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Supporters of Rwandan president Paul Kagame in full cry. EPA/Stephen Morrison

The changes made to Rwanda's constitution are peculiar – here's why

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A [two-year process](#) to secure a constitutional amendment allowing Rwandan President Kagame to run for a third term finally ended in mid-December with 98.3% voter approval. The country's 2003 constitution had limited the number of terms a president could sit to two.

The campaign for the change was run by the governing Rwandan Patriotic Front ([RPF](#)) as well as all parties represented in parliament. It was largely supported by the regime-dependent media and opinion makers. The result was near-total unanimity in favour.

The sole registered opposition party, the [Democratic Green Party](#), was the only one to publicly oppose the move, and even [petitioned](#) the Supreme Court to have the amendment declared unconstitutional. But it had no legal case and was rightly denied its claim.

In all, 3.7 million Rwandans out of a total voting population of six million [signed petitions](#) in a regime-organised “spontaneous” expression of support. The country's population is estimated to be just over [12 million](#).

There were no debates, no demonstrations - not even peaceful ones. This was to be expected. Since the RPF took power in 1994 every demonstration in the country has been organised by the government.

Both chambers of parliament [unanimously approved](#) the amendment. One MP abstained. And during nationwide “consultations”, MPs and senators only found ten Rwandans opposing the move.

Strongly worded expressions of [discontent](#) by the US and the EU didn't help. Kagame was quick to denounce international [interference](#) in Rwandan affairs.

The revised constitution was published in the [Official Gazette](#) on 24 December. Kagame, having displayed a noncommittal attitude throughout the campaign, announced on New Year's eve that he would seek a third presidential [term](#).

This article draws attention to some legal peculiarities of the revised constitution.

Unpacking the constitutional change

Article 101 as revised states:

The President of the Republic is elected for a five (5) year term. He or she may be re-elected once.

The initial 2003 constitution was phrased as follows:

The President of the Republic is elected for a term of seven years renewable only once. Under no circumstances shall a person hold the office of President of the Republic for more than two terms.

The duration of presidential terms is thus reduced from seven to five years; the number of terms remains limited to two. The deletion of the emphasis “under no circumstances” has no constitutional significance.

Although the Democratic Green Party invoked this to support its claim before the Supreme Court, the two-term limit is clear and unambiguous, and the emphasis was redundant. So far, so good.

But, Chapter XI on transitional provisions contains an article that makes all the difference. Article 172 proceeds in three steps. Paragraph one states:

The President of the Republic in office at the time this revised Constitution comes into force continues to serve the term of office for which he was elected.

This provision is not extraordinary as it aims at preventing a void in the office of the president. But it would have been more logical to provide for this continuity for all offices of the state in one transitional provision. However, this paragraph sets the foundation for something more important: namely Kagame's stay in office beyond 2017.

Indeed the operative part of paragraph two provides that

[w]ithout prejudice to Article 101 of this Constitution (...) a seven (7) year presidential term of office is established and shall follow the completion of the term of office referred to in the first paragraph of this article.

While the legalistic quality of this provision is poor and could raise doubts as to the beneficiary of this exceptional seven-year term (as phrased it could apply to any candidate), it is clearly meant to apply to Kagame, and to him only, as the non-operative part (see below) indicates. So paragraph two allows Kagame to run for a third seven year term in 2017.

The third paragraph states:

The provisions of Article 101 of this Constitution shall take effect after the seven (7) year term of office referred to in the second paragraph of this article

What this means is that after his third seven-year term in 2024, Kagame can stand for another two five year terms.

This implies that he could theoretically remain in office until 2034. As he was de facto leader since 1994 before formally becoming president in 2000, that would give him a 40-year presidency.

What's peculiar about the changes

Article 172 displays at least three peculiarities. The first is that the provision is tailor-made for one person, namely President Kagame. Constitutions are normally abstract and general. This oddity was highlighted by the EU High Representative [Frederica Mogherini](#):

[T]he adoption of provisions that can apply only to one individual weakens the credibility of the constitutional reform process (...). The amendments to the Rwandan constitution (...) would give rise to this situation.

Second, that the revised text refers specifically to Kagame can also be deduced from another peculiar feature. This is the inclusion of a non-operative provision in the second paragraph of article 172 which contains the following passage:

...considering the petitions submitted by Rwandans that preceded the coming into force of this revised Constitution, which were informed by the particular challenges of Rwanda's tragic history and the choice made to overcome them, the progress so far achieved and the desire to lay a firm foundation for sustainable development.

This can refer only to Kagame's past record. In addition, it is a sentence one would expect to find in the preamble of the constitution, and not in the actual text as it has no normative content.

The third oddity is that the entry into force of article 101 is made dependent on a contingent event, namely that Kagame stands for re-election in 2017 and that he is elected.

While it is safe to assume that he will be elected if he runs, the question arises: what happens if he doesn't? Although he has announced he will, events might prevent him from doing so between now and mid-2017. In that case, does article 101 enter into force in 2017?

These three peculiarities are the consequence of a bizarre constitution-making process that was exclusively focused on Kagame remaining in office beyond 2017. The entire campaign leading to this outcome was extremely personalised, with the incumbent presented as unique and irreplaceable and, more generally, Rwanda highlighted as exceptional. This is not the foundation on which sound constitutional bases can be laid.