


PROMOTION OF CONSTITUTIONALISM
THROUGH TERM LIMITS IN AFRICA:
**THE PERSISTENCE AND PERILS OF WINNER-TAKE-
ALL POLITICS IN AFRICA**

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The African Network of Constitutional Lawyers (ANCL) would like to acknowledge Dr Adem Kassie Abebe, Dr Elvis Fokala and Yvonne Anyango Oyieke in conceptualising and leading the development of the policy paper series on selected themes on the promotion of constitutionalism and regular alternation of power through term limits. The ANCL also recognises the support of Professor Serges Alain Djoyou, Dr Laura-Stella Enonchong, Vanja Karth, and Dr Azubike Onuoraoguno.

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1. Introduction

Hopes and expectations that the democratic transitions and constitutional reforms that swept parts of Africa beginning in the early 1990s would usher in a new brand of politics and transform the exercise of political power in the African state have generally met with disappointment. Admittedly, the last thirty years have brought important changes onto Africa's political and constitutional landscape. De jure one-party political systems, once the norm on the continent, have disappeared. Presidential term limits, an idea alien to African politics before the 1990s, though still resisted by many incumbent leaders, have gained acceptance and become institutionalized in a number of states, including South Africa, Benin, Nigeria, Ghana, and Kenya. At the popular level, support for a two-term limit on presidential tenure has held strong across Africa over several rounds of Afrobarometer surveys. A combination of new term limits and competitive elections has, in fact, worked to end the tenure of presidents and enabled peaceful power alternation to occur in several once-authoritarian states. While *coups d'état* have made an astonishing comeback recently, they are now met with condemnation from the African Union and affected regional bodies like ECOWAS as violations of continental and regional sanctions-backed normative frameworks against "unconstitutional change of government". Notwithstanding these positive precedent-setting changes and developments, certain perverse features of the *ancien régime* persist. Notable among these is Africa's "winner-take-all" politics.

In African political discourses, the term winner-take-all is used in at least two related senses. In its conventional, typically academic and limited usage, winner-take-all describes an electoral system in which the candidate who receives the most votes, whether that constitutes a majority or only a plurality of the votes, wins all the seats. Losing candidates in such a system win nothing, no matter how substantial their votes and even if the losers' combined vote tally exceeds the votes of the largest vote-getter. In general, such an electoral system favors the emergence of two rival parties, squeezes out smaller parties, and tends to produce single-party legislative majorities. On a national scale, winner-take-all electoral systems enable the party that garnered the most seats, regardless of the thinness of its victory, to form the government and to govern without the necessity of forging consensus or sharing power with its electoral rivals.

As the term is more commonly used to describe politics in Africa, however, winner-take-all means something more than an electoral system that produces non-inclusive or exclusionary representational outcomes. Beyond the electoral system, winner-take-all politics in Africa describes a practice or mode of exercising political power where the party that

wins power not only gets to exclude its rivals (and their supporters) from a formal role or participation in government (and governing) but, crucially, also shuts out its rivals from a wide range of tangible and intangible public opportunities, including appointments to significant public offices (such as positions in the bureaucracy, armed forces, police, and the public services generally), award of government contracts, and broadly equal legal treatment. In other words, to win power in winner-take-all Africa is to earn not just the right to govern solo but also an entitlement to the fruits of power, comprising a vast wealth of public opportunities and privileges that the winner is free to allocate as "spoils of war" or rewards for the benefit of its co-partisans and allies.

This brand of exclusionary, zero-sum politics, long associated with Africa's authoritarian regimes, has survived the currents of democratization the continent has experienced since the early 1990s. A key domestic driver of the many conflicts that have characterized the continent's post-independence history, the survival of winner-take-all politics in the contemporary period has not only degraded the quality of democratic governance across the continent, it has continued to endanger prospects for peace and stability and might explain, in part, some of the recent episodes of democratic backsliding in the region. As exclusion from power in Africa's winner-take-all political culture portends drastic and ruinous consequences for losers, electoral contests in Africa's democracies have often assumed a potentially violent or destabilizing do-or-die character, with rival parties and contestants sparing no effort to secure victory by fair or foul means. Similar anxieties about life without power might explain the dogged resistance of some African leaders and regimes to the idea of presidential term limits as well as efforts by others to manipulate existing term limit provisions and elections to prolong their stay in office.

2. Origins and Early Construction of Africa's Winner-Take-All Politics

Winner-take-all has been a feature of African politics since the early days of independence. Whether independence came through electoral competition among factions of the nationalist class or through liberation struggle, the leader and faction that emerged victorious and, thus, led their people to independence earned for themselves a messianic status as the liberator and founder of their new nation. With this status came, among other things, a sense of entitlement to rule or govern virtually unchallenged, just as the colonial power before them had done, only now with far superior legitimacy than the erstwhile colonial overlord. Bearing honorifics like

Osagyefo, Mzee, Ngwazi, and Mwalimu, Africa's founding leaders became the human embodiment of their new sovereign states, pioneering Africa's tradition of winner-take-all politics.¹

As the struggle for independence in Africa was everywhere attended by factionalism and rivalry among elements of the nationalist class -each factional leader typically drawing their base of support from their ethnic or regional kin-, Africa's new states were born with rifts, divisions, and jealousies to heal, overcome, or suppress. Political party and leadership rivalry, such as the country had experienced or witnessed in the lead-up to independence, was seen as subversive of the nation-building project. In particular, the idea of an opposition party, a party waiting in the wings in the expectation of forming an alternative government, was regarded not only as alien to traditional African conceptions and practices of governance but as a kind of "fifth column" or enemy within. The notion of sharing governing power with an opposition party was, thus, ruled out of the question *ab initio*. What was advanced as the vehicle to drive the national project to its destination was the "one-party state". Invariably, this meant the party of the Founding Father, that being the party which the prevailing nationalist historiography credited exclusively with liberating the people from the clutches of colonial domination. A party-state system thus developed in which a single party took and exercised control, literally, of all the levers of state power, including the bureaucracy, the army, and the police. Opposition elements who desired to participate in government could join the ruling party or be consigned to the margins of power or worse.

At the sub-national level, the nation-building rationale translated into official hostility toward assertions of provincial or local autonomy by one of the other constituent social or political grouping. Given the political geography of the African state, in which a particular regional or local territory tended to be home to a dominant ethnic or ethnocultural group, demands for a measure of subnational self-government were treated suspiciously as secessionist or subversive. It did not help that opposition parties and their political principals often drew their base of support from one or the other ethnically-identified subnational community. Of course, the positions Africa's regionally-based parties took on some national questions often reflected legitimate socio-economic interests rooted in the unique geography and history of the regions or ethnic groups in question, including the history and manner of their integration or incorporation into the colonial project and economy. To Africa's new leaders, however, none of this mattered; any expression of regionalism or local nationalism was deemed tribalistic and illegitimate. Consequently, demands for federalism or for concessions in favor of regional or provincial autonomy were summarily

dismissed and, in some cases, criminalized, along with the parties advocating such positions. The centralized unitary model, under the leadership of the Founding Father and his vanguard party, emerged as the only model of state structure deemed politically compatible with the nation-building project.

Winner-take-all politics also drew justification from the crisis of underdevelopment that confronted the newly emergent African state and society at the time of independence. Colonialism had left in its wake a legacy of substantial unmet needs in education, health, housing, and other social infrastructure. In addition, the colonial economy, focused, as it was, on domestic extraction, importation of foreign manufactures, and export of primary commodities, offered little in the way of wage-earning opportunity for the politically restive and growing urban population. This state of affairs, as the new managers of the African state and economy reasoned, qualified as a national emergency. The metaphor of war--a war to conquer "those very real enemies"--"ignorance, poverty, and disease"--was invoked to characterize the nature and urgency of the response that was needed. As with wars generally, including metaphorical ones, the implication was that the push for "accelerated development" would require "all hands on deck" -- a national mobilization, so to speak--as well as a "commander" in charge. Once again, as with the nation-building rationale, the development rationale, as articulated by the Africa's new leaders, countenanced neither opposition nor rivalry. Rather, the one rationale reinforced the other, both converging in the need for a supreme (and lifelong) leader at the head of a vanguard party leading one people ostensibly toward a common destiny.

The development rationale underwrote winner-take-all, one-party control of the state in another important respect, namely the model of development that Africa's new state managers adopted. Almost invariably, the choice was in favor of a state-led, command-and-control economic model. As Africa's new economic managers reasoned, the pre-industrial character of the inherited colonial economy, and, in particular, its structural inability to produce a local capitalist class with sufficient private accumulation to drive industrialization, left the state as the only viable option to lead economic transformation. In consequence, Africa's new governments invested in an array of state-owned enterprises across industries, in agriculture, mining, commerce, and services. These ventures not only placed the state in charge of the "commanding heights of the economy", but they also served the additional social and political function of offering livelihood opportunities and other material rewards for party and regime loyalists.

In terms of constitutional design, winner-take-all politics found expression in elite preference for presidentialism as the form of government that supposedly best aligned with postcolonial Africa's national projects. The parliamentary system was almost uniformly disfavored. Some of Africa's founding fathers in countries with parliamentary systems, mainly in Anglophone Africa, were not less powerful as prime ministers, but being president appeared to signal something grander. Formally at least, unlike the prime minister in a parliamentary, Westminster-style system, an executive president, combining both head of state and head of government functions, represented the whole nation, stood above both party and cabinet, and, having a fixed term, was invulnerable to removal by confidence vote of the legislature. Even so, in choosing presidentialism over parliamentarism, Africa's postcolonial leaders did not go for the American presidential model, featuring a term-limited president sharing power with a separate multiparty legislature and an independent judiciary within an interactive system of checks and balances. African presidentialism dispensed with both opposition parties and American-style checks and balances.

Justifying the departure, Tanzania's Julius Nyerere's noted that "the system of checks and balances is an admirable way of applying the brakes to social change. Our need is not for brakes; we need accelerators powerful enough to overcome the inertia breed of poverty and the resistances which are inherent in all societies".ⁱⁱ Ghana's Kwame Nkrumah, who pioneered the switch to African neo-presidentialism in 1960 defended his extraordinary presidential powers in similar terms: "The increased authority given to the President is to enable him to exercise the positive leadership that is so vital to a country seeking to pull itself up by its bootstraps . . . There are some jobs in the world that can be best done by a committee, others need a managing director".ⁱⁱⁱ Through neo-presidentialism, winner-take-all politics in Africa thus became personalized and embodied in the African president.

3. Why Winner-Take-All Politics Persists

The winner-take-all brand of politics pioneered by Africa's founding generation of leaders held sway across the continent for the next three decades following independence, remaining a constant feature of the succession of authoritarian, nondemocratic projects and regimes that Africa witnessed during this period yet delivering neither stable national integration nor equitable or balanced development. Perhaps because of its historical association with authoritarian single-party and one-man rule in Africa, the current survival of winner-take-all politics, despite the wave of democratic and related constitutional changes in Africa since the end of the

1980s, is as confounding as it is disappointing to the many ordinary Africans who expected that democratization would bring with it a different and better kind of politics.

What accounts for the stubborn persistence of winner-take-all politics despite the wave of democratization and related constitutional reforms – changes that have sent many old-guard leaders and authoritarian regimes off the African political stage since the early 1990s? The answer lies in the nature and the extent of the changes in question.

First, while there is no denying that the post-1980s wave of democratization in Africa introduced new rules of the game in the political arena, these changes were primarily in the nature of changes to the *rules of entry and exit*, as opposed to changes to the *rules of play*.^{iv} The constitutional changes that accompanied democratization focused on opening up a previously closed political system to competition from once excluded political actors. In other words, *democratizing* politics and power, not *transforming* them, was the main driver behind the constitutional reform projects that accompanied African democratization in the period after the 1980s. Accordingly, the principal rule changes involved removing existing bans and other restrictions against political parties and other provisions to guarantee political pluralism and free and fair elections. Also featured among the new rules were presidential term limits; these were designed to facilitate the exit of long-entrenched incumbents and ensure orderly leadership succession in presidential office.

Beyond these new changes to the rules of entry and exit, which, indeed, have worked to democratize the political space and competition for political power, the other rules of the game, namely the rules of play – that is to say, the substantive content, character, and relationships of power in the African state – have remained substantially unchanged. Notably, certain notable features of the *ancien regime* like the imperial presidency and related winner-take-all politics, have been preserved, if only by default. Thus, newly term-limited presidents, once installed in office, inherit and possess nearly as much power in substance as some of their authoritarian predecessors, even if new formalities must now attend the way power is expressed by the new incumbents. The net effect of the preservation of substantial aspects of the old order is that – even in countries like Ghana where post-1980s presidential term limit provisions enjoy unquestioned acceptance, or where general elections have produced turnover in government multiple times – , democratically elected, term-limited presidents and their parties run the country practically like a "one party state" during their terms.

Also noteworthy is the fact that, by and large, Africa's post-1980s constitutional reform projects left in place the existing

sub-constitutional legal order, comprising the vast panoply of authoritarian-era laws and regulations – among them, public order laws, various security-related legislation, criminal defamation and sedition laws. This stock of existing laws has, thus, continued to provide the operational legal tools for the everyday exercise of governmental authority and executive prerogative. Bureaucratic traditions of habitual deference and fidelity to the authoritarian-era statutory and administrative regime have ensured the continued use and enforcement of such laws and practices, even if they may be at variance with the letter or spirit of new constitutional precepts and standards.

Multiparty elections have, of course, made sure that Africa's parliaments are no longer a one-party affair. However, this has not necessarily made governing more party-inclusive. Even where, as is often the case, formal separation of powers is enshrined in the current constitutional relationship between the legislative and executive branches, presidents have been able to count on their continued control of wide-ranging political resources and prerogatives to secure the loyal support of their party legislators in parliament in approving appointments, bills and other executive initiatives. In Africa, as elsewhere, partisanship and party-line voting behavior among legislators have tended to nullify the checks and balances on presidential behavior that traditional separation of powers is supposed to induce. In the case of new African constitutions that require or allow the president to appoint sitting MPs to ministerial positions, as obtains in Zambia, Ghana and many other African states, this hybrid feature has further facilitated presidential dominance of the legislature. The president's role as chief dispenser of patronage, a role that has historically placed him at the center of Africa's winner-take-all politics, has been largely preserved.

The failure of democratic and constitutional reforms to deconcentrate power and resources from the center and devolve them democratically downwards in favor of subnational units and communities is another factor accounting for the persistence of winner-take-all politics. The African state continues to be governed and administered, by and large, from the center, with local authorities little more than under-resourced branch offices of the capital city-based central government. Africa's post-1980s democratization wave often did not trickle down from the center. Democratizing national politics without democratizing the subnational or local governments means, in practice, that the party that loses out in national elections also loses the opportunity to participate in government at the local level, no matter the strength and spread of its local electoral support. Ghana's current constitutional arrangement best illustrates this problem. Under Ghana's 1992 constitution, the only

elective executive political office in the country is the office of the President (elected together with a vice president). There is no elective executive office at the subnational level. The mayors of the more than 200 local government units into which the country is divided administratively, including the capital city district, are all appointed by the president and serve at his pleasure. This means that even in those districts where an opposition party commands substantially greater electoral support than the party in government, local governing authority resides solely with the party of the president. Political parties that lose national elections in Ghana are, therefore, cast out of power at all levels of the state—national, provincial, and local.

4. Ways Forward In Addressing Winner-Take-All Politics

If winner-take-all politics has carried over into the contemporary period in Africa, it is because, with the exception of Kenya's post-2007 constitution-making process, which culminated in the 2010 constitution, Africa's political and constitutional reform projects have thus far not made dismantling winner-take-all politics a central focus or target of their efforts. As democracy in Africa has begun to show worrying signs of stagnation, decline and, in some cases, collapse, this omission or blind spot of the earlier round of constitutional reforms must be corrected—and corrected with intention. Analyzing trend data over several years, Afrobarometer has observed, insightfully, that, while Africans' "demand" for democracy has generally held strong, everyday Africans are disappointed with the "supply" of democracy being served them.^v Because of the various ills associated with it — non-inclusive governance, excessive partisanship, political and social polarization, election rigging and violence, abuse of incumbency, state capture, insider impunity, privileging party and group interest over the interest of the nation, term limit evasion, etc. — persistent winner-take-all politics must bear part of the blame for popular dissatisfaction and disappointment with democracy's delivery and performance in contemporary Africa. Addressing winner-take-all politics must, therefore, feature prominently on the future agenda of Africa's policymakers and constitutional reforms.

The remainder of this section offers, by way of concluding thoughts, a few proposals for institutional and constitutional designers and reformers to consider in tackling Africa's winner-take-all problem.

Presidential term limits still matter

Given, as we have seen, that winner-take-all politics has survived the introduction of presidential term limits in Africa,

it might sound counterintuitive to propose deeper entrenchment of term limits as one of the ways to tame winner-take-all politics. While it is true that term limits have continued to coexist with imperial presidents and winner-take-all politics, it is also the case that the countries in Africa that have experienced repeat party turnover in government, among them, Benin, Ghana, Nigeria, Malawi and Zambia, are also the countries where presidential term limits have gained both elite and popular acceptance as a non-negotiable part of the rules of the game. In other words, the emerging evidence suggests that, all things being equal, a presidential term limit provision enhances the chances of an opposition party or candidate winning power. Thus, while presidential terms limits do not, in and of themselves, solve the winner-take-all problem, they make winner-take-all behavior transitory by raising the prospect of incumbent party defeat, particularly at the end of a president's last term. Especially if such party turnover or rotation in and out of government is sustained or repeated over time, signaling electorate disapproval of continuous or prolonged winner-take-all politics, presidential term limits may help reduce the incentive for winner-take-all behavior on the part of incumbents.

Afrobarometer data show that Africans support consistently—and by very large majorities—a two-term limit on presidential tenure.^{vi} Leaders who defy popular opposition to extend their term in office must often resort to repressive and other undemocratic methods and practices in order to maintain their insecure hold on power. In West Africa, attempts to sidestep or modify term limit provisions to prolong the president's stay in office have recently provoked strong negative reactions, including bloody street protests (Senegal, 2023) and coups d'etat (Guinea, 2021; Burkina Faso, 2014; Niger, 2010). Following the September 2021 coup in Guinea, ECOWAS' invocation of its protocol against "unconstitutional change of government" to sanction the new military junta was met with swift popular condemnation both in the country and across the region. Critics condemned the regional body for applying double standards for failing to register any form of disapproval when the former president, Alpha Conde, pushed through a widely unpopular constitutional amendment to grant himself a third term in office, thus provoking—or providing a pretext for—the ensuing coup. In the wake of the recent re-emergence of coups in Africa, the continent's regional bodies risk further erosion of their credibility and legitimacy if they are seen to tolerate or turn a blind eye to "constitutional coups", notably in the form of incumbent maneuvers to evade term limits, while denouncing and sanctioning military coups. The case for the adoption and enforcement of a regional norm against incumbent manipulation of term limit provisions has never been stronger, or more urgent.

Decongest and disperse presidential executive functions

As noted, winner-take-all politics in Africa is underwritten and sustained largely by the vast powers and prerogatives of the presidency. Therefore, taming winner-take-all politics in Africa necessarily requires reconsideration of the scope of the president's executive powers and functions. Traditional constitutional design has relied on interbranch separation of powers and functions between the president and the legislature to keep each power in check. However, the basic assumption underlying standard separation of powers, namely that each branch would stand united in defense of its institutional prerogatives, has proven illusory in practice, as party politics and inter-party rivalry have typically operated to defeat legislative cohesion, with the president's co-partisans in parliament often choosing to side with the executive (their party in power) instead.^{vii} As conventional separation of powers has proven unreliable or insufficient as a check on presidential power, it is necessary to consider additional or alternative mechanisms. One idea is *intra-branch* or "internal" separation of powers. Unlike conventional separation of powers, internal separation of powers looks for separation of powers and functions *within* the executive branch, not between the branches.^{viii} The objective is to carve out of the portfolio of executive functions traditionally located in or under the control of the presidency certain specific functions and related powers that require partisan detachment and professionalism for their effective performance and entrust each of them to a separate office that is vested with appropriate independence and protection from presidential control and political micromanagement. Executive functions that are ideal candidates for such internal separation of powers, in addition to the broader bureaucracy, include general law enforcement and policing, criminal investigations, and prosecutions.

Kenya's 2010 Constitution seeks to shield policing, criminal investigations, and prosecutions from partisan and presidential meddling. Thus, the offices of Director of Public Prosecutions (DPP) and Inspector-General of Police (IGP) in Kenya are established under the constitution as independent offices. Kenya's attorney-general, who is a member of the president's cabinet, does not have prosecutorial power; that power is in the DPP. The DPP is appointed (by the president with the approval of parliament) to a fixed, non-renewable term of eight-years and may not be removed except on grounds and in accordance with a multi-layered, quasi-judicial process specified in the constitution. The DPP "shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her functions shall not be under the control or direction of any person or authority." (Article 157(10)). On the other hand, the DPP "shall have the power to direct the Inspector-

General of the National Police Service to investigate any information or allegation of criminal misconduct and the Inspector-General shall comply with any such direction.” (Article 157). Unlike the DPP, the IGP is appointed to a shorter, four-year term. However, he, too, may be removed only on constitutionally specified grounds. Other than the DPP, “no person may give a direction to the Inspector-General with respect to the investigation of any particular offence or offences, the enforcement of the law against any particular person or persons, or the employment, assignment, promotion, suspension, or dismissal of any member of the National Police Service.” While the cabinet secretary (Minister) responsible for police services may direct the IGP, such ministerial direction is limited to matters of “policy for the National Police Service” and must be in writing.

Constitutional provisions like these, designed to ensure that law enforcement and prosecutorial functions are performed independently and professionally, are essential to upholding the rule of law, a value that is frequently undermined when winner-take-all politics extends to the domain of law enforcement and prosecutions.

Opposition Empowerment

Winner-take-all politics can also be tamed by enhancing the representation and power of opposition parties (and opposition leadership) on important legislative and non-legislative bodies and in the making of certain key national decisions and appointments.^{ix} While a simple-majority vote of parliament is standard and appropriate for the passage of ordinary legislation and the approval of a president’s nominees for appointment to cabinet, ministerial and other political offices whose occupants serve at the president’s pleasure, a simple-majority decision rule generally falls short of the degree of inclusiveness or cross-party support that is considered appropriate for extraordinary legislation, such as constitutional amendments, and appointments to judicial and other independent offices (such as election management bodies, auditor-general, anticorruption commission, etc.) Supermajority rules are thus routine for passage of constitutional amendments, but also increasingly common for the appointment of judges and independent officeholders. In Chile, for example, the President’s appointment of Supreme Court judges, the National Prosecutor and members of the Directive Council of the Electoral Service must receive the approval of a two-thirds majority of the Senate. South Africa’s Public Prosecutor and Auditor-General are each appointed by the President with the approval of at least 60% of the National Assembly.

Supermajority rules carry the risk of deadlock and paralysis. Therefore, it is necessary to couple them with deadlock-

breaking or “anti-deadlock” mechanisms. These are fall back options that kick in when there is an unresolvable deadlock. However, ideally the anti-deadlock mechanism should be one that none of the decision-making parties would prefer to use. Thus, its real value is to induce or incentivize the parliamentary parties to work out a compromise within the supermajority rule, knowing that failure on their part to compromise would cause them to lose the ability to influence the appointment or decision. Serbia has included an anti-deadlock provision in its recently adopted constitutional amendments giving the power of appointing judges and prosecutors to a judicial council whose members are appointed by a two-thirds majority in Parliament.^x If parliament is unable to garner the required supermajority to appoint the judicial council members, the power to do so falls on a body comprising the speaker of parliament, president of the constitutional court, president of the supreme court, the supreme public prosecutor, and the ombudsman.

Instead of (or in addition to) supermajority rules, some constitutions establish special bodies to handle nominations or appointments to specified public offices. For example, the 1993 Constitution of Seychelles provides for a Constitutional Appointments Authority (CAA), a five-member body whose mandate is to propose candidates for appointment (by the President) to senior judicial offices (chief justice, supreme court, court of appeal) and other independent offices, including the attorney-general, ombudsman, and electoral commissioner. The CAA also deals with removal of the holders of these offices. The President and the Leader of Opposition each select two of the CAA’s members, and the four, in turn, select a fifth who serves as chairperson of the Authority.

Formal constitutional recognition and empowerment of the position of Leader of the Opposition as a public office with appropriate compensation and privileges, as exists in the Seychelles constitution, is an important way of signaling and acknowledging the importance of opposition parties. In Dominica, for example, half of the members of the Electoral Commission are appointed on the binding advice of the Leader of Opposition. Fiji’s 2013 Constitution also establishes a Constitutional Offices Commission whose membership includes the Leader of the Opposition and another member appointed by the President on the advice of the Leader of the Opposition.

Open, competitive meritocratic recruitment into public services and SOEs

Recruitment into the public services, including state-owned corporations (SOEs), on the basis of partisan criteria or through party networks has been a longstanding feature of

winner-take-all politics across Africa. It is, in fact, one of the avenues through which winner-take-all politics has been sustained materially. This is a common outcome where, as in Ghana, the power to appoint persons to the boards and management of state corporate entities is left in the hands of the President or a minister of the president, without any clear or binding legal principles, standards or restrictions. Kenya's 2010 Constitution charts a new path in this regard. "Fair competition and merit as the basis for appointments and promotions" is one of the constitutional "values and principles of public service" applicable to all state organs at all levels of government as well as all state corporations. Application of this principle means that recruitment and selection into the public services must follow a transparent, competitive, and meritocratic process. Taming winner-take-all politics must mean an end to the "spoils system" in the public services and its replacement by an open, competitive, and meritocratic process of recruitment and selection that is administered independently and professionally.

Democratization of subnational and local government

Although elite and popular prejudice against federalism appears to persist in Africa, the point is also widely conceded or acknowledged that the centralized state model has not worked either to unify the people or develop the country. Of the post-1980s constitutional reform projects other than full-fledged federations, Kenya's "devolved system of government," involving the 47 newly created counties each with its own elected governor working alongside an elected county assembly, has gone the farthest in democratizing power and politics at the subnational level. Parties that lose national elections but enjoy strong electoral support in certain counties are thus no longer shut out of government entirely; they have an opportunity to gain control of either the governorship and/or assembly in some county, including in the national capital area. Kenyan-style devolution is indeed a big step in tackling the winner-take-all politics in contemporary Africa, short of a full-fledged federal arrangement. Giving municipal or metropolitan communities the right and opportunity to choose their own mayors and town councils in competitive local elections, and even consider allowing them to decide on the design of their local government, would have a similar effect.

It is not possible to exhaust all of the various arrangements and options for addressing the problem of winner-take-all politics in Africa. What is most important is to recognize that persistent winner-take-all politics continues to pose a problem for democracy in Africa, as it did in the years after independence. Furthermore, addressing Africa's winner-take-all problem demands both intentionality and innovation, including an openness to comparative learning and borrowing,

on the part of constitutional designers and reformers. As the emerging evidence already shows, presidential term limits alone cannot carry the burden of reforming or transforming politics in Africa. Without addressing the scourge of winner-take-all politics, presidential term limits will, in fact, remain not only insufficient but also vulnerable to reversal, either through incumbent elongation of tenure, or abrupt overthrows of government.

ⁱ On the emergence and persistence of the imperial presidency, see H. Kwasi Prempeh “Presidential power in comparative perspective: The puzzling persistence of imperial presidency in post-authoritarian Africa” (2008) 35 *Hastings Constitutional Law Quarterly* 761.

ⁱⁱ Julius Nyerere “*How much power for a leader*” (1962) 7 *Africa Report* 7.

ⁱⁱⁱ Kwame Nkrumah *Africa Must Unite* (1964) 82.

^{iv} H Kwasi Prempeh “Africa’s “constitutionalism revival”: False start or new dawn?” (2007) 5 *International Journal of Constitutional Law* 469, 501.

^v Robert Mattes “Democracy in Africa: Demand, supply and the ‘dissatisfied democrat’”, Afrobarometer Policy Paper No 54, February 2019.

^{vi} Boniface Dulani, “Long-serving African presidents say the people want them to stay on. Is that true?”, *Washington Post*, November 5, 2021.

^{vii} David Fontana “Government in Opposition” (2009) 119 *Yale Law Journal* 548.

^{viii} Neal Kumar Katyal “Internal separation of powers: Checking today’s most dangerous branch from within” (2006) 115 *Yale Law Journal* 2314.

^{ix} See also Adem Kassie Abebe “Winner-takes-all politics and opposition empowerment: Towards ‘Africanization’ of democracy?”, Annual Review of Constitution Building Processes 2022, International Institute for Democracy and Electoral Assistance (2023, forthcoming).

^x Milica Stojanovic “Serbia votes on ‘positive’ judicial reform, but doubts linger”, *Balkan Insight*, 14 January 2022, <https://balkaninsight.com/2022/01/14/serbia-votes-on-positive-judicial-reform-but-doubts-linger/> (accessed 20 August 2023)