The No-Benefit-Rule's Struggle for Survival

How Zimbabwe Tries to Undo Its Constitutional Term Limit Protection

Markus Böckenförde

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Zimbabwe is on its way to amend its 2013 constitution for the third time. One of the amendment's aims is to undermine the term limit provision for the incumbent president Mnangagwa, whose second and final five-year term is due to end in 2028. Such an attempt is not unprecedented on the African continent with its "presidents for life" culture. However, since the Zimbabwean constitution has established a specific and almost unique safeguard to protect this provision, such an amendment would even formally contravene the constitution – and exceed current practices in Africa.

The Never-Ending Battle for Effective Term Limit Provisions in Africa

After the fall of the Berlin Wall, the so-called "third wave of democratization" triggered considerable constitutional reforms in many regions around the globe. Africa has been no exception to this trend, and new or substantially revised constitutions were adopted that aimed to end the culture of "presidents for life". Consequently, presidential term limits have become a defining feature of modern African constitutions. In the decades that followed, few other constitutional provisions provoked more political contestation than term limit arrangements. Incumbent presidents have sought to extend their tenure beyond the limits originally established when they assumed office, employing a wide array of constitutional and quasi-legal strategies. As the violation of term limit provisions is easy to detect and difficult to justify, they are rarely silently ignored or openly disrespected. Rather, a president's bid for a third term is working through, not around, formal institutional channels. Versteeg et al. observed that "none of the twenty-first century's evasion attempts involved ignoring the constitution outright […], but showed nominal respect" and Wiebusch and Murray noticed for Africa that "[a]ll the presidential term limit changes have followed the procedure set out in the constitution if this is measured purely formally".

Constitution-makers in Africa have, in turn, sought to strengthen the constitutional framework to protect term limits, predominantly by further entrenching these provisions to prevent amendment. However, less ambiguous language, special supermajorities, additional referenda, and/or immutable clauses have not had the desired effect. In authoritarian systems, the required majorities or referendum results were obtained through reprisals (e.g. Rwanda, 2015); or compliant judges consented to an additional term by resetting the term limit clock after an amendment (e.g. Senegal, 2012) or an entirely new constitution was enacted to overcome eternity clauses (Republic of Congo, 2015).

Tackling the Problem at Its Root

One design option took a different approach: it tackles the problem at its root by recognising that all attacks on presidential term limits were carried out at the behest of the incumbent presidents to serve their short-term interests in staying in power. This approach includes a built-in restraint on abuse by rendering such an amendment ineffective for the incumbents themselves and is occasionally referred to as "no-benefit-rule". So far, it has only been applied in two African countries: Liberia and Zimbabwe. While it held in the former for 40 years, it is currently under attack in the latter as part of the Constitution Amendment Bill No. 3 (CAB3), introduced in February 2026.

President Mnangagwa's Agenda for an Extended Term in Zimbabwe

President Mnangagwa came to power in 2017. A military "palace coup" resolved the internal tensions within the ruling ZANU-PF party regarding succession to 93-year-old President Mugabe, resulting in his removal from office and the appointment of Emmerson Mnangagwa as both the new party leader and the interim president. Mnangagwa also won the subsequent – and contested – presidential elections in 2018 and 2023.

He promised a Second Republic, distinct from Mugabe's reign, and announced far-reaching reform programs to be achieved by 2030. From early on, this announcement was met with scepticism regarding an implicit suggestion to disregard the final term limit in 2028. And indeed, the intention was made explicit at the 21st ZANU-PF conference in 2024:

> *"The Excellency, Cde. Dr E. D. Mnangagwa's term of office as the President of the Republic of Zimbabwe and the First Secretary of ZANU PF be extended beyond 2028 to 2030. The Party and Government should, therefore, set in motion the necessary amendments to the National Constitution so as to give effect to this resolution."*

The 22nd conference in 2025 confirmed and further specified this intention. Words were followed by action: on February 16, the constitutional amendment bill was gazetted, followed by an allegedly manipulated 90-day consultation process required by the Constitution [Arts 328(3) and (4)]. The draft bill is currently before Parliament for consideration, and given the current composition of both houses, it is likely to be passed by respective two-thirds majorities of members.

The Amendment Clauses and Their Effect

Like most other provisions in the Constitution of Zimbabwe, the provision regarding the President's term of office may also be amended by a two-thirds majority of the members of the National Assembly and the Senate, pursuant to Article 328.

However, Article 328(7) stipulates that "an amendment to a term-limit provision, the effect of which is to extend the length of time that a person may hold or occupy any public office, does not apply in relation to any person who held or occupied that office, or an equivalent office, at any time before the amendment". Pursuant to Article 328(1), "'term-limit provision' means a provision of this Constitution which limits the length of time that a person may hold or occupy a public office".

The purpose of Art. 328(7) is obvious: it is intended to prevent the incumbents from changing the rules of the game in their own favour while the game is still being played.

The Poison Pill Clause of Art. 328(8) and (9)

Zimbabwe's constitution-makers anticipated the vulnerability of the no-benefit-rule and built in an additional layer of protection, borrowing a concept from corporate law: the poison pill. This concept refers to a defensive strategy that does not preclude a hostile takeover but rather makes it excessively complicated, time-consuming, and expensive. Art. 328(8) and (9) apply the same logic to the no-benefit rule. This works as follows: First, Art. 328 itself can only be amended under the stricter conditions of Art. 328(6), i.e., through an additional referendum. Crucially, Art. 328(8) further stipulates that a change to these stricter amendment conditions cannot occur simultaneously with the repeal of Art. 328 (7), but rather two successive constitutional amendments would be required.

As such, permitting the incumbent president to remain in office beyond 2028 would first require the repeal of Article 328(7), which can only be achieved through an amendment procedure that includes a referendum. Only then, in a subsequent constitutional amendment, could his term of office be extended. Collapsing these two steps into one is constitutionally impermissible – and that, by design, is precisely the point of the poison pill.

An Attempted Constitutional Coup

The poison pill clause did have an effect, albeit not the desired one: CAB3 does not attempt to take the first

step in the constitutionally required chain: no referendum is sought, no successive amendment process initiated. Evidently calculating that such an approach would entail significant risks even for the current authoritarian regime, the government has opted for an unconstitutional shortcut – one that circumvents not only the poison pill clause but also explicitly disrespects Art. 328(7).

CAB3 amends Article 95 in two steps. It extends the presidential term from five to seven years and inserts a new subsection stating that this extension applies to the incumbent president "notwithstanding Article 328(7)". The "notwithstanding" formulation says that this is not an attempt to work within the constitution but to ignore it. Amending Article 95 in this manner constitutes a constitutional coup and is a blatant disregard for the carefully drafted amendment provision. This is a rare occurrence that circumvents presidential term limits and breaks with the otherwise prevalent African tradition of manipulating term limits through formal procedures. The only precedent was Egypt in 2019.

Before the end of Egypt's President Sisi's second term in 2022, a constitutional amendment was introduced that, among other things, extended the terms from four to six years and added a new transitional provision that granted Sisi an additional two years on his then-current term (until 2024 instead of 2022) and allowed him to serve a third term afterwards. It was passed by referendum in accordance with the ordinary amendment procedures, even though term limit provisions had been made immutable (Art. 226). This coup remained unchallenged. This was because at the national level, the relevant Egyptian court deemed itself unable to review constitutional amendments approved by referendum, and because, at the continental level, Egypt never signed and ratified the African Charter on Democracy, Elections and Governance (ACDEG). The latter's Art. 23(5) prohibits any constitutional amendment that infringes the principles of democratic change of government, thereby offering the legal grounds for an AU intervention.

Zimbabwe is different on both counts. Its Constitutional Court has previously reviewed the formal constitutionality of constitutional amendments and even ruled in favour of the plaintiffs. And unlike Egypt, Zimbabwe also ratified the ACDEG in 2022. In this respect, the poison pill and the no-benefit rule may yet prove effective – not by preventing the attempt, but by providing the legal grounds to strike it down.

ABOUT THE AUTHOR

Markus Böckenförde
Markus Böckenförde is Associate Professor at the Legal Department of the Central European University in Vienna and Chair of the Global Comparative Constitutional Studies Program.

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