

## Mayoral term limits in South Africa

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**Summary:** *This article explores mayoral term limits in South Africa. The Structures Act, which governs the functioning of local municipalities, outlines specific provisions regarding the tenure of mayors and executive mayors. These provisions allow for a maximum of two consecutive terms in office but leave open the possibility of serving additional non-consecutive terms after a hiatus. The article examines the legislative intent behind these provisions, comparing them to the term limits imposed on other executive offices at national and provincial levels, such as the presidency and premiership. Through a textual and contextual interpretation, the article argues that the Structures Act deliberately permits the return of experienced leadership while maintaining the democratic principles of leadership rotation and accountability. Additionally, it draws comparisons with international practices, highlighting the diversity in approaches to mayoral term limits across different democratic systems. The discussion underscores the unique role that local government plays in South Africa's political landscape and the importance of balancing continuity with the renewal of leadership at the municipal level.*

**Key words:** *mayoral term limits; local government; Municipal Structures Act; executive mayors; democracy; Constitution; legislative intent; public law; mayors; municipalities*

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# 1 Introduction

The story of cities is the story of democracy. To retell the city's history, from polis to megaregion, is also to tell the story of the civic from citizenship to civilisation. Urban life entails common living; common living means common willing and common law making, and these define the essence of political democracy.<sup>1</sup>

The essence of political democracy, as captured in the evolution of cities, is mirrored in the mechanisms that sustain it. These mechanisms include the separation of powers, electoral processes and, specifically, term limits for executive office holders, which is the topic of this article. Just as urban life thrives on common living and collective decision making, democracy flourishes when power is checked, regularly refreshed and devolved.<sup>2</sup> The concept of term limits, therefore, is not only a procedural tool, but a fundamental principle that ensures the vibrancy and resilience of democratic governance.

The concept of term limits is a fundamental aspect of democratic governance, designed to prevent the entrenchment of power in a single individual or office and to encourage the rotation of leadership.<sup>3</sup> Term limits are typically applied to executive offices, such as presidents, premiers and mayors.<sup>4</sup> In many democratic systems, term limits are seen as a safeguard against the risks of authoritarianism, corruption, and the stagnation of political leadership.<sup>5</sup> Term limits are essential for maintaining the vitality and accountability of a democratic political system by preventing the concentration of power in a single individual or group, serving as a safeguard against the entrenchment of political power.<sup>6</sup> By restricting the number of terms an individual can hold office, term limits foster regular renewal of new leadership, bringing fresh ideas and perspectives to governance.<sup>7</sup> This rotation of leadership, at least in theory, discourages the entrenchment of political dynasties,

1 BR Barber *If mayors ruled the world: Dysfunctional nations, rising cities* (2013) 53.

2 SP Huntington 'Democracy's third wave' (1991) 2 *Journal of Democracy* 12-16.

3 D Posner & DJ Young 'Term limits: Leadership, political competition and the transfer of power' in N Cheeseman (ed) *Institutions and democracy in Africa: How the rules of the game shape political developments* (2018) 260-261.

4 C Fombad & N Inegbedion 'Presidential term limits and their impact on constitutionalism in Africa' in C Fombad & C Murray (eds) *Fostering constitutionalism in Africa* (2010) 5.

5 D Murden 'Term limits as a means to consolidate liberal democracy in Mauritius' LLM dissertation, University of Pretoria, 2021 34-35.

6 As above.

7 K Kouba & T Dosek 'Democratizing urban governance through mayoral term limits: Quasi-experimental evidence from a reform in Chilean municipalities' (2023) 140 *Cities* 104446.

reduces opportunities for corruption, and encourages leaders to focus on public service and positive governance rather than securing their political survival.<sup>8</sup> As a result, term limits contribute to a more transparent, ethical and responsive government that is attuned to the needs of its citizens.<sup>9</sup> While term limits serve as a safeguard against the risks of authoritarianism, corruption and the stagnation of political leadership, throughout history some mayors become beloved figures in their communities, leading to their re-election for multiple terms despite these general concerns.<sup>10</sup>

However, it has also been argued that term limits are undemocratic, as they can artificially constrain the will of the electorate.<sup>11</sup> Critics contend that term limits prevent voters from re-electing effective and popular leaders, thereby disrupting continuity and potentially depriving the community of experienced governance.<sup>12</sup> In some cases, term limits can lead to a loss of institutional memory and expertise, forcing out capable leaders at a time when their knowledge and experience might be most needed.<sup>13</sup> Moreover, term limits can create a perverse incentive for politicians in their final terms, since the impossibility of re-election may reduce their motivation to deliver on campaign promises or to remain attentive to constituents.

In South Africa, the application of term limits has been an inveterate and unquestioned feature of the post-apartheid constitutional order. The country's commitment to democratic principles is reflected in its constitutional framework, which imposes explicit term limits on key executive positions, including the President and premiers of provinces.<sup>14</sup> However, the regulation of term limits for local government officials, such as mayors, is not contained in the Constitution of the Republic of South Africa, 1996 (Constitution) but is governed by specific legislation.<sup>15</sup> This distinction, therefore, allows room for interpretation regarding the question of whether mayoral terms are similarly limited in South Africa.

8 Murden (n 5) 34-35.

9 As above.

10 See, eg, the history of Hazel McCallion who served as the mayor of Mississauga in Canada for 36 years, the longest tenure in the city's history, during which she became widely admired and affectionately known as 'Hurricane Hazel'; T Urbaniak *Her Worship: Hazel McCallion and the development of Mississauga* (2009).

11 E Elhauge 'Are term limits undemocratic?' (1997) 64 *University of Chicago Law Review* 83-201.

12 As above.

13 JA Okuku *Beyond 'third-term' politics: Constitutional amendments and Museveni's quest for life presidency in Uganda* (2005) 19-21.

14 Secs 88 & 130 Constitution of the Republic of South Africa, 1996.

15 Secs 48 & 57 Local Government: Municipal Structures Act 117 of 1998 (Structures Act).

This article seeks to answer the question of whether the Local Government: Municipal Structures Act (Structures Act) allows a mayor or executive mayor to serve more than two terms, provided that those terms are not consecutive. The issue arises because, unlike the Constitution's absolute two-term limit for presidents and premiers, the Act uses the phrase 'two consecutive terms', creating ambiguity as to whether non-consecutive terms are permissible.

This article, therefore, explores the implications and interpretation of sections 48 and 57 of the Structures Act concerning mayoral term limits. The article seeks to clarify whether the Structures Act allows for a person to serve more than two terms as mayor, provided that those terms are not consecutive. By examining the language of the Structures Act and comparing it to the term limitations at national and provincial levels, the article aims to provide a clear answer to the ambiguity contained in the Structures Act.

## 2 Local Government: Municipal Structures Act

The Structures Act is a cornerstone of South Africa's legislative framework for local government, providing the legislative scaffolding of democracy that supports the functioning of local governance. Its primary purpose is to provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipalities as envisioned in the Constitution.<sup>16</sup> The Structures Act seeks to establish a coherent system of local governance that is democratic, accountable, and capable of delivering services efficiently to the people of South Africa. It outlines the different categories of municipalities, their powers, functions, and the mechanisms for governance within these structures.

The Structures Act defines the roles and responsibilities of municipal councils, including the election, powers and duties of executive mayors. It aims to create a uniform and clear structure for local governance, in the hope of ensuring that municipalities operate effectively while being held accountable to their constituents. By setting out the procedures for the establishment of municipal councils and the election of mayors and executive mayors, the Structures Act provides the legal basis for the way in which local governments function in South Africa.<sup>17</sup>

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16 B Bekink 'The restructuring (systemisation) of local government under the Constitution of the Republic of South Africa, 1996' PhD thesis, University of Pretoria, 2006 123.

17 As above.

In 2003 the Structures Act was amended to specify that when a vacancy in the office of mayor or deputy mayor is filled, the period from the election to fill that vacancy until the next election for mayor or deputy mayor is not considered a full term.<sup>18</sup>

A key innovation of the Constitution was the recognition of local government as a distinct sphere of governance, which significantly bolstered its autonomy.<sup>19</sup> This constitutional change granted municipalities the authority to manage local affairs independently, empowering them to govern their communities without undue interference from national or provincial governments.<sup>20</sup> Although the national and provincial spheres of government retain supervisory powers, their oversight must respect the autonomy of local government.<sup>21</sup> The Constitution also delineates the functional responsibilities of local government in Schedules 4B and 5B.<sup>22</sup>

The Constitution established three distinct categories of local government.<sup>23</sup> Category A municipalities operate as single-tier entities, holding full executive and legislative authority over their jurisdictions.<sup>24</sup> Category B municipalities function within a two-tier system, sharing governance responsibilities with Category C district municipalities, which oversee several Category B municipalities within their designated areas.<sup>25</sup> In metropolitan areas, Category A municipalities have exclusive executive and legislative powers, distinguishing them from the shared authority structure of Categories B and C.

This categorisation of municipalities, while not in itself determinative of governance models, reflects the diversity of institutional arrangements across local government. In recognition of this diversity, the Structures Act provides for different executive systems, most notably the collective executive and executive mayoral models, which in turn necessitate distinct provisions regulating the term limits of mayors and executive mayors across these different municipalities. Consequently, sections 48 and 57 of the Structures Act regulate the term limits of mayors and executive mayors respectively. Section 48 addresses the term limits for mayors in municipalities that operate under a collective executive system, typically, but

18 Local Government: Municipal Structures Amendment Act 1 of 2003.

19 Bekink (n 16) 729.

20 Bekink (n 16) 128.

21 Bekink (n 16) 377 & 684.

22 Schedules 4B & 5B Constitution.

23 Sec 155(1) Constitution.

24 Sec 155(1)(a) Constitution.

25 Secs 155(1)(b) & (c) Constitution.

not exclusively, found in Category B and C municipalities, where the mayor's role is more collaborative and often involves chairing meetings and representing the municipality at official events. While authority in such systems is shared among council members, it is not uncommon for municipalities to delegate significant powers to the mayor, meaning that in practice the scope of mayoral authority can vary considerably. In contrast, section 57 focuses on the term limits for executive mayors, who possess more centralised executive authority in municipalities that have opted for an executive mayoral system, typically found in larger Category A municipalities and some Category B municipalities. Hence, this is why the Structures Act contains two provisions regarding the removal of mayors.

Section 48 of the Structures Act pertains to the terms of mayors. Sections 48(4), (5) and (6) read as follows:<sup>26</sup>

- (4) A mayor or deputy mayor is elected for the duration of that person's term as a member of the executive committee, but vacates office during a term if that person –
  - (a) resigns a mayor or deputy mayor;
  - (b) is removed from office as a member of the executive committee in terms of section 53; or
  - (c) ceases to be a member of the executive committee.
- (5) (a) No person may hold office as mayor or both mayor and executive mayor for more than two consecutive terms in the same council.
- (b) No person may hold office as deputy mayor or both deputy mayor and deputy executive mayor for more than two consecutive terms in the same council.
- ...
- (6) A mayor whose two consecutive terms have expired as provided for in subsection (5)(a) may not immediately after the expiry be elected as deputy mayor.

Regarding the term of office of executive mayors, section 57 of the Structures Act reads as follows:<sup>27</sup>

- (1) An executive mayor and a deputy executive mayor must be elected for a term ending, subject to sections 58 and 59, when –
  - (a) the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b) or 10(a); or
  - (b) the next council is declared elected.

<sup>26</sup> Sec 48 Structures Act.

<sup>27</sup> Sec 57 Structures Act.

- (2) (a) No person may hold office as executive mayor or both executive mayor and mayor for more than two consecutive terms in the same council.
- (b) No person may hold office as deputy executive mayor or both deputy executive mayor and deputy mayor for more than two consecutive terms in the same council.
- ...
- (3) An executive mayor whose two consecutive terms have expired as provided for in subsection (2)(a), may not immediately after the expiry be elected as deputy executive mayor.

Section 48 of the Structures Act addresses the term limits for mayors and deputy mayors, specifying that no individual may serve as mayor or both mayor and executive mayor for more than two consecutive terms within the same council. Additionally, it states that a mayor whose two consecutive terms have expired cannot immediately be elected as deputy mayor. This provision prevents a transition from mayor to deputy mayor immediately after the expiry of the two-term limit.<sup>28</sup>

Similarly, section 57 of the Structures Act governs the term limits for executive mayors and deputy executive mayors, upholding the same principle that no person may hold office as executive mayor or both executive mayor and mayor for more than two consecutive terms within the same council. It also prohibits an executive mayor whose two consecutive terms have ended from immediately assuming the role of deputy executive mayor.<sup>29</sup>

The wording of both sections 48(5) and 57(2), pertaining to the term limits of mayors, is ambiguous. Specifically, a question arises as to whether a mayor or executive mayor who has served two consecutive terms may be re-elected after a break, thereby serving additional non-consecutive terms. Although this scenario has never presented itself in practice, the question remains open and, therefore, is worthy of discussion, particularly as South Africa's democracy ages and matures, so too the likelihood of a person wishing to serve more than two terms increases.

Sections 48(6) and 57(3) specifically allow that a mayor or executive mayor may serve as deputy mayor as long as it is not immediately after the term as mayor or executive mayor. This is an important consideration, which will be discussed later in the article.

<sup>28</sup> Sec 48(6) Structures Act.

<sup>29</sup> Sec 57(3) Structures Act.

Moreover, the question of mayoral term limits is of particular importance in South Africa, where local government is central to providing essential services and ensuring the direct representation of communities at the most immediate grassroots level.<sup>30</sup> Understanding whether sections 48 and 57 of the Structures Act permit a mayor to serve more than two non-consecutive terms is not only a matter of legal interpretation, but also of governance practice and political consequence.

Relating to mayoral term limits of mayors, section 48(5)(a) of the Structures Act states that '[n]o person may hold office as mayor or both mayor and executive mayor for more than two consecutive terms in the same council'.

Relating to mayoral term limits of executive mayors, section 57(2)(a) of the Structures Act states that '[n]o person may hold office as executive mayor or both executive mayor and mayor for more than two consecutive terms in the same council'.

The two crucial aspects of sections 48(5)(a) and 57(2)(a), therefore, are that no individual may serve as an executive mayor or both an executive mayor and mayor for more than two consecutive terms. Additionally, this limitation applies specifically to the same council or municipality, meaning that while an individual may be restricted from serving more than two consecutive terms in one municipality, they could potentially serve in the same roles in a different municipality.

The phrase 'two consecutive terms' is crucial because it suggests that while a mayor may not serve more than two terms consecutively, it does not necessarily preclude the possibility of serving additional non-consecutive terms.<sup>31</sup> This distinction, although potentially consequential, has not as yet led to significant debate about whether the legislation was intended to impose an absolute limit of two terms in total or whether it allows for the re-election of a mayor after a break in service.

It is interesting to note that, while imposing term limits on mayors and executive mayors, the Structures Act does not extend similar restrictions to other key positions within local government. For example, there are no term limits for the election of speakers of council, which means that an individual can be re-elected to this position indefinitely, provided they continue to enjoy the support of

30 L Kaywood 'Exploring the history and development of the local government system in South Africa' (2021) 12 *African Journal of Public Affairs* 56-58.

31 N Steytler & J de Visser *Local government law of South Africa* (2014) 3-35.



the council.<sup>32</sup> This absence of term limits for the speaker suggests a different approach to managing leadership continuity and change within councils, potentially allowing for greater stability or continuity in the legislative agenda and leadership.

Moreover, municipal managers, who fulfil the top role in the administration of municipalities, are also not subject to term limits. According to section 54A of the Local Government: Municipal Systems Act, 2000 (Systems Act), the appointment of municipal managers is primarily governed by the qualifications and competencies of the candidates rather than the duration of their tenure.<sup>33</sup> The Systems Act provides detailed guidelines for the appointment process, emphasising the need for municipal managers to possess the prescribed skills, expertise and qualifications.

The Systems Act does impose restrictions on the duration of both municipal managers and acting municipal managers.<sup>34</sup> Specifically, a person appointed as an acting municipal manager may not hold the position for more than three months unless special circumstances warrant an extension, which must be approved by the member of executive council for local government.<sup>35</sup> This provision ensures that acting appointments are temporary and that the position of municipal manager is filled by a suitably qualified individual in a timely manner.

The absence of term limits for these positions aligns with the constitutional practice at national and provincial levels which similarly does not impose term limits for the speakers of parliament and provincial parliaments. While the term limits for executive mayors are designed to prevent the consolidation of power and promote leadership renewal, the absence of comparable restrictions for other key positions, such as speakers and municipal managers, serves a specific purpose and, more importantly, underscores that local government is not only a distinct sphere of governance but also a uniquely structured one.

Overall, the Structures Act and the Systems Act provide a comprehensive framework for local government in South Africa, but the selective application of term limits highlights the different

32 See secs 36-41 of the Structures Act relating to speakers of council, which impose no term limits.

33 Local Government: Municipal Systems Act 32 of 2000 (Systems Act).

34 Secs 54A(2A)(b) and 57(6)(a) Systems Act.

35 Sec 54A(2A)(b) Systems Act.

approaches to managing political and administrative leadership at the municipal level.

### 3 Legislative intent

The legislative intent behind the wording of sections 48(5)(a) and 57(2)(a) of the Structures Act appears to be focused on preventing the continuous concentration of power in a single individual, acting as a safeguard against power monopolies in local governance. By limiting the tenure of a mayor and executive mayor to two consecutive terms, the Structures Act aims to ensure that no single person can dominate the leadership of a municipality for an extended uninterrupted period of more than ten years. This intent is consistent with democratic values that favour leadership rotation and the prevention of potential abuses of power that can arise from prolonged incumbency.

Municipal councils in South Africa are unique in that they fulfil both executive and legislative functions within their jurisdictions.<sup>36</sup> This dual role means that councils are responsible not only for adopting laws and by-laws in their legislative capacity, but also for formulating and adopting policies in their executive capacity, alongside overseeing the implementation of those laws and policies through municipal administration.<sup>37</sup> The legislative function involves drafting, debating and passing by-laws that govern the municipality, while the executive function encompasses the oversight and management of municipal administration, service delivery and the execution of council decisions.<sup>38</sup>

The mayor's role, however, is distinct from the collective responsibilities of the municipal council.<sup>39</sup> As the political head of the municipality, the mayor is often seen as the face of the municipality, responsible for providing leadership and representing the municipality both internally and externally. The mayor plays a key role in steering the council's strategic direction and ensuring that council decisions are effectively implemented.<sup>40</sup> In municipalities with an executive mayoral system, the mayor holds even more concentrated executive authority, often making key decisions and directly overseeing the administration, thus serving as the

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36 Sec 151(2) Constitution.

37 Bekink (n 16) 321.

38 As above.

39 Bekink (n 16) 177.

40 C Thornhill 'The executive mayor/municipal manager interface' (2008) 43 *Journal of Public Administration* 728-730.

political leader of the municipality.<sup>41</sup> Given this significant role, the legislature's allowance for mayors to potentially serve more than two non-consecutive terms reflects an understanding of the importance of experienced leadership in local governance.

Therefore, the allowance for non-consecutive terms, inferred from the inclusion of the word 'consecutive', suggests that the legislators were not entirely opposed to the return of experienced leadership after a period out of office.<sup>42</sup> This could be seen as a way to maintain the benefits of experienced governance while still upholding the principle of regular leadership change. The legislative intent, therefore, seems to strike a balance between preventing long-term monopolisation of power and allowing for the possibility of the return of experienced leaders after a break, which could be beneficial in cases where an individual's prior experience could contribute to effective governance.

Steytler and De Visser argue that the provision in the Structures Act, which allows for an individual to be re-elected as mayor after serving two consecutive terms, should be interpreted with caution to prevent potential abuse.<sup>43</sup> They suggest that the Act did not intend to allow an outgoing mayor to use this exemption to be re-elected as mayor shortly after their second term has ended. Such an interpretation would make the provision susceptible to easy circumvention, undermining the legislative intent of limiting mayoral tenure.<sup>44</sup> To uphold the purpose of the term limits, they propose that a full term, during which the mayoral position is occupied by another individual, should separate the two consecutive terms from any potential third term.<sup>45</sup>

However, this has never been tested in court, nor does it consider every scenario, for example, if a newly elected mayor decides to resign shortly after commencing their term. In such a case, the outgoing mayor could potentially step back into the role without a significant passage of time, thereby challenging this particular interpretation of the mayoral term limit provisions.

Lastly regarding the legislative intent, the provisions in sections 48(6) and 57(3) of the Structures Act, which specifically allow a mayor or executive mayor to serve as deputy mayor as long as it

41 Bekink (n 16) 190-193.

42 Steytler & De Visser (n 31) 3-35.

43 As above.

44 As above.

45 Steytler & De Visser (n 31) 3-36.

is not immediately after their term as mayor or executive mayor, provide a compelling comparison for the interpretation of mayoral term limits. These sections suggest that the legislature recognises the value of experienced leaders who return to municipal governance, provided there is a break between terms. This provision logically extends to the role of mayor or executive mayor itself, reinforcing the idea that an individual could serve in these positions again after a hiatus, similar to the provision regarding deputy mayors. The legislative intent appears to want to ensure that former leaders are not permanently barred from contributing to their municipalities after completing two consecutive terms.

### 3.1 Implications of the clause

The implications of sections 48(5)(a) and 57(2)(a) are significant for the tenure of executive mayors in South Africa. The clear prohibition against more than two consecutive terms in the same council underscores the importance of leadership rotation within local government. This clause effectively ensures that no executive mayor can remain in office indefinitely, thereby reducing the risks of entrenched power structures and promoting democratic renewal within municipalities.

At the same time, the potential for non-consecutive terms introduces flexibility into the system, creating a revolving door of leadership that allows former mayors and executive mayors to return to office after a break. This could have several implications. On the one hand, it could allow municipalities to benefit from the experience and expertise of individuals who have previously served as executive mayors, particularly if they are seen as effective leaders by their constituents. On the other hand, it also raises the possibility of strategic political maneuvering, where an individual might temporarily step down only to return to office after a brief hiatus, potentially undermining the intent of preventing power concentration.

Throughout history, across the globe, many mayors have not only transformed the cities under their governance but have also come to embody enduring leadership and a deep commitment to public service. For instance, Thomas Menino of Boston served as mayor for over two decades, becoming known as the 'urban mechanic' for his hands-on approach to governance.<sup>46</sup> In Cork, Ireland, Seán French,

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46 B Marquard & J O'Sullivan 'Thomas M Menino, Boston's longest-serving mayor, dies at 71' *The Boston Globe* 30 October 2014, <https://www.bostonglobe.com/>

who served multiple terms as lord mayor, guided the city through turbulent times, leaving a legacy of resilience and reform.<sup>47</sup> Similarly, in Mackinac Island, Margaret Doud has been re-elected for over five decades, demonstrating the strong bond between her leadership and the community.<sup>48</sup> These examples highlight how extended tenures can contribute to stability and continuity, key aspects that the Structures Act undoubtedly considers in its governance framework.

Furthermore, the restriction to the 'same council' implies that an individual barred from serving additional consecutive terms in one municipality might still be eligible to run for the same position in a different municipality. This geographic flexibility could allow experienced leaders to bring their skills to new contexts, although it could also lead to concerns about the portability of political influence across different municipalities.

## 4 Comparison with other political term limits in South Africa

### 4.1 Presidential term limits

The term limits for the President of South Africa are clearly defined in section 88 of the Constitution, which states: 'The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.'<sup>49</sup> Furthermore, the Constitution imposes a strict two-term limit on the office of the President, as outlined in section 88(2): 'No person may hold office as President for more than two terms, but when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.'<sup>50</sup>

Unlike the wording in the Structures Act, the Constitution makes no reference to consecutive terms. While the Structures Act could allow for mayors to return after a break in service, the Constitution

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metro/2014/10/30/thomas-menino-boston-longest-serving-mayor-has-died-age/zAuWXQ4ccPJsv7uuW0kcDK/story.html (accessed 22 August 2024).

47 PJ Dempsey 'French, Seán' *Online dictionary of Irish biography* August 2022, <https://www.dib.ie/biography/french-sean-a3370> (accessed 22 August 2024).

48 J Delaney 'Margaret Doud celebrates 30 years as Mackinac Island mayor' *The St Ignace News* 2 June 2005, <https://www.stignacenews.com/articles/margaret-doud-celebrates-30-years-as-mackinac-island-mayo/> (accessed 22 August 2024).

49 Sec 88(1) Constitution.

50 Sec 88(2) Constitution.

establishes an absolute two-term ceiling for the presidency, regardless of whether or not the terms are consecutive. The presidency is therefore subject to a stricter regime of leadership rotation, reflecting the heightened concern with limiting executive power at the national level.

This two-term limit is designed to prevent the monopolisation of executive power at the highest level of government, ensuring that no single individual can dominate the presidency for an extended period.<sup>51</sup> The principle behind this limitation is to promote democratic renewal and prevent the risks associated with prolonged leadership, such as the entrenchment of power and potential authoritarianism.<sup>52</sup> Over the years there have been debates and discussions regarding the efficacy and necessity of such terms limits.<sup>53</sup> However, the two-term limit remains a critical feature of South Africa's democratic framework, ensuring regular leadership change and the opportunity for fresh perspectives in the presidency.

Interestingly, while the President is subject to a two-term limit, there are no similar restrictions on how long an individual can serve as a minister within the executive branch of government. This absence of ministerial term limits allows for continuity and the retention of experienced leadership in key governmental positions, even as the presidency itself undergoes periodic renewal.

#### 4.2 Premiers and members of executive councils

Similar to the presidency, the Constitution imposes term limits on the office of the premier.<sup>54</sup> Section 130(1) of the Constitution specifies that '[a] Premier's term of office begins when the Premier assumes office and ends upon a vacancy occurring or when the person next elected Premier assumes office'.<sup>55</sup> Moreover, the Constitution mandates a two-term limit for premiers, as detailed in section 130(2): 'No person may hold office as Premier for more than two terms, but when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.'<sup>56</sup>

51 Posner & Young (n 3) 274.

52 Fombad & Inegbedion (n 4) 1-3.

53 C Heyl & M Llanos 'Contested, violated but persistent: Presidential term limits in Latin America and sub-Saharan Africa' (2022) 29 *Democratization* 3-4.

54 Sec 130 Constitution.

55 Sec 130(1) Constitution.

56 Sec 130(2) Constitution.

This provision aligns with the term limits for the President. The two-term limit for premiers ensures that provincial leadership is subject to the same democratic principles of rotation and renewal as the national leadership, thereby fostering accountability and preventing the perpetuation of power by a single individual within a province.

In contrast to the premier, members of executive councils (MECs), who are appointed by the premier to head various provincial departments, are not subject to any term limits. MECs can continue to serve as long as they maintain the confidence of the premier and are reappointed. This lack of term limits for MECs allows for continuity in provincial administration and the retention of experienced leadership within provincial governments, even as the office of premier is subject to periodic change.

#### **4.3 Members of parliament, members of provincial legislatures and local council term limits**

Where legislative roles are concerned, South Africa's Constitution does not impose any term limits on members of parliament (MPs), members of provincial legislatures (MPLs) or municipal councillors. This means that individuals in these roles can serve for an indefinite period, provided they continue to be re-elected by their constituents. The absence of term limits for these positions reflects a different approach to political tenure compared to the executive branch, emphasising the role of electoral accountability rather than mandated rotation.

The absence of term limits for MPs, provincial legislators and municipal councillors allows for the development of deep expertise and continuity in legislative processes. It also enables long-serving members to build substantial influence and leadership within their respective bodies. However, it also raises the potential for the entrenchment of long-serving politicians who over time may become less responsive to the changing needs and desires of their constituents.

While the Constitution imposes clear term limits on the executive roles of President and premier, it takes a more flexible approach with other political offices, such as ministers, MECs, MPs and councillors. It seems that the particular distinction is between members of legislators at various levels and those holding executive office.

#### 4.4 Term limits for judges

The Constitution outlines specific term limits for judges, particularly for those serving on the Constitutional Court.<sup>57</sup> According to section 176(1) of the Constitution, a Constitutional Court judge serves a single, non-renewable term of 12 years, or until reaching the age of 70, whichever occurs first.<sup>58</sup> This provision ensures that the highest court in the land benefits from both continuity and the infusion of new experience, while also preventing the entrenchment of any single judge in these roles. The possibility exists for an act of parliament to extend a judge's term, but no such national piece of legislation currently exists. For judges serving in other courts, the Constitution is not prescriptive, stating that they hold office until they are discharged from active service in terms of an act of parliament. This approach likely reflects the varying demands and circumstances of different judicial roles across the country's legal system. The Magistrates' Court Act 32 of 1944 similarly does not limit the terms of magistrates.

### 5 Legislative interpretation

In interpreting sections 48 and 57 of the Structures Act, it is essential to engage with both textualist and contextualist approaches to statutory interpretation. Textualism emphasises the plain, ordinary meaning of the words chosen by the legislature, while contextualism insists that those words must be understood within the broader purpose, framework and circumstances of the statute. These approaches are not mutually exclusive but work together to ensure a balanced and coherent interpretation of legislation. Each method offers insights into the legislative intent and the nuanced meaning of the statutory text, ensuring a thorough and well-rounded interpretation. The combination of these approaches allows for a more flexible and comprehensive understanding of the law.<sup>59</sup>

As emphasised in both *Endumeni*<sup>60</sup> and subsequent judgments, while the textualist approach anchors interpretation in the ordinary grammatical meaning of the words, the contextualist approach ensures that this interpretation is not conducted in isolation but

<sup>57</sup> Sec 176 Constitution.

<sup>58</sup> Sec 176(1) Constitution.

<sup>59</sup> M Wallis 'Interpretation before and after *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 4 SA 593 (SCA)' (2019) 22 *Potchefstroom Electronic Law Journal* 13.

<sup>60</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA).



is informed by the broader legislative purpose and the specific circumstances surrounding the statute.<sup>61</sup> By balancing these two methods, the court can avoid the pitfalls of a purely literal reading that might ignore the broader legislative intent, while also ensuring that the statutory language is respected and not unduly stretched beyond its plain meaning. The author argues that on both interpretations it is clear that the Structures Act allows for the serving of more than two terms as long as the third term does not immediately follow the preceding two terms.

## 5.1 Textual interpretation

The textualist approach to statutory interpretation prioritises the plain and ordinary meaning of the words used in the statute.<sup>62</sup> This method focuses on the text itself, on the presumption that the legislature's chosen wording faithfully reflects its intent.<sup>63</sup> Textualist interpretation requires that the exact words of the legislation, or *ipsissima verba*, must be followed because it is not the role of the judiciary to read into legislation. This perspective is well illustrated in the case of *Engels v Allied Chemical Manufacturers (Pty) Ltd*, where the Court emphasised that remedying a defect in the legislation is the role of the legislature, not the judiciary.<sup>64</sup> According to this view, any deviation from the plain language of the statute would constitute judicial overreach, effectively usurping the legislative function by making law rather than interpreting it.

In the case of sections 48(5)(a) and 57(2)(a) of the Structures Act, the language is notably specific: 'No person may hold office as executive mayor or both executive mayor and mayor for more than two consecutive terms in the same council.'<sup>65</sup>

The key phrase 'two consecutive terms' is decisive to understanding the limitation imposed by the statute. The term 'consecutive' is defined as sequential or uninterrupted in order ('follow one after another without an interruption').<sup>66</sup> Thus, when the statute limits

61 See *Natal Joint Municipal Pension Fund* (n 60); *Cool Ideas 1186 CC v Hubbard & Another* 2014 (4) SA 474 (CC) para 28.

62 See *SATAWU & Another v Garvas & Others* [2012] ZACC 13; 2013 (1) SA 83 (CC); 2012 8 BCLR 840 (CC) (*Garvas*) para 37; *S v Zuma & Others* [1995] ZACC 1; 1995 (2) SA 642 (CC); 1995 4 BCLR 401 (CC) (*Zuma*) paras 13-14; *Dadoo Ltd & Others v Krugersdorp Municipal Council* 1920 AD 530 543.

63 *Public Carriers Association v Toll Road Concessionaries (Pty) Ltd* 1990 (1) SA 925 (A).

64 *Engels v Allied Chemical Manufacturers (Pty) Ltd & Another* 1993 (4) SA 45 (Nm HC) 54(A-B).

65 Secs 48(5)(a) & 57(3)(a) Systems Act.

66 'Definition of consecutive' *Cambridge online dictionary*, <https://dictionary.cambridge.org> (accessed 22 August 2024).

the term of office to 'two consecutive terms', it explicitly restricts an individual from serving more than two terms in immediate succession. However, the statute does not address the possibility of serving non-consecutive terms directly, which is where the interpretation gains significance.

A strict textualist reading suggests that the prohibition applies solely to back-to-back terms.<sup>67</sup> Since the statute does not explicitly prohibit non-consecutive terms, it implies that an individual could potentially serve more than two terms if there is a break between their terms of office.<sup>68</sup> This interpretation hinges on the deliberate inclusion of the word 'consecutive' which, if ignored, would render the term superfluous and, therefore, meaningless. The principle of statutory interpretation known as *expressio unius est exclusio alterius*<sup>69</sup> (the expression of one thing is the exclusion of another) further supports this reading: By specifying 'consecutive', the statute implicitly allows for the possibility of non-consecutive terms.

Moreover, the textualist approach would argue that had the legislature intended to impose an absolute limit of two terms, regardless of whether they were consecutive, it would have simply stated that '[n]o person may hold office as executive mayor or both executive mayor and mayor for more than two terms'. The choice to include 'consecutive' suggests a more nuanced limitation, allowing for multiple terms as long as they are not sequential. Therefore, from a textualist perspective, sections 48(5)(a) and 57(3)(a) clearly permit an individual to serve more than two terms as mayor, provided those terms are not consecutive.

Flowing from this, the question arises as to what would constitute a break that would then enable the serving of further terms, and how long this interruption must be to avoid violating the spirit of the statute. The term 'break' or 'interruption' or other synonym in the context of sections 48 and 57 of the Structures Act is not explicitly defined, leading to potential ambiguity in its application. A textual interpretation would focus on the ordinary meaning of consecutive and logically infer that a break or interruption refers to any period during which the individual does not hold the office of executive mayor. This could range from a single day or a single election cycle to a more extended hiatus from office. The textualist approach, therefore, suggests that any interval, regardless of its length, that interrupts a

<sup>67</sup> Steytler & De Visser (n 31) 3-35.

<sup>68</sup> As above.

<sup>69</sup> *Saboath General Traders (Pty) Ltd t/a Sausage Saloon & Another v Mthatha Mall (Pty) Ltd* 2023 ZACC 43 para 14.

person's consecutive terms would constitute a break, thus resetting the term limit and allowing for the possibility of additional non-consecutive terms. However, this interpretation must be examined in light of the legislative intent and the broader constitutional framework to ensure that it aligns with the principles of democratic governance and the prevention of power concentration. A purely textualist interpretation could be criticised for potentially allowing minimal breaks, such as a single election cycle, to circumvent the intended limitation on consecutive terms, thereby undermining the purpose of term limits.<sup>70</sup>

However, the use of the word immediately in section 48(6) which prohibits a mayor from being elected deputy mayor 'immediately after' completing two terms suggests that the legislature contemplated more than a merely formal or momentary gap. Instead, it points towards requiring at least one intervening electoral cycle, or some substantive passage of time, before a return to executive office is permissible.

## 5.2 Contextual interpretation

The contextualist approach to statutory interpretation, which has been increasingly embraced by South African courts following the widely cited *Endumeni* judgment, requires that the words of a statute be interpreted in light of their context, purpose and the broader legislative framework.<sup>71</sup> This approach recognises that the meaning of statutory language cannot always be fully understood in isolation and must be considered in the broader legislative and societal context in which it operates.<sup>72</sup>

In interpreting ambiguous or unclear statutory language, courts often look at the law as a whole, comparing the specific provision in question with other sections and the Preamble to ensure that the interpretation aligns with the overall legislative intent. This principle is well illustrated by Kotze CJ in *Hess v The State*, where he held:<sup>73</sup>

Where the meaning of a section in a law is uncertain or ambiguous it is the duty of the court to consider the law as a whole, and compare the various sections with each other and with the preamble, and give such meaning to the particular section under consideration that it may, if possible, have force and effect.

<sup>70</sup> Steytler & De Visser (n 31) 3-35.

<sup>71</sup> *AfriForum v University of the Free State* 2018 (2) SA 185 (CC) para 43.

<sup>72</sup> As above.

<sup>73</sup> *Hess v The State* 1895 2 ORC 112.

This approach is also echoed in broader constitutional principles historically and globally, such as those articulated by James Madison in the Federalist Papers 37, where he observed:<sup>74</sup>

All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications.

These principles underscore the importance of interpreting statutory language not only through the lens of its immediate wording, but also in consideration of the broader legislative and societal purposes it is meant to serve. When the text alone does not provide absolute clarity, context becomes crucial in uncovering the full scope of the law's intent.<sup>75</sup> This approach helps to ensure that the interpretation aligns with the overarching objectives of the legislation and the constitutional values it seeks to uphold.

Applying this contextual approach to sections 48 and 57 of the Structures Act, one must consider the broader goals and purposes of the Act, which seeks to create a democratic, accountable and efficient system of local governance. The Act's provisions are designed to balance the need for experienced leadership with the democratic principles of accountability and renewal.

The inclusion of the term 'consecutive' in sections 48(5)(a) and 57(3)(a) must be viewed in light of these broader objectives. By limiting consecutive terms, the legislature likely intended to prevent the entrenchment of power and the risks associated with prolonged incumbency, such as decreased accountability and the potential for corruption. At the same time, the allowance for non-consecutive terms acknowledges that local governments can benefit from the experience and leadership skills of individuals who have previously served as mayors.

Furthermore, the context in which local governments operate in South Africa includes a range of challenges, from service delivery issues to the need for strong and effective leadership. The flexibility afforded by allowing non-consecutive terms could be seen as a response to these challenges, ensuring that municipalities are not deprived of effective leaders simply because they have already served two consecutive terms. However, experience alone is not sufficient to resolve the persistent challenges of poor service delivery, weak

74 J Madison 'Federalist 37: Concerning the difficulties of the convention in devising a proper form of government' in *The Federalist Papers* (1788).

75 *AfriForum* (n 71) para 43.

administration or governance failures that many municipalities continue to face. The return of experienced mayors may provide continuity and institutional memory, but its effectiveness ultimately depends on broader systemic factors such as administrative capacity, political stability and oversight mechanisms. This interpretation is consistent with the broader legislative intent of fostering capable and accountable local government while preventing the stagnation of leadership that can occur with indefinite consecutive terms.

In addition to the legislative context, the use of the term 'consecutive' should also be understood against the backdrop of South Africa's broader constitutional framework, which emphasises the importance of limiting executive power across all levels of government. The Constitution imposes clear two-term limits on the President and premiers, as discussed earlier in the article. However, these provisions do not include the word 'consecutive', signalling an absolute two-term limit. The Structures Act does not mirror the language found in sections 88 and 130 of the Constitution. Therefore, it is argued that the Structures Act does not contain as strict a limitation as the Constitution does and that this is purposeful.<sup>76</sup> The choice to include 'consecutive' in sections 48 and 57 of the Structures Act, therefore, should be interpreted as a deliberate legislative decision to create a distinct rule for local government executives, one that balances continuity and renewal in a way that is uniquely suited to the needs of local governance.

From both a textualist and a contextualist perspective, sections 48 and 57 of the Structures Act should be interpreted to allow an individual to serve more than two terms as mayor, provided those terms are not consecutive.

### 5.3 How long should the hiatus be?

That said, the central ambiguity remains: How long must the hiatus be before a further term is permissible? A strict textualist reading could interpret any interruption, even one of a few days, as sufficient to break consecutiveness. By contrast, a contextual and purposive interpretation, informed by the use of the word 'immediately' in sections 48(6) and 57(3), suggests that the legislature intended to avoid superficial or tactical interruptions that would undermine the principle of rotation. On this reading, a full intervening council term, during which another individual occupies the office, may be required to give meaningful effect to the limitation. The absence of

<sup>76</sup> Steytler & De Visser (n 31) 3-25.

explicit guidance leaves this question unresolved, but the interpretive balance points toward requiring more than a nominal break in order to uphold the democratic purpose behind term limits.

An unresolved question in the interpretation of sections 48 and 57 of the Structures Act concerns what happens if a mayor resigns, dies or is otherwise unable to complete their term. From a textualist perspective, any such interruption breaks the consecutiveness of terms, since another person necessarily occupies the office, even if only briefly. On this reading, the prohibition applies only to uninterrupted service, and any gap – however short – would permit re-election.

However, the purposive and contextual approach may yield a different conclusion. Allowing a mayor to resign strategically near the end of their second term, only to return shortly thereafter, would undermine this purpose. A stronger purposive interpretation would therefore require that a full intervening term be served by another individual before the original mayor could return, ensuring that leadership renewal is substantive rather than merely technical.

Internationally, courts and legislatures have sometimes treated incomplete terms differently. For example, in United States presidential practice, completing less than two years of a predecessor's term does not 'count' as a full term for the successor. South Africa's Constitution mirrors this in section 88(2) regarding the presidency. By analogy, one might argue that incomplete mayoral terms in South Africa should also be treated distinctly, but the Structures Act does not provide such a rule, leaving the ambiguity open.

## **6 Constitutional comparison**

In analysing the term limits for mayors, a comparison with the term limits imposed on other executive offices provides a useful guide because it highlights the broader constitutional and legislative pattern in South Africa, demonstrates whether mayoral rules align diverge from established norms for executives such as the President and premiers, and helps clarify whether the wording of the Structures Act was intended to mirror or deviate from these higher-level precedents.

When examining the term limits imposed on executive positions across various levels of government in South Africa, it becomes evident that there is a case to be made for the uniform application of these limits to mayors, who serve as the executives of local

governments. The Constitution imposes clear and unequivocal two-term limits on both the President (section 88) and the premiers of provinces (section 130), which suggests a constitutional norm aimed at preventing the over-concentration of power in any single executive office. Given this precedent, it stands to reason that similar restrictions should logically apply to mayors, regardless of whether or not their terms are consecutive, in order to maintain consistency in democratic governance across all levels of government.

Sections 88 and 130 of the Constitution are so explicit in their restriction to two terms that there has been little academic debate or legal challenge concerning their interpretation, nor have these provisions been judicially tested with a situation of a president or premier being unwilling to leave office. The clarity of these sections leaves no room for alternative readings, as the Constitution expressly prohibits any individual from serving more than two terms in these executive roles, regardless of whether or not the terms are consecutive.

Unlike the Constitution, which is silent on the issue of mayoral term limits, sections 48 and 57 of the Structures Act do not mirror the language found in sections 88 and 130. Specifically, the inclusion of the word 'consecutive' in section 57 introduces a potential deviation from the established norm of term limits seen at the provincial and national levels. This raises the question of whether the legislature intentionally sought to create a different standard for local government executives, or whether the wording was simply a product of legislative drafting without a deliberate intent to diverge from constitutional norms.

In the author's view, the key to interpreting sections 48(5)(a) and 57(3)(a) lies in giving meaningful content to the word 'consecutive'. The inclusion of this term, which is absent from sections 88 and 130 of the Constitution, suggests that the legislature intended to indeed differentiate the rules governing local executives from those at the national and provincial levels. This distinction implies that the Structures Act permits an individual to serve more than two terms as mayor, provided those terms are not consecutive, thus allowing for a return to office after a hiatus. Ultimately, the presence of the word 'consecutive' in section 57 is what sets it apart from the constitutional provisions governing other executives.

## 7 Conclusion

The interpretation of mayoral term limits in South Africa, as outlined in the Structures Act, indicates that should the situation arise where a mayor, having served two consecutive terms, seeks the office once again, this would be allowable in terms of the Structures Act. The Structures Act's leeway for non-consecutive terms suggests a deliberate legislative intent to permit experienced leaders to return to office after a hiatus, provided they do not serve more than two consecutive terms in the same council. In light of the important role that local governments play in social and economic development as the sphere of government closest to the people, this leeway is both understandable and necessary.

When comparing mayoral term limits internationally, it is clear that there is no single approach. In the United Kingdom, for instance, there are no term limits for mayors, allowing them to serve multiple terms without restriction as long as they continue to be re-elected.<sup>77</sup> In contrast, in the United States, nine of the ten largest cities impose term limits on their mayors, typically restricting them to two consecutive terms.<sup>78</sup> Additionally, a 2006 survey by the International City/County Management Association revealed that while only 9 per cent of surveyed cities in the United States limit the mayor's term, the majority of those that do limit terms impose a two-term limit. Larger cities are more likely to impose such restrictions.<sup>79</sup> There is variation in term lengths and limits, as seen in the survey where term lengths range from one to four years, with 45 per cent of cities opting for four-year terms.<sup>80</sup>

South Africa's neighbours have no limit of any nature pertaining to mayoral terms. In Botswana, the Local Government Act of 2012 sets no limit to mayoral terms.<sup>81</sup> Moreover, in Namibia their Local Authorities Act 23 of 1992 similarly does not impose any limit.<sup>82</sup>

This diversity in international approaches underscores the flexibility and adaptability in local government structures, reflecting different

77 Local Government Association 'Don't be left in the dark: Devolution and mayors' (2017), <https://www.local.gov.uk/sites/default/files/documents/dont-be-left-dark-devolut-886.pdf> (accessed 22 August 2024).

78 PJ Egan 'Term limits for municipal elected officials: Executive and legislative branches' (2010), <https://as.nyu.edu/content/dam/nyu-as/faculty/documents/egan.municipal.termlimits.2010.pdf> (accessed 22 August 2024).

79 ER Moulder 'Municipal form of government: Trends in structure, responsibility, and composition' in ER Moulder (ed) *Municipal year book 2008* (2008) 33.

80 Moulder (n 79) 31.

81 Republic of Botswana's Local Government Act 18 of 2012.

82 Republic of Namibia's Local Authorities Act 23 of 1992.



democratic traditions and local needs. It suggests that South Africa's allowance for non-consecutive terms in the Structures Act is aligned with broader global approaches.

Ultimately, the interpretation of the Structures Act should strive to uphold the principles of democratic governance, ensuring that term limits serve their intended purpose of promoting leadership rotation while allowing municipalities to benefit from the experience of capable leaders. The Structures Act's provisions, when viewed through both textual and contextual lenses, support a balanced approach that encourages both renewal and continuity in local government leadership.