic Commission for Africa’s African Charter for Popular Participation in Development and Transformation,
- having regard to UN Human Rights Council resolution 19/36, adopted at its 19th session on 23 March 2012, on human rights, democracy and the rule of law,
- having regard to UN General Assembly resolution 67/97 of 14 December 2012 on the rule of law at the national and international levels¹,
- having regard to UN General Assembly resolution 66/285 of 3 July 2012 on the support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies²,
- having regard to UN General Assembly resolution 70/168 of 17 December 2015 on strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratisation,³
- having regard to the annual report of the UN High Commissioner for Human Rights, published on 17 December 2012, on common challenges facing states in their efforts to secure democracy and the rule of law from a human rights perspective⁴,
- having regard to the Constitutive Act of the African Union, and in particular Article 3(f), (g) and (h) and Article 4(m) and (p) thereof,
- having regard to the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament, and in particular Article 3(c), (d) and (f) thereof,
- having regard to the Protocol relating to the establishment of the Peace and Security Council of the African Union, and in particular Article 3(a) and (f) and Article 4(c) thereof,
- having regard to the African Union’s Convention on Preventing and Combating Corruption,
- having regard to the African Union’s declaration on the Principles Governing Democratic Elections in Africa (2002),

¹ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/97

² http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66/285

³ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/168

⁴ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.29_English.pdf

- having regard to the African Union’s Assembly declaration on Democracy, Political, Economic and Corporate Governance, and in particular Article 3, Article 5, Article 6, Article 7(a), (e) and (f), Article 8, Article 9, Article 13, Article 14 and Article 15 thereof,
- having regard to the decision of the Assembly of the African Union of 2 February 2010 on the prevention of unconstitutional changes of government and strengthening the capacity of the African Union to manage such situations¹,
- having regard to the African Union’s Economic Community of Central African States’ Bata Declaration for the Promotion of Lasting Democracy, Peace and Development in Central Africa, and in particular Article 11 thereof,
- having regard to Aspiration 3 of the ‘Agenda 2063, the Africa we want’, on ‘Good Governance, Democracy, Respect for Human Rights, Justice and the Rule of Law’,
- having regard to the UN Secretary-General’s statement at the 26th African Union Summit, ‘2016: African Year of Human Rights’,
- having regard to the African Union’s Solemn Declaration at the Conference on Security, Stability, Development and Cooperation in Africa of May 2000,
- having regard to the Democracy and Political Governance Initiative title in the New Partnership for Africa’s Development of October 2001,
- having regard to Article 4(g), (h) and (j) of the Treaty of the Economic Community of West African States (ECOWAS),
- having regard to the ECOWAS Protocol on Democracy and Good Governance adopted on 21 December 2001 (A/SP1/12/01),
- having regard to the Treaty of the Southern African Development Community, and in particular Article 4(b) and (c) and Article 5(1)(b) and (c) thereof,
- having regard to the African Commission on Human and Peoples’ Rights’ African Charter on Human and Peoples’ Rights, and in particular Article 13 thereof,
- having regard to the African Commission on Human and Peoples’ Rights’ African Charter on Democracy, Elections and Governance,
- having regard to the Universal Declaration on Democracy adopted by the Inter-Parliamentary Council at its 161st session on 16 September 1997,
- having regard to the Ulaanbaatar Plan of Action Democracy, Good Governance and Civil Society adopted on 12 September 2003 at the Fifth International Conference of New or Restored Democracies,

¹ <http://www.peaceau.org/uploads/assembly-au-dec-269-xiv-e.pdf>

- having regard to the 11th European Development Fund 2014-2020 National Indicative Programme, which prioritises strengthening democracy, governance and the rule of law, with an allocation of EUR 30 billion,
- having regard to Article 18(1) of its Rules of Procedure,
- having regard to the report of the Committee on Political Affairs (ACP-EU/xxxxx),
- A. whereas term limits exist today on every continent and may be adapted to both parliamentary and presidential regimes, but are especially relevant in the latter;
- B. whereas presidential regimes are one of the most widespread systems of government, in particular in Africa;
- C. whereas term limits are a key element of democracy, since they prevent incumbents from taking advantage of their position and ensure that governments act in the interests of the electorate through elections, by instituting a predictable political calendar;
- D. whereas most constitutions, including most African constitutions, contain presidential term limits;
- E. whereas political leaders in countries where the constitution contains provisions limiting presidential terms have often attempted to overstay in power;
- F. whereas from 1994 to 2009, 24 African leaders attempted to change term limits; whereas 12 succeeded, while another 9 finally abandoned their attempts following stiff resistance; whereas more recently, between 2000 and 2015, 26 African leaders have tried to remove or extend presidential term limits, 10 of them successfully;
- G. whereas 15 of the current African presidents have ruled their country for more than 12 years;
- H. whereas two or three terms amount to a period long enough for leaders to accomplish memorable progress; whereas overstaying in power is more often than not a means of serving a leader's political and personal interests rather than the people's interests;
- I. whereas prolonged time in office allows for greater accumulation, personalisation of power, the cult of personality, a culture of impunity and influence over privilege and corruption;
- J. whereas the absence of presidential term limits has the dangerous tendency of turning the office into an inheritance, preventing the people from choosing their leaders;
- K. whereas the multiplication of popular protests is evidence that over time people favour alternation of power and presidential term limits;

- L. whereas term limits contribute to the prevention of conflicts and are especially necessary in countries with fragile constitutional and democratic roots and little history or tradition of competitive politics;
- M. whereas any attempt to circumvent or amend the constitution against the will of the people is a major obstacle to peace and development, threatens political stability, and results in chaos, violence, violations of human rights and displacements;
- N. whereas in a democracy no party can amend the constitution to its own benefit;
- O. whereas both EU and ACP countries have a strong common interest in the continued development of democracy and the establishment of properly functioning constitutionalism;
- P. whereas the Cotonou Agreement reaffirms that democratisation, development and the protection of fundamental freedoms and human rights are interrelated and mutually reinforcing; whereas presidential term limits can be seen as a way to effectively implement universally recognised democratic principles and good governance, underpinning the organisation of a state so as to ensure the legitimacy of its authority and the legality of its actions;
- Q. whereas democracies are characterised by free and fair elections by which power is transferred peacefully to persons who have gained legitimacy through the exercise of the vote, freedom of expression and assembly and freedom of the press;
- R. whereas opposition parties and civil society organisations are often prevented in various ways from exercising their right to freedom of expression, assembly and association;
- S. whereas strong and lasting democratic systems and societies require strong independent institutions governed by the principle of separation of powers between the legislative, executive and judicial branches;
1. Welcomes the efforts made by nations in the process of democratisation and constitutionalism by including presidential term limits in their constitutions;
 2. Welcomes the decisions of leaders who have presided responsibly and respected such provisions by leaving office at the end of their term;
 3. Calls on all governments to comply in good faith with their constitution, which is the most sacred and highest law of the land;
 4. Strongly condemns any attempt to overstay in power by violating, evading or unlawfully amending the existing law, and in particular the constitution;
 5. Stresses that those in power must put the higher interest and will of their people and country above their own personal considerations;

6. Recalls that democracy is a political system in which sovereignty comes from the people;
7. Underlines that the introduction and above all the enforcement of term limits will help development and will consolidate democracy, the rule of law and good governance;
8. Emphasises that it will never be possible to break embedded patterns of clientelism, corruption, violence and infringement of the rule of law and democracy without the enforcement of presidential term limits;
9. Strongly condemns any strategy to abolish or circumvent term limits, such as: using weak judicial institutions to creatively interpret term limits in favour of an incumbent; using the legislature to extend time in power beyond the mandated tenure without abolishing term limits; abolishing term limits through referendums or the parliament; exploiting legal loopholes; or putting in place ‘succession strategies’;
10. Stresses that where the constitution foresees that a referendum is the means to amend provisions relating to presidential term limits, this shall be done according to the strict terms of the constitution, with no resort to fraud, bribery or any form of intimidation to influence the voting;
11. Urges all governments to take measures to ensure the transparency and integrity of the entire electoral process, and to take all necessary measures and precautions to prevent the perpetration of fraud or any illegal practices;
12. Stresses that every vote, including those of minority ethnic groups, women and the elderly, and those groups’ access to voting centres, must be guaranteed;
13. Recommends and encourages all countries to invite or accept election observation missions, and to take all necessary measures to facilitate such missions;
14. Strongly underlines the duty of every government to take measures to protect civil society and organisations in the exercise of their right to freedom of expression and assembly, as recognised in the Universal Declaration of Human Rights;
15. Calls on the Pan-African Parliament, the AU Commission, the AU Peace and Security Council and the AU Permanent Representatives’ Committee to conclude an agreement explicitly recognising the importance of presidential term limits and encouraging their inclusion and respect for them;
16. Encourages the EU, the AU and the UN to support the further implementation and enforcement of presidential term limits and democratic principles;
17. Instructs its Co-Presidents to forward this resolution to the ACP-EU Council of Ministers, the European Parliament, the European Commission, the African Union, the regional organisations of the ACP states and the Secretary-General of the United Nations.

