

Tilting the balance

A real options analysis of Burundian president Nkurunziza's third term candidacy

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ABSTRACT

The paper analyses what drives incumbent presidents, in this case Burundian President Nkurunziza, to decide to run for a contested third term, and how to explain the timing of this decision. Compared to a conventional cost-benefit analysis, the real options approach used here is better capable of capturing additional components of the decision: uncertainty surrounding benefits and costs, opportunities to temporarily delay the decision and potential opportunity costs associated with waiting. The last-minute nature of President Nkurunziza's announcement to run at the 2015 elections was mainly due to intra-party dissidence. This initially created uncertainty, compromising the incumbent's chances of successfully exercising the third term option. While international actors failed to seize the momentum, Nkurunziza successfully managed and reduced the uncertainty before finally announcing his candidacy.

1. INTRODUCTION

In 2015, presidential term limits dominated the political debate in Central Africa. Facing the end of their second term, the incumbent presidents of Burundi, the Democratic Republic of the Congo (DRC), the Republic of the Congo and Rwanda successfully paved the way for an extension of their rule. Other African (and non-African) countries as well have been – or may well become – the scene of executive term limit crises. Why do sitting presidents decide to run for an additional term although legal norms, domestic protest movements and/or international partners – be it with importantly varying degrees of intensity – are opposed to an extension of their presidency? More specifically, how can we better understand the factors that determine an incumbent's decision to run for an additional term, notwithstanding the fall-out this ambition may cause? This paper addresses this question from a real options perspective.¹ Compared to a traditional cost-benefit analysis, a real options approach incorporates essential additional elements: flexibility in the timing of the decision, the uncertainty surrounding the level of the expected benefits and costs and the opportunity for active management of these costs and benefits before deciding. Although an incumbent's decision to run for office is announced at one moment in time, the decision-making process prior to (and even after) that announcement spans a much longer period, with various factors and actors impacting – or trying to do so – the incumbent's decision and the uncertainty inevitably associated with his ambition. This dimension of temporality stands central to a real options analysis: given the various factors surrounding and shaping the decision, their evolution and interaction, what tilts the balance in favor of exercising the option of a contested third term, and what is the optimal moment to do so? We apply this analytical model to an inductive and hypothesis-generating case-study on Burundi.² Our purpose is to gain additional insights – using a theoretical framework that may also be relevant beyond this particular case – into the timing and dynamics of the main trigger of Burundi's most severe political and security crisis since its internationally applauded transition from conflict to peace.³

The structure of the paper is as follows. The first section briefly sketches the context in which Burundian President Nkurunziza successfully ran for a third term. Next, we explain the real options model. The core of our analysis applies the different components of the model to the Burundi case. Particular attention is paid to those factors that – potentially and/or in reality – affected the volatility of the benefits and costs of securing a third term, most importantly the

[1] Cassimon, Engelen and Reyntjens. "Rwanda's involvement in Eastern DRC".

[2] Levy. "Case studies".

[3] Bouka and Wolters. *Analysing post-transition violence*.

contestation within the president's own inner circle. The paper concludes that a real options analysis is extremely useful in explaining the events studied. It not only explains why President Nkurunziza opted to execute (or 'exercise') his option to run for a third term, as the benefits of doing so clearly outnumbered the costs. More importantly, it shows why he waited so long before announcing his candidacy. The timing was due to the low opportunity costs of waiting, coupled with a high uncertainty of costs and benefits, which was predominantly caused by the inner circle contestation of his third term. While waiting, through active option management, he was able to increase benefits, decrease costs, and reduce their volatility, mainly by addressing the inner circle contestation problem. Furthermore it shows the failure of the international community to broker interventions that may have tilted the balance towards not executing the third term option.

2. NKURUNZIZA'S CONTESTED THIRD TERM

Civil war broke out in Burundi in the aftermath of the assassination of Burundi's first democratically elected president Melchior Ndadaye, leader of the *Front pour la démocratie au Burundi* (FRODEBU) and a member of the Hutu demographic majority group, on 21 October 1993. After two years of international mediation by former President Nyerere of Tanzania and former President Mandela of South Africa, a peace agreement was signed in Arusha (Tanzania) on 28 August 2000. At its core, the Arusha Peace and Reconciliation Agreement (APRA) contained a complex and multidimensional power-sharing agreement between incumbents and opponents and between Burundi's Hutu, Tutsi and Twa ethnic segments.⁴ Among scholars and policy-makers, the APRA is widely seen as a remarkably successful attempt at institutional engineering of peace in one of the world's poorest countries.⁵ The APRA, supplemented by subsequent peace agreements with the remaining predominantly Hutu rebel movements, paved the way for post-conflict general elections. The 2005 local and legislative elections were won by the *Conseil national pour la défense de la démocratie – Front pour la défense de la démocratie* (CNDD-FDD), the main former Hutu rebel movement. CNDD-FDD leader Pierre Nkurunziza was – indirectly – elected as president of Burundi by the two chambers of parliament.

The APRA also contained a detailed constitutional blueprint for post-conflict Burundi. Reflecting a growing international acceptance of the principle of presidential term limits⁶, the APRA signatory parties included an unambiguous provision that 'No one may serve more than two presidential terms' (Protocol II, chapter I, article 7). The Constitution of 18 March 2005 was to a very large degree inspired by the APRA. However, most probably unintentionally, an ambiguity slipped into the constitutional provision on presidential term limits.⁷ For the first post-transition presidency, an indirect rather than a direct presidential election was provided for. According to third term supporters, this provision derogated from the general principle, thus creating an exceptional presidency that did not count under the two term limit. According to third term opponents both within and outside CNDD-FDD, this provision was merely intended as an exception to the modality of the election without affecting the application of the two term limit to the first post-transition presidency. At the height of the popular demonstrations against Nkurunziza's candidacy in the capital city Bujumbura, the Constitutional Court on 4 May 2015, ten days after the incumbent's nomination as presidential candidate by the CNDD-FDD, interpreted the Constitution as permitting one final term for the incumbent president. A coup

[4] Vandeginste, "Power-sharing, conflict and transition".

[5] Reyntjens, "Burundi: institutionalizing ethnicity".

[6] Posner and Young, "Institutionalisation of political power".

[7] Vandeginste, "Legal loopholes"; Kavakure, *Burundi. La démocratie*.

attempt on 13 May 2015 failed.

Despite international calls to postpone them and notwithstanding the withdrawal of several opposition parties and electoral observation missions, the elections went ahead. CNDD-FDD obtained an absolute majority at the legislative elections. On 21 July 2015, Pierre Nkurunziza was elected with almost 70% of the votes. Amidst a continuing security and humanitarian crisis, a new government was sworn in on 24 August 2015. By the end of 2015, rebel movements announced an armed struggle to topple the Nkurunziza government. More than two years later, their military nuisance capacity, however, turned out to be very limited. An international mediator (President Museveni of Uganda) and facilitator (former President Mkapa of Tanzania) were appointed by the East African Community, but, as of June 2018, no political settlement of the crisis has been reached. In June 2018, after a constitutional referendum, a new Constitution was promulgated. The constitutional amendment – which covers a broad range of issues, several of them enhancing presidential powers - did not remove the presidential two-term limit but modified it. Although the new constitution remains silent on the eligibility of the incumbent, there was a wide-spread assumption – among political actors in Burundi and in the diaspora, as well as in national and international media - that the reform was intended to allow him to run for office again in 2020. Quite surprisingly, on the occasion of the promulgation of the new Constitution on 7 June 2018, Nkurunziza announced he would not run at the 2020 presidential elections, a statement he later repeated on several occasions. It should be noted that, in December 2016, President Nkurunziza had voiced the possibility of running for president in the 2020 elections, if the people of Burundi asked him to do so.

3. THE REAL OPTIONS APPROACH (ROA)

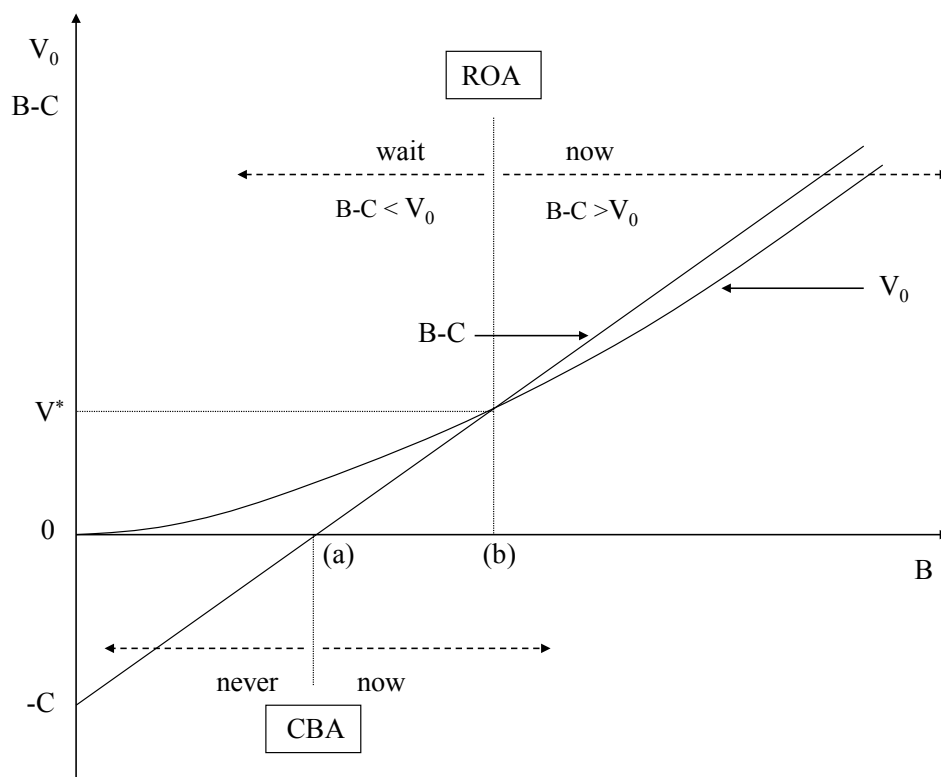
The factors that drove Nkurunziza's behavior will here be analysed from a so-called real options perspective, which goes beyond the traditional cost-benefit approach⁸. The latter basically trades off perceived costs and benefits associated to the decision to run, going for it whenever the benefits are perceived bigger than the costs. In reality, decision-making processes are often more complex in the sense that there is some degree of uncertainty related to both the level of costs as well as benefits. When combined with some flexibility in the timing of the decision, it may be optimal to postpone the decision ('to wait') even if benefits exceed costs. This extra time enables the gathering of more information that reduces this uncertainty so as to be able to make a less risky decision, or, even stronger, to be able to influence the components in the desired direction (i.e. reduce the cost and increase the benefit or make them more certain). On the other hand, such waiting may also entail an opportunity cost (i.e. some benefits forgone), as the net benefits do not accrue as long as the decision is not taken and some benefits may be foregone while waiting.

A real options approach explicitly includes these additional considerations in the trade off. Analogous to a financial option, it looks at the opportunity to run for an extra term as an 'option' that can be executed during a particular period of time. Whether and when this option will be effectively 'executed' (the decision to run taken) depends on the variables that drive the decision, i.e. the components (or 'drivers') of the (real options) model. In addition to the costs and benefits, four additional important components affect the decision making process: the volatility of benefits and of costs (as a proxy of their uncertainty), the time remaining before expiry of this option, and the opportunity cost. Together with the risk-free interest rate, these six

[8] For seminal contributions and overviews, see McDonald and Siegel, "The Value of Waiting"; Dixit and Pindyck, *Investment under uncertainty* and Trigeorgis, *Real options*.

components determine the value of the option.⁹ This will lead to a decision trade off that differs from the traditional cost-benefit criterion. Instead of deciding to run whenever the benefit exceeds the cost (i.e. the net benefit is positive), the decision maker will compare this net benefit value (i.e. the value of executing the option now), with the value of keeping the option alive (i.e. waiting to execute the option), determined by the value of the option, as calculated by the real options model. As long as the value of the option exceeds the net benefit (even if this net benefit is positive), waiting (not executing the option yet) is preferable to deciding now. The rational and well-informed decision-maker will only execute the option now if the current net benefit exceeds the value of waiting. This reasoning is presented graphically in Figure 1.

Figure 1: Timing of executing a third term option from a real option perspective (ROA) compared to a conventional cost-benefit analysis (CBA)



Source: Cassimon, Engelen and Reyntjens (2013).

The straight line on the figure shows the evolution of the net benefits (i.e. benefits minus costs, or $B-C$), using a conventional cost-benefit approach, CBA). At a given cost (C), the CBA line is negative as long as costs exceed benefits. From point (a) onwards, where both are equal ($B=C$), a traditional CBA analysis would hint at deciding to run. The other curve (V_0) on the figure shows the evolution of the option value, expressed as a function of the benefits (B). Under a real option approach (ROA), the optimal decision point switches to point (b), where $B-C$ equals V_0 . In the zone between point (a) and (b), even if perceived benefits are larger than costs, it remains optimal to ‘wait and see’ instead of deciding now, because the value of waiting

[9] Models to value financial options can thus be used to value these real options; see e.g the Black and Scholes (“The pricing of options”) model, dealing with volatility of benefits (only), or Fisher (“Call option pricing”), incorporating also volatility of the costs.

(V_o), presented in the option value curve (which has the typical option value shape) is higher than the net benefits (B-C). Only from point (b) on, it is optimal to decide to execute now. The role of the additional real option components is crucial in determining the option value (the V_o -curve): a higher volatility (of both costs and benefits) leads to a higher option value, and hence encourages waiting longer (point b moving to the right), while a higher opportunity cost reduces the option value, leading to faster execution (point b moving to the left); also, the longer the remaining lifetime of the option, the higher the option value and thus the longer the waiting.

As mentioned before, while waiting, as long as the options is not expired, the option holder can try to influence its value during the remaining lifetime of the option (so-called ‘actively managing’ his option) by attempting to take actions that increase the value of the option, say reduce the cost, increase the benefit or opportunity cost, and/or make them more certain. Similarly, outsiders, such as the international actors, may want to affect the option holder’s decision, by trying to influence again the same components, thus trying to tilt the balance towards the desired outcome. From the perspective of international actors, two types of decision making process may occur. The first one is an undesirable decision, in which case international actors would like to *prevent* the execution of the option. A typical example refers to so-called criminal options, i.e. options to commit a crime.¹⁰ In this case, international interventions will aim at reducing the benefits and opportunity costs and/or increasing the costs and uncertainty. The opposite type of interventions by international actors will aim at *stimulating* the execution of a desirable option in case the option holder is dragging his feet to do so or, to the extent possible, at *reversing* a previous bad or undesirable one.¹¹ One particular feature of our case-study is that both types of decisions occur sequentially. We analyze what drove Nkurunziza to execute his third term option, also touching upon how domestic and international actors influenced the value of that option but did not succeed in preventing its execution, and, finally, how some international actors tried to motivate Nkurunziza to ‘do the right thing’ and to reverse the implementation of the ‘undesirable option’ he executed.

Before we embark on an application of this real options approach to our case, one final conceptual insight deserves explicit mentioning. By describing the two options mentioned above as sequential ones we hint at what is more generally known as compound options, i.e. options on options¹². This occurs when the particular situation analysed is best described as a series of decisions, in which executing a first option creates further optional decision opportunities. The relevance of these additional options for valuation and trade off analysis of the first option is that such follow-up options create additional value, which increases the value of this first option, which encourages option holders to execute their first option *sooner*. Again, this concept of compound options has relevance here: executing the option to go for a third term always creates the indirect option to abandon this behavior later (by withdrawing a contested candidacy), and, more directly, executing the option to attempt a third term also generates options to go for additional terms in office.

4. BENEFITS AND OPPORTUNITY COST

Zooming in on its various drivers, we now conduct a real options assessment of Nkurunziza’s third term candidacy. First, it is important to note that this option was exercised in different stages: his personal decision to run; his nomination, very late in the pre-electoral process, by the party CNDD-FDD on 25 April 2015; and the formal submission of his candidacy

[10] Cassimon, Engelen and Reyntjens, “Rwanda’s involvement in Eastern DRC”.

[11] Cassimon, Engelen and Van Liedekerke, “When do firms invest”.

[12] See e.g. Engelen and Cassimon, “Real Options”.

to the national electoral commission (CENI) on 8 May 2015. Contrary to some of the costs and uncertainties (see below), the benefits of the option were not associated with the candidacy in itself but with an electoral victory. One can therefore also consider the pre-electoral process as an accumulation¹³ (and management) of costs and uncertainties in return for future benefits, the timing of which largely depends on an exogenous factor, namely the electoral legislation that determines the electoral calendar. Seen from that same angle, the opportunity cost (or, under the ROA model, the cost of waiting) was a component with little impact on the optimal moment of exercising the option.

The benefits do not require much explanation. In the highly neo-patrimonial setting of a *de facto* almost one-party state, staging an electoral victory comes with an impressive lists of crucial benefits, including political power, social prestige, access to aid and other resources (for the president and his wide network of clients), immunity for past and future abuses, etcetera.¹⁴ The benefits are likely to be earned during a period of four years or even much longer in case term limits are removed from the constitution and the compound option of running for additional terms in office is executed.

5. COSTS

We look at three types of sanctions associated with exercising the option, their (perceived) probability and their severity. A first potential cost was criminal prosecution. Running for a third term was not a crime, neither under national nor under international law. However, Nkurunziza's candidacy increasingly went hand in hand with excessive violence used by the police, the intelligence force and the *Imbonerakure* youth wing of CNDD-FDD, in particular against presumed third term opponents.¹⁵ Nkurunziza's potential command responsibility for extrajudicial killings, torture and other human rights violations might therefore theoretically lead to his prosecution. As he went ahead with his candidacy, this cost theoretically became increasingly likely, given the incrementally violent repression of anti-third term protests (see also below). In reality, however, the likelihood of this cost mostly depended on the outcome of the candidacy, rather than on the gravity of the crimes committed. In case of an electoral victory, criminal prosecution was extremely unlikely. At the domestic level, the head of state can only be prosecuted for high treason before the *Haute Cour de justice* (High Court of Justice), which has not yet been established. At the international level, heads of state of states parties to the International Criminal Court (ICC) statute do not enjoy immunity.¹⁶ On 25 April 2016, the ICC prosecutor announced the opening of a preliminary examination into the Burundian situation (which enabled the pre-trial chamber to authorize an investigation by the Office of the Prosecutor in November 2017).¹⁷ Yet, this preliminary examination did not affect this first cost factor, not only because of its late announcement (exactly one year after Nkurunziza's nomination), but also because recent ICC practice (in the cases of Sudan and Kenya) has convincingly shown that sitting heads of state – while not legally enjoying immunity – in reality always escape justice during their tenure in office. In case of an electoral defeat, however, the likelihood of criminal prosecution at the level of the ICC increases, as other instances (in the cases of DRC and Côte d'Ivoire) have shown.¹⁸ In summary, exercising the option (which, in all

[13] Again, this hints at the existence of compound options, as discussed in the previous section.

[14] Curtis, "The international peacebuilding paradox".

[15] International Criminal Court, *Public Redacted Version*.

[16] Burundi ratified the Rome Statute on the International Criminal Court on 21 September 2004. On 19 October 2016, Burundi notified its withdrawal of the ICC Statute, which entered into effect one year later.

[17] International Criminal Court, *Public Redacted Version*.

[18] Tiemessen, "The International Criminal Court".

likelihood, was equivalent to winning the elections given the dominant position of CNDD-FDD) was unlikely to entail the cost of criminal prosecution.

A second potential cost was the public disapproval by Burundian citizens. Massive anti-third term street protests broke out in Bujumbura on 26 April 2015, the day after Nkurunziza's nomination. While Burundi had no tradition of politically motivated mass demonstrations, this 'public sanction' did not come as a total surprise to well informed observers. The protests were triggered by the third term candidacy but should also be seen as a reaction against other governance failures (corruption, militarism, political favoritism, poverty, impunity). Furthermore, they were inspired by successful anti-third term protests in Burkina Faso.¹⁹ Although unprecedented in Burundian history, the demonstrations were largely limited to the capital city. According to the government, they were orchestrated by opposition elites who lacked electoral support and by so-called civil society terrorists, thus demonstrating *a contrario* the president's unchallenged popularity in the rural areas.²⁰ Yet, in those areas, the catholic bishops publicly disapproved Nkurunziza's third term ambitions, with the prominent archbishop of Gitega asking Burundians to reject their subjugation as slaves.²¹ On 13 May 2015, the demonstrations culminated in a coup d'Etat attempt, widely celebrated in the streets of Bujumbura but unsuccessful.²² In summary, exercising the option entailed the cost of a hostile capital city and strained relations with the catholic church.

International diplomatic and aid sanctions were a third potential cost. As documented elsewhere, the international community's response to Nkurunziza's third term candidacy was ambiguous, divided and belated.²³ Some international partners remained silent. Others merely issued diplomatic statements, while yet others went as far as to impose personal and aid sanctions. Between October 2014 and May 2015, in accordance with the Cotonou partnership agreement, the European Union (EU) engaged in an 'intensified political dialogue' (IPD)²⁴ in response to the pre-electoral crisis in Burundi. In July 2015, the EU announced the preparation of consultations under the sanctioning mechanism of the Cotonou agreement. On 14 March 2016, the EU suspended direct financial support to the Burundian administration because of Burundi's failure to comply with the 'essential elements' (human rights, democracy and the rule of law) referred to in the Cotonou agreement. In the meantime, the EU and several other donors had withdrawn their financial support for the 2015 elections.²⁵ From October 2015 onwards, the EU, the United States (US) and Switzerland imposed sanctions on individuals (on the side of the government and of the rebellion, but not on President Nkurunziza) accused of obstructing the search for a political solution to the crisis. In December 2015, the African Union (AU) Peace and Security Council (PSC) decided to authorize the deployment of an African Prevention and Protection Mission in Burundi (MAPROBU) with an initial strength of up to 5,000 military personnel and police. In the absence of the consent of the Burundian government and of its needed endorsement by the AU Heads of State and Government, this unprecedented PSC decision was not put into operation. It is important to note that none of these diplomatic and financial measures were explicitly linked to Nkurunziza's third term candidacy and that the sanctions were rather due to the impact of the crisis on the protection of human rights, on the

[19] Frère and Englebert, "Briefing: Burkina Faso".

[20] Office of the President, *Memorandum of His Excellency*.

[21] #Sindumuja ('I am not a slave') soon became the main anti-third term slogan on social media.

[22] Vandeginste, "Burundi's electoral crisis".

[23] Wilen "The Rationales behind the EAC"; International Crisis Group, *The African Union*.

[24] The IPD is a preliminary process before entering, in case of failure of the dialogue, into consultations under the sanctioning framework of articles 96 and 97 of the Cotonou Agreement.

[25] CENI, *Rapport général*, 113.

democratic nature of the elections and on the maintenance of peace and security. In summary, the fall-out of exercising the third term option gave rise to important but belated reputational and financial costs at the level of Burundi's international relations.

In conclusion, the costs of executing the third option did not discourage the option-holder from running for office; compared to the benefits, they were rather limited. First, despite the state-sanctioned violence that went hand in hand with executing the option, criminal prosecution was unlikely to take place if elections were won; hence the crucial importance of managing (reducing) the uncertainty of the benefits (see below) which was likely to automatically annul this first potential cost. A second cost may have been somewhat underestimated a priori, but was even in retrospect not significant enough. Street protests were unprecedented and surprisingly intensive, but at the same time, because they were mainly limited to the capital city, their electoral impact (on elections that were not free and fair anyway) was limited. A third cost occurred too late to have some effect. The international sanctions 'stick' was not used until several months after Nkurunziza's re-election.

While the assessment of costs and benefits has some explanatory value, it does not explain one important feature of Nkurunziza's execution of the option: its timing. From a classical cost-benefit analysis perspective, Nkurunziza would rationally have announced his candidacy on behalf of CNDD-FDD much earlier, at a time when the costs were limited and could even have been avoided by deciding rather than waiting. On a comparative note, this stood in sharp contrast with Rwandan President Kagame's time management of his third term bid. A referendum on the required constitutional amendment took place in December 2015 and Kagame announced his intention to run in his new year's address on 1 January 2016, while presidential elections were scheduled for August 2017. To explain the timing of Nkurunziza's candidacy, which happened only very shortly before the deadline set by electoral law, we need to include a dimension of temporality and assess the volatility of the benefits and how that volatility was managed by the incumbent president intent on running for office again.

6. VOLATILITY OF THE BENEFITS

Under the ROA model, the more volatile the benefits (i.e. the more uncertain the return), the later the option will be exercised. In addition to the negligible opportunity cost of delaying the decision (see above), this component explains why Nkurunziza took so long before announcing his third term candidacy. Our analysis also looks into the management of this component: how did Nkurunziza seek to reduce the uncertainty of the benefits of exercising the option? We break down this component into four factors that – to importantly varying degrees – affected the volatility of the return: intra-party support, opposition strength, administrative and judicial hurdles, and international (de)legitimation of the post-election authorities.

Within the CNDD-FDD, internal opposition against Nkurunziza's third term was very significant, in the military wing (the so-called '*maquisards*') as well as in the civilian wing (the so-called '*intellectuals*') of the party. This was by far the most important cause of volatility of the benefits, because it constituted a main threat to Nkurunziza's nomination and re-election.²⁶ Seen from a historical perspective, the internal rift did not come as a total surprise: throughout the civil war, the rebel movement had been the scene of repeated and violent succession struggles.²⁷ Nkurunziza took over the CNDD-FDD leadership in 2001 and was nicknamed *Umuhuza* ('he who

[26] In theory, Nkurunziza running as an independent candidate against another CNDD-FDD presidential candidate was an alternative but, given the party's control over the state apparatus, very high risk option.

[27] Ruffyikiri, "The post-wartime trajectory"; Burihabwa, "*Continuity and contingency*".

brings together’). Fifteen years later, his third term ambition was the main source of internal division. It would go beyond the scope of this paper to explain the details of this internal rift. What matters most here, is that Nkurunziza managed to retain control over the party, despite the defection of many party cadres and state officials. Two important developments need to be mentioned, one in the military (and predominant) wing, the other in the civilian wing of the party. Between November 2014 and February 2015, Nkurunziza faced considerable opposition from a majority of CNDD-FDD affiliated army generals. In a first reaction, Nkurunziza seemingly sacrificed two of his closest aides, widely accused of human rights violations (general Adolphe Nshimirimana) and corruption (general Alain-Guillaume Bunyoni) by removing them from their influential positions.²⁸ Next, he gradually managed to buy in a number of dissident generals and rally them around his third term candidacy.²⁹ General Godefroid Niyombare, the newly appointed head of the National Intelligence Service (SNR) replacing Nshimirimana, remained opposed to the president’s third term. In an internal SNR note of 13 February 2015, he warned Nkurunziza against the consequences of his third term ambitions. Niyombare was dismissed five days later, an event that, after several months of uncertainty, proved Nkurunziza’s successful management of the anti-third term protest within the CNDD-FDD military wing. In the meantime, some civilian party cadres had also publicly expressed their opposition against the third term which, internally, some had started voicing already in 2012.³⁰ On 12 January 2015, realizing that most CNDD-FDD affiliated generals were closing ranks around Nkurunziza, former CNDD-FDD senator Richard Nimbeshu publicly aired his anti-third term position on popular radio Isanganiro. In the following weeks, local and national party officials took sides, splitting the party into two pro- and anti-Nkurunziza camps. An anti-third term petition was published on 20 March 2015, one week after a UN Security Council mission visited Burundi. According to third term supporters, dissidents simply voiced their frustration for not being selected as electoral candidates.³¹ According to third term opponents, Nkurunziza gradually secured the loyalty of hesitant party members either through intimidation or by offering them electoral positions.³² By mid-April, an internal purge had excluded tens of (disclosed or suspected) dissident party cadres. Nkurunziza had secured enough support for his third term ambition and could confidentially call a party congress that confirmed his nomination on 25 April 2015. In summary, incumbent president Nkurunziza skillfully managed this risk factor, which constituted the main source of volatility of the benefits of exercising the third term option. It was almost certain that maintaining control over the party also meant maintaining control over the state apparatus and winning the presidential elections. As regards the international management of this first risk factor, confidential diplomatic cables and conversations with (former) foreign diplomats based in Bujumbura (2015-2017) reveal that Burundi’s international development partners belatedly realized the scale of intra-party opposition. It was not until they realized that maintaining the *status quo* was no guarantee for stability and might even induce instability that they called upon Nkurunziza to abide by the term limit.³³ By then, the president had secured the loyalty of CNDD-FDD generals. Insofar as some of Burundi’s development partners preferred Nkurunziza’s replacement – which, according to confidential diplomatic cables and conversations with (former) foreign diplomats based in Bujumbura, some of them did only after they came to realize that, because of the numerous

[28] Iwacu – La redaction, “Deux poids lourds”.

[29] Interviews with (former) members of the CNDD-FDD party leadership, Bujumbura, early February 2015 and Brussels, August 2015.

[30] Girijambo, “Des révélations époustouflantes”.

[31] Telephone conversation with close presidential advisor, 23 March 2015.

[32] Telephone conversation with CNDD-FDD member of parliament, 24 March 2015.

[33] Vandeginste, “Legal loopholes”, 59.

defections within CNDD-FDD, mostly radicals were likely to rule the country after the elections – the failure to manage this factor in a timely manner clearly was a missed opportunity.

Opposition parties at no point were a meaningful source of uncertainty over the benefits of exercising the third term option. Over the past decade, in particular after the 2010 elections, internal splits and leadership rivalries have importantly weakened most parties. Proactively managing this second potential risk factor, the dominant party CNDD-FDD cleverly reinforced or even orchestrated some of these internal opposition party divisions through what has become known as the *nyakurisation* of the party landscape: small dissident wings were officially registered as the ‘real’ party and their leaders gratefully accepted rewarding positions in the state institutions.³⁴ In addition, further contributing to the absence of a level playing field, opposition parties and their leaders were subjected to intimidation by local and national administration and prosecution departments.³⁵ Despite some attempts at creating a coalition platform, the opposition remained divided, poorly prepared for the 2015 electoral campaign and, most importantly, was unable to present one candidate to run against Nkurunziza.³⁶ The absence of a common opposition candidate also reduced the international community’s ability to manage this risk factor.³⁷

A third risk factor was related to the presidential term limit laid down in the APRA and, be it with some unintended ambiguity (see above), also in the Constitution. This potentially meant that the administrative or judicial bodies in charge of organizing the elections – the electoral commission (CENI) and the constitutional court – might not validate Nkurunziza’s candidacy. At least in theory, this increased the volatility of the benefits. In reality, however, there was, first, a legal constraint that limited the impact of this risk factor. The term limit was characterized by an important enforcement gap. For procedural reasons, both the CENI and the constitutional court had limited possibilities to enforce the norm.³⁸ Secondly, the supposed independence of the two bodies was carefully managed in a pro-incumbent direction. Already in the run-up to the 2010 elections, the dominant party spared no effort to establish control over the electoral commission.³⁹ Nevertheless, immediately prior to the 2015 elections, there was some internal dissidence within the CENI. Shortly after Nkurunziza introduced his candidacy on 8 May 2015, two out of the five CENI members resigned and fled Burundi. They were replaced by more ‘loyal’ members and, on 12 June 2015, CENI validated Nkurunziza’s nomination. A similar development happened at the level of the constitutional court which had been petitioned by pro-Nkurunziza senators to interpret Burundi’s term limit legislation. According to the vice-president of the court, who opposed the third term and fled the country, a majority of court judges was initially opposed to Nkurunziza’s third term.⁴⁰ However, allegedly following both intimidations (‘sticks’) as well as carrots offered to the court judges through ‘anonymous’ phone calls, the court in the end delivered a pro-third term interpretation of the Constitution.⁴¹ Shortly before the judgement and widely perceived as the most blatant example of ruling party management of this risk factor, constitutional court president Ndagijamana was appointed to the board of directors of the national brewery company Brarudi, a branch of the Heineken group

[34] Vandeginste, “Power-sharing as a fragile safety valve”.

[35] United Nations Security Council, *Report of the Secretary-General*.

[36] Jones and Wittig, “The 2015 legislative and presidential elections”.

[37] Conversation with a senior Belgian diplomat, Brussels, 9 March 2015.

[38] Vandeginste, “Legal loopholes”, 60.

[39] International Crisis Group, *Burundi: Ensuring credible elections*.

[40] Nimpagaritse and Parmentier, “Journal d’un juge constitutionnel”.

[41] Nimpagaritse and Parmentier, “Journal d’un juge constitutionnel”.

and Burundi's biggest commercial company.⁴²

Finally, the absence of international recognition of re-elected President Nkurunziza potentially undermined the benefits of exercising the option. In case of an unconstitutional change of government, the African Union (AU) may decide not to recognize the new 'de facto' authorities as the legitimate representatives of the member state concerned. In line with the 2007 African Charter on Democracy, Elections and Governance, this has become standard AU policy in situations of military coups.⁴³ However, in situations of incumbents entangled in unconstitutional - or constitutionally questionable - preservations of power, the AU's track record has been subject to criticism.⁴⁴ In the case of Burundi, despite widespread international (non-governmental and intergovernmental) critique on the freedom and fairness of the elections, neither the AU, nor the EAC, the UN or the EU refused to recognize the newly elected Nkurunziza government as representing the Burundian state or to engage in diplomatic relations with it. There was no real need for the pro-third term camp to proactively manage this risk factor. In line with international recognition practice, it had every reason to assume that the newly installed government would be internationally recognized, whether constitutionally elected or not. At no point did the anti-third term opposition in the diaspora seriously consider establishing a government in exile and calling for its international recognition as the legitimate authorities representing the Burundian state.⁴⁵

In summary, intra-party dissidence was by far the main source of volatility of the benefits of exercising the third term option. International actors refrained from managing this factor and, thus, missed the opportunity of enhancing the risks associated with exercising the option. Adopting a counterfactual perspective, we also conclude that opportunities for proactive management of the three other factors by international community actors theoretically existed but were not seized. There was no international effort at forging an opposition consensus around one alternative candidate.⁴⁶ No meaningful and timely efforts were made to enable constitutional court judges to rule independently. And the Burundi case did not deviate from international recognition practice. This is not to suggest, however, that international actors remained totally passive bystanders, which brings us to the final stage of our analysis.

7. CARROTS INSTEAD OF STICKS?

In his biography published in April 2016, former FIFA boss Sepp Blatter revealed that at the request of the Swiss government – also the chair of the UN Peacebuilding configuration for Burundi – he met President Nkurunziza in Bujumbura in early May 2015. He offered him a position as FIFA goodwill ambassador for soccer in Africa, but Nkurunziza declined the offer.⁴⁷ From a ROA model perspective, this offer – and possibly also other suggestions made to the potential third term candidate – should be seen as the (unsuccessful) international management of the benefits of Nkurunziza's other option, namely to abide by the APRA term limit.

In the run-up to the CNDD-FDD party congress nominating its presidential candidate, public international statements focused mainly on discouraging Nkurunziza from standing by highlighting the risks such decision might entail in terms of peace, security and stability of the country. With the benefit of hindsight, analysts have concluded that these

[42] Van Beemen, "Burundi: la cadeau". After the elections, in October 2015, Ndagijimana was promoted as president of the Burundi board of directors.

[43] African Union Peace and Security Council, *Communiqué*.

[44] Obse and Pippan, "Collectively protecting constitutionalism".

[45] Interviews with opposition leaders in exile in Belgium at various occasions in 2016 and 2017.

[46] Interviews with several international diplomats in spring 2015.

[47] Renggli, *Sepp Blatter – Mission & Passion*, 112.

‘aggressive’ public postures have not sufficiently been backed up by persistent private diplomacy encouraging Nkurunziza to do the right thing. Discretely offering carrots – while publicly wielding sticks – required a more persistent personal engagement by interlocutors Nkurunziza trusted. No international actor seems to have sufficiently invested in promoting this alternative option in due time.⁴⁸ It is obviously hard to tell what carrot might have been sufficiently convincing. Note that Burundi’s Constitution contained an incentive to do abide by its term limits, namely by granting a senator-for-life position to all former Presidents. It is worth noting that this senator-for-life position of former heads of state – a benefit associated with Nkurunziza’s option not to run - no longer appears in the Constitution of 7 June 2018 voted by referendum.

8. CONCLUSION

Since the early 1990s, presidential term limits have been spreading on the African continent as an institutional tool to promote non-violent alternations of executive power.⁴⁹ Moreover, despite a rather modest rise in their effectiveness over the past 20 years, term limits have been increasingly respected.⁵⁰ However, cases like Burkina Faso, the DRC and Burundi show that disrespect for term limits may trigger considerable political instability and violence. This enhances the need, both for academics and policy-makers, to properly understand the decision-making process of incumbents seeking to prolong their term in office despite a constitutional term limit. This case-study on Burundi illustrates that a classical cost-benefit analysis may not suffice. A real options approach incorporates the important dimension of temporality in the analysis. The timing of President Nkurunziza’s decision to run for office in 2015 was indicative of both the existence and the importance of certain underlying factors that affected the volatility of the benefits. It also showed how much time he needed for reducing the uncertainty that was initially associated with executing the third term option, mainly because of intra-party opposition. His successful management of benefit volatility tilted the balance in favour of executing the option. A real options analysis offers a methodology for a better informed international term limit crisis management. Applied to the 2015 pre-electoral period, the analysis reveals the window of opportunity the international community had (but did not successfully exploit) to broker interventions that focused on inner circle contestation.

[48] International Crisis Group, *The African Union*.

[49] Cheeseman, *Democracy in Africa*, 176-177; Tull and Simons, “The institutionalisation of power”.

[50] Reyntjens, “The struggle over term limits”, 63.

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