

Policy Paper

Constitutionalism, Peaceful Alternation of Power and Public Debt Management in Africa

**African Network of
Constitutional Lawyers
(ANCL) in partnership with
the National Democratic
Institute**

*Written by
Dr Adem Kassie Abebe and
Dr Laura-Stella Enonchong*



AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS
RÉSEAU AFRICAÏN DE DROIT CONSTITUTIONNEL
REDE AFRICANA DE JURISTAS CONSTITUCIONALISTAS



Executive Summary

This policy paper argues that constitutionalism in Africa depends not only on the holding of elections, but on the credible possibility of regular and peaceful alternation of power. Where incumbents erode term limits, manipulate institutions, and weaponise winner-takes-all systems, electoral competition loses meaning, accountability weakens, and the risks of democratic backsliding, coups, and even conflict increase. Regular alternation of power is therefore presented as a practical enabler of democratic legitimacy, leadership accountability, political stability, and the management of social and political diversity.

At the same time, the paper stresses that alternation of power, while necessary, is not sufficient to secure resilient constitutional democracy. Even in systems that experience leadership change, excessive concentration of power, exclusion of opposition actors, weak oversight institutions, and limited public participation can sustain public distrust and poor governance outcomes. The paper therefore links democratic consolidation to reforms that reduce winner-takes-all politics, strengthen checks and balances, empower opposition participation, and improve the responsiveness, transparency, and effectiveness of state institutions.

A central contribution of the paper is to frame public debt as a constitutional and governance issue, not merely a technical economic matter. Unsustainable or hidden debt can undermine democratic legitimacy, constrain future governments, deepen social hardship, and expose states to austerity, instability, and external dependence. The paper shows that constitutional and legal frameworks can improve debt management by requiring meaningful parliamentary oversight, timely disclosure, accountability mechanisms, and safeguards for intergenerational justice. In this way, stronger constitutional design can support both democratic resilience and more sustainable public finance.

Key recommendations: establish, protect and strengthen presidential term limits; reform electoral systems and governance arrangements to address winner-takes-all politics; reinforce oversight over executive power; create meaningful constitutional and legal roles for opposition actors in governance and reform processes; require broad-based consultation and national consensus for major constitutional amendments; and strengthen constitutional and legal frameworks on public debt through parliamentary approval, transparency, accountability, and intergenerational safeguards.



A woman voting in Sierra Leone in 2018. (Photo: USAID/Carol Sahley)

Introduction

Constitutionalism is fundamentally about ensuring legitimate, responsive, accountable and effective government that generates tangible benefits to the people in the form of equitable voice, liberty and shared prosperity. Constitutional systems generally seek to achieve this through mechanisms to enable collective governance, while preventing the personalization and concentration of power that expand discretion and overreach, especially of the executive. Central to this effort is ensuring regular and peaceful alternation of power through credible elections and term limits.

Africa continues to represent a mosaic of countries with relatively competitive elections and regular alternation of power (such as Botswana, Kenya and Senegal), and authoritarian (such as Cameroon, Ethiopia, Togo, Uganda, Zimbabwe), and military regimes (such as Burkina Faso, Mali, Niger). Regardless of the nature of the system, there is a growing crisis of politics and legitimacy.

Accordingly, competitive elections and alternations of power are only a part of the riddle. In fact, shifts in regional and global environments, notably the increasing disregard for international law and resurgence of transactional politics, have worsened the risks of reversal

constitutionalism, even in countries with recent history of alternations of power, such as the Democratic Republic of Congo, where President Felix Tshisekedi is seeking ways to remove term limits; in The Gambia, President Barrow has effectively abandoned the promise to introduce two term limits and is expected to run for a third term; and in Zambia, where President Hakainde Hichilema has been accused of seeking to dismantle checks and balances and may potentially attempt to run for a third term.

Moreover, many countries in Africa where alternation of power has become the norm continue to face popular dissatisfaction with the performance and legitimacy of their governments. Elections are increasingly seen as “choiceless”, even where they are competitive.

An area where the sense of choiceless is prevalent relates to public debt. African countries are once again facing the brunt of unsustainable (external) public debt. Measures to address unsustainable debt, notably in the form of IMF interventions and austerity measures, further strain government legitimacy and even stability, as abrupt austerity and economic liberalisation increase popular suffering, as recent experiences in Ghana, Zambia, and Ethiopia attest to. In Senegal, issues around the astronomical debt levels following the unveiling of ‘hidden’ debt contracted under

the former government, contributed to a fracture in the ruling party that may undermine governance reform efforts and even lead to political instability.











Thus, debt is not merely an economic issue, but a central governance matter that constitutions must grapple with. Notably, as Africa pushes towards an indigenous Rating Agency/System and broadly an equitable debt framework, this requires effective and reliable public debt management systems, including through enabling constitutional frameworks.

This policy brief restates the value of alternation of power to democracy,











accountability, stability and the management of diversity. It also explores how constitutionalism can promote inclusive, legitimate and effective governance, notably through reducing winner-takes-all politics and providing the framework for transparent and accountable and responsible public debt management systems.

The last section of the brief provides policy recommendations with a view to inform decisions of stakeholders, including national governments, political parties, civil society organizations, youth groups, and continental and regional organizations.

Top 10 Countries

	Score 2023	Change '14-'23
 Seychelles	75.3	+10.0
 Mauritius	72.8	-4.0
 Cabo Verde	69.6	+0.4
 South Africa	65.9	-1.4
 Botswana	65.8	-3.6
 Namibia	63.9	-3.3
 Ghana	62.2	+1.2
 Morocco	62.0	+5.3
 Tunisia	61.2	-4.7
 Kenya	60.3	+2.5

Bottom 10 Countries

	Score 2023	Change '14-'23
 South Sudan	19.0	-0.8
 Somalia	25.5	+6.8
 Eritrea	27.5	+1.9
 Sudan	29.6	-0.4
 Equatorial Guinea	30.1	+2.7
 Central African Republic	31.5	+3.0
 DR Congo	32.8	-2.5
 Chad	34.8	+1.8
 Libya	38.4	+1.7
 Congo Republic	39.7	+0.1

© A table from The Ibrahim Index of African Governance displays the overall governance scores of the 10 best performing and 10 worst performing African countries in terms of governance.

Why Regular Alternation of Power Matters

Africa has seen a progressive increase in the number of peaceful alternations of power through incumbent defeats and term limits since the 1990s. Nevertheless, the share of peaceful alternations of power has stagnated and has seen reversals in recent years, due to coups in places like Mali, Burkina Faso and Niger, which had built a nascent tradition of credible elections and alternations of power.

As such, disregard for the regular alternation of power remains one of the major challenges confronting constitutionalism and democracy in Africa. This is the case despite the existence of forms of regular elections and mechanisms to resolve electoral disputes. The pervasive influence of the winner-takes-all phenomenon only exacerbates the problem, incentivising winner-takes-all means, including deceit, rigging and even violence to retain/access political power. Extant governments have used incumbency advantages to manipulate the rules of political competition. Electoral laws are framed to systemically exclude the

the political opposition, further eroding democratic competition, while institutions such as the judiciary, law enforcement bodies, the legislature and the administrative apparatus (civil service) have been weaponised and strategically packed with loyalists.

In many instances, constitutional amendments have been used by incumbents to alter or erode constitutional checks and balances, including notably term limits¹. This constitutes one of the main barriers to alternation of power when leaders can stay in power for considerably long periods without credible challenge. An incumbent who has altered term limit provisions rarely, if ever, loses elections. Indeed, the quality of electoral competition worsens after term limit erosion, as evidenced by the fact that there has only been one instance where an incumbent who tempered with term limits ever lost an election - Abdoulaye Wade in Senegal in 2012. This was an exceptional situation resulting from Senegal's unique political context, where the army in particular has



Image — Supporters of the anti-establishment campaigner Ousmane Sonko and his presidential candidate Bassirou Diomaye Faye gather during a campaign rally in Dakar on 10 March 2024. (Photo by JOHN WESSELS/AFP via Getty Images).

managed to retain its relative autonomy from politics. In other places, tampering with term limits signals authoritarian consolidation. For instance, the excessive tenure of Teodoro Obiang Nguema Mbasogo of Equatorial Guinea, Paul Biya of Cameroon, and Yoweri Museveni of Uganda, who have been in power since 1979, 1982 and 1986, respectively, were enabled by constitutional amendments eliminating presidential term limits. While elections have been held regularly in these countries, they have not led to change in leadership due in large part to the overwhelmingly unfair electoral frameworks in place and the pervasive consequences of the winner-takes-all politics. In fact, in all countries, there are concerns around a dynastic succession process where the children of the long-time leaders hold key positions.

Given the above circumstances, it is unsurprising that many African countries have experienced stalled democratic developments or outright backsliding. Countries like Burkina Faso, Mali and Niger have fallen to military regimes. Even Benin, considered as one of Africa's few beacons of democracy, has seen the systematic remaking of the democratic system and weakening of oversight mechanisms, notably its prominent Constitutional Court.²

This context brings to the fore the precarity of constitutionalism and democracy in Africa and the particular relevance of regular power alternation as a pathway for constitutional and democratic consolidation.

Regular alternation of power matters and is regarded as the hallmark of a thriving democracy.³ It provides an enabling environment for the development and sustenance of elements of democratic consolidation. This includes accountable and responsive government. If voters can oust underperforming governments through credible electoral processes, this creates a sense of awareness within government that its survival depends to a significant extent on their ability to meet the needs of their populations. That awareness fosters the need for the government to

remain accountable to the population to avoid electoral loss. Over time, a culture of accountability and responsiveness develops driven by the need for the government to attain more inclusive developmental objectives rather than accumulating wealth for the few. Accordingly, alternation of power can increase the chances of effective governance. Indeed, countries where term limits are established and respected tend to show more transparency, accountability and deliberation, by increasing the relative autonomy of the bureaucracy and law enforcement, and stronger civic space.

Moreover, regular alternation of power is a key enabler of accountability of leaders, therefore incentivizing leadership integrity. Indeed, across Africa, changes in leadership, even when the same party retains in power, often lead to a flurry of accountability mechanisms, as examples from Angola, Senegal, Ghana and Mauritius attest.

Regular alternation of power is also associated with reduced corruption and better economic management (including debt management as discussed below). Longevity in power promotes the development of clientelism and patronage to sustain the system of governance, as opposed to a reliance on formal state institutions and processes established to regulate governance. The leaders, especially the president, have considerable control of the state's resources, including the mechanisms for the award of government contracts and appointment to lucrative public offices. These privileges are used to bolster the patronage networks which are subsequently harnessed to secure electoral victories.



Regular alternation of power is the hallmark of a thriving democracy.

Whereas regular alternation of power allows for the development of a system of governance that is responsive to the people and therefore public satisfaction becomes a key determinant of electoral success. In such a case, the incentives for influence- buying and other corrupt practices to secure electoral victories become diminished.⁴

Further, as recent coups demonstrate, regular alternation of power is an important factor for political stability in Africa. The immediate triggers of the coups in August 2023 that ousted Ali Bongo in Gabon and Alpha Conde in Guinea in September 2021 can be traced to attempts to thwart power alternation, notably the removal of term limits.⁵ In the latter case, the immediate trigger was Conde's attempts to prolong his stay in power through a constitutional amendment to the term limits provision. Similarly, Bongo's apparent manipulations of election results to secure a victory triggered his overthrow by the military, bringing an end to the Bongo dynasty.

Besides abrupt regime change through coups, more broadly, limited instances of power alternation cause deep dissatisfaction within sectors of the populations who feel excluded from governance. This is critical in the African context considering the multi-ethnic and multi-sectoral nature of society and the pervasive ethnic cleavages in political party affiliations. Exclusion of certain groups from power over time, due to failure of a change in top leadership, can exacerbate ethnic or sectoral tensions which subsequently translate into political tensions and armed conflicts. Cameroon presents such a situation where the absence of power alternation has contributed to the marginalisation and exclusion of the Anglophone minorities from political office. That has been a key driver of the conflict plaguing the English-speaking regions of Cameroon since 2017.⁶ Cameroon's situation underscores the need for a robust system that can ensure regular rotation of power, in particular through a constitution that can effectively support a change in government and provide credible mechanisms for dispute

resolution to reduce the incentives to resort to violence when associated disputes arise. In South Sudan, a key contributor to the eruption of conflict in 2013, which still continues, relates to a power struggle between president Salva Kiir and then vice president Riek Machar.⁷ If the country had presidential term limits, Machar would more likely have waited for his chance until the expected retirement of Kiir, rather than challenge Kiir's leadership directly. The fact that the two are from different major ethnic groups in South Sudan worsened the consequences of the lack of term limits, plunging the country into a deadly conflict that it is still struggling to extract itself from. Term limits can therefore stabilize even dominant parties, as has been the case in Tanzania, Namibia and South Africa, and can reduce incentives for rebellion, especially in countries with politically mobilised identity groups. Indeed, term limit provisions have been a key enabler of representation of the various regions and religions of Nigeria across time, and provide a key stabilizing mechanism.

Overall, while credible elections can lead to alternations of power, countries in Africa without term limits hardly ever witness credible elections. Thus, term limits are arguably a necessary, although admittedly insufficient, condition for credible elections.



Woman casts vote in Kenya's election, March 4, 2013 (AP Photo/Riccardo Gangale)

From Alternation of Power to Consolidation and Resilience of Constitutionalism

While alternation of power is important to embed democracy, it is not sufficient to secure it. In many countries where regular alternation of power has occurred (for instance Benin, Ghana, Kenya, Nigeria, Senegal), there is still significant popular dissatisfaction with the performance of the governments. Often, because of winner-takes-all politics, once new leaders come to power, the danger of completely excluding the political opposition remains large. This may partly be the strategy new governments adopt to assert their authority and distinct identity. In other instances, it is the case that the stakes of losing power trigger centralization and subsequently the development of authoritarian tendencies with little or no oversight. This situation facilitates the abuse of power, mismanagement of state resources and accumulation of wealth by the incumbents and their governing clique at the expense of the broader public.

This reality highlights the enduring need for fairer and more effective oversight of democratic processes to consolidate a culture of democracy. It also highlights the need to promote transparency, responsiveness and accountability in all aspects of governance.

Addressing Winner-takes-all Politics

A key feature of politics in Africa is winner-takes-all frameworks, even in countries with regular alternations of power. Such frameworks ensure excessive powers on those who win elections, leading to extreme levels of competition.⁸ Such systems also weaken the opposition, which tends to be fragmented as it faces exclusion from access to state resources and institutions, including publicly owned/funded media.

Winner-takes-all systems are partly enabled by electoral systems. Reforms to the electoral system can therefore help address the undesirable effects of winner-takes-all politics. Notably, many African countries apply the first past-the-post (FPTP) majoritarian electoral system especially at the national level. The FPTP system tends to generate dominant political parties, potentially undermining

representation and political diversity, which in the context of Africa may not always bode well for its multi-ethnic groups. Moreover, FPTP often results in significant discrepancies between the share of votes and the share of the seats won by political parties. Adopting more representative systems such as proportional representation or mixed member proportional representation can help to mitigate the problem of lack of representation of a wider spectrum of society. While these alternative systems have their own challenges, they are not insurmountable and the promise of greater representation and potential coalition and cooperation between political actors may be what is required for the pluralist dynamics of African societies.



While reforms to the electoral system are vital, they are insufficient. They must be complemented by systems that are transparent and inclusive, providing scope for meaningful participation of the political opposition in strategic governance processes and decision-making.

Even where the electoral system is more representative and inclusive, the manner with which electoral support is translated into political power can lead to winner-takes-all outcomes. For instance, in Ghana, the President of the country appoints mayors and members of local legislative councils. This is the case even in regions where the opposition candidate secure majority votes. Majority electoral winners also often get to control the administrative apparatus, state owned enterprises and law enforcement bodies. In combination, winning and losing elections become do-or-die affairs, making elections tense affairs, rather than moments democratic celebration. As such, in addition to adjusting electoral systems, countries should consider how electoral support is translated into actual political and economic power.

Enabling genuine political participation entails a broadly legitimate and inclusive democratic process requiring the recognition and empowerment of the political opposition.

This can be achieved through several mechanisms, including normative arrangements providing consequential roles or duties for the opposition (for instance in the nomination of judicial or other key public officials as in Seychelles) and constructing inclusive decision-making frameworks.⁹ The principle of national consensus embedded in the African Charter on Democracy, Elections and Governance (ACDEG), article 10(2) necessitates broad based participation, notably in constitutional amendments and revision processes. States are directed to ensure that such processes are underpinned by the national consensus. This is of particular relevance to insulate electoral rules from unilateral amendments by incumbents. Implementing broad national consensus in such contentious processes opens up opportunities for deliberative democracy

where relevant stakeholders, including opposition groups, can participate in dialogue and negotiations with the potential to influence the process and its outcome. Opposition groups are more likely to accept the outcome of such inclusive deliberative processes. Political processes underpinned by participation and consensus enhance the quality of democracy and contribute to the development and sustenance of a culture of democracy.

Promoting Effective, Responsive and Accountable Governance

In addition to ensuring regular alternations of power and addressing the problem of winner-takes-all politics, the sustenance of constitutionalism, democracy, and peace and economic development, requires promoting effective, responsive and accountable governance. Support for and resilience of constitutionalism and democracy cannot be separated from the ability of the political system to deliver basic public services. This is recognised by continental normative frameworks such as the ACDEG, article 12(1) of which requires states to ensure transparent and accountable administration in pursuance of good governance. This nevertheless remains a challenge in Africa, even in relatively functioning democratic systems. Political leaders, especially in winner-takes-all political systems, have exclusive control of how power and resources are distributed and exercised through patronage, rather than efficient mechanisms that reward ingenuity and productivity. This implies that even regarding fiscal management where oversight is essential not least to achieve good governance objectives, accountability mechanisms may be nonexistent or insufficient.

Constitutionalism can intervene to guarantee the existence of robust accountability mechanisms and institutional structures that can promote transparent and responsible management. Yet, many African governments fail to align their constitutional systems with mechanisms that foster transparency and accountability. That problem is exacerbated by the failure of substantive change in political leadership. The latter phenomenon, when combined with winner-takes-all politics, further exacerbates the complexities of accountable and transparent governance. In the fiscal domain a government that perpetuates itself in power tends to adopt centralization policies where power is concentrated in the hands of a few loyalists. This facilitates the establishment and operation of opaque governance systems where information and access is granted only within this narrow clique. Such an approach provides enabling environments where concealment of the factual state of the government's fiscal obligations, such as its public debt burden and its servicing (discussed below), becomes rife. Control over information dissemination and the accountability mechanisms facilitates this opacity. With power in the hands of leaders that have every incentive to remain in power, prospects for the development of a culture of transparency are diminished, as is the need for accountability.

Overall, regular alternations of power and respect for constitutionalism can enhance the prospects of effective, responsive and accountable governance. Without such outcomes, however, public confidence in constitutionalism and alternations of power can diminish, opening possibilities for non-democratic mechanisms, such as coups. Accordingly, effective governance should be a key part of the concerns of those promoting constitutionalism.



While reforms to the electoral system are vital, they are insufficient. They must be complemented by systems that are transparent and inclusive, providing scope for meaningful participation of the political opposition in strategic governance processes and decision-making.



Constitutionalism and Public Debt

Central to effective and accountable governance is the management of public finance. Public finance, which broadly relates to how public funds are raised, appropriated (allocated), spent and accounted for, often makes limited appearances in discourses around constitutional governance, particularly among constitutional experts. Notably, public debt, a key feature of the public finance architecture, is often not central to evaluations of the system and studies of constitutionalism and democracy. Nevertheless, the manner in which public debt is raised, deployed and accounted for has serious implications for both the reality and perceptions of democratic constitutionalism. Indeed, the experience of public pension funds affecting millions in Ghana, following the country's default on its debt in 2022, and elsewhere demonstrate the critical and direct effect of the public debt framework for lives and livelihoods.¹⁰ Moreover, fallouts from a debt related crisis, in the form of severe austerity measures, can increase popular disillusionment and openness towards non-democratic forms of governance, including military regimes.

As such, those seeking to promote constitutionalism and democracy should make public finance and debt central to their works.¹¹ This is particularly important considering the increasing number of defaults on debt, where more than a third

of Sub-Saharan African countries are reeling under, or at high risk of, debt distress and unsustainable debt, and where at least 10 countries allocate more than 20% of their entire fiscal revenue to service their debt.¹² Many countries spend more on debt servicing than the budget for education, agriculture, and health, often combined.

In view of its significance to both democratic constitutionalism and economic livelihoods, this section raises key issues and insights to aid the integration of public debt in the constitutionalism discourse.¹³

Public debt is not inherently good or bad. All modern states rely on public debt. Legally and transparently raised, allocated and overseen, debt can be a crucial and productive source of investment that can spur sustainable economic growth through kickstarting an ailing economy, building basic infrastructure and providing needed public services. Public debt can also serve as a 'shock absorber' in times of emergency to allow governments to avoid sharp movements in taxes.¹⁴ Considering the low level of revenue and savings in many African countries, public debt is arguably both necessary and desirable. The focus should therefore be on managing it effectively, in the public interest, with due regard to the interests of the future generation that will bear the burden of repaying the debt (while the benefits to them may be less certain), and in a transparent and accountable manner.

In this regard, legal and constitutional underpinnings can and do play crucial roles to enhance the chances that debt is productively raised and utilised, and to reduce possibilities of corruption and misjudgements.¹⁵ In many countries, including in Africa, constitutions provide some regulation of aspects of public debt, including the authority and process to raise debt, the sources of debt, the purposes for which it may be deployed, how it is overseen and accounted for, and, in some cases, limits on the total level of debt.¹⁶ While political and economic factors affect the level of debt and the quality of its management, proper legal frameworks can engender discipline, deliberation, transparency, and accountability in debt raising and repayment.

The following parts discuss the various ways through which constitutions can promote productive and sustainable public debt, and ensure intergenerational sharing of both the burden and benefits of debt. Accordingly, stakeholders working around public debt and constitutionalism should focus on assessing the constitutional and legal frameworks and developing proposed reforms towards a transparent, deliberative, intergenerationally just and effective public debt regime.¹⁷ This would not only be good for democracy and constitutionalism, but is also required under the ACDEG, which mandates state parties to institutionalize sound economic and corporate government through, inter alia, the 'efficient management of public debt'.¹⁸

While most aspects of public debt would have to be covered through subsidiary legislation, constitutional anchoring of the framework offers significant advantages. A constitutional framework can be crucial to ensure limits on executive overreach, corruption and misjudgment. The constitutionalization of the basic rules ensures that transient political majorities do not alter the debt management framework to serve their short-term interests, while increasing the risks of default and austerity later on. In addition, it allows stakeholders, notably opposition groups, the media and civil society organizations, to monitor and even challenge, including in courts, debt acquisition, management, and repayment

processes. Overall, constitutional frameworks should seek to balance the need for a deliberative and responsible debt management system, and the prevention and detecting of potential abuse, with the need for the efficient and effective raising and use of debt.

Oversight and deliberation: Checks and balances

In view of the significant impact of debt on the economy and democracy, the process of raising, deploying and accounting for debt should involve broad oversight and deliberation. Notably, the prior legislative approval of public debt can ensure better transparency, oversight, and representation of the views of broad political stakeholders.¹⁹ While the executive often has the expertise and insight, it is often composed of a single political group that won the elections. In contrast, parliaments offer, alongside members of the ruling party, formal and legitimate representation and platforms for opposition voices. Thus, the authorization of parliament to review and approve public debt can enhance oversight and deliberation, thereby reducing executive overreach and aggrandizement. The value of the parliamentary oversight of the public debt framework can be enhanced through mechanisms that expand the role of the opposition, such as opposition leadership of parliamentary financial committees, which offer access to loan negotiation proceedings. Similarly, constitutions and subsidiary legislative frameworks may require the representation of the opposition in other critical institutions, such as debt management offices or departments that provide a centralized point for consolidated debt management.

As part of an effective oversight and deliberation mechanism, constitutions may impose a timeline within which proposed loan agreements are presented to parliament and published to the public, before parliament deliberates and votes on them. The inclusion of such a mechanism

can allow more information and analysis of debt proposals, and also open possibilities for the media, civil society, independent professional associations and opposition groups to express themselves and mobilize their constituencies. Such timelines are common, for instance, in relation to proposed constitutional amendments, and can have particular utility in relation to public debt.

Overall, a deliberative process can ensure that loans are contracted in the public interest rather than merely to advance the transient interests of the governing party or ruling clique. This can be particularly critical with external loans, which must often be paid in foreign currencies, and have a particularly severe impact on both the economy and democracy. The absence of deliberation and oversight can increase the chances of impropriety and unsustainable loans and guarantees.

Transparency and accountability

Constitutions are also critical to ensure transparency and accountability in the raising and repayment of public debt. Lack of debt transparency may take many forms, including 'weak reporting obligations, limited coverage of public debt, inadequate monitoring, unclear borrowing and delegation processes, unfettered confidentiality arrangements and weak accountability mechanisms'.²⁰ While the principle of transparency is now generally included in many constitutions, in view of the heightened consequences of public debt, it may also be useful to require and provide for specific mechanisms to ensure a transparent public debt management system. The mechanisms of oversight and deliberation discussed above may lead to better transparency in relation to specific debt transactions. In addition, a broader framework of transparency enables the proper and continuing monitoring and evaluation of public debt, and can reduce instances of what is called 'hidden debt'.²¹

This may, for instance, involve the publication, regular updating, and accessibility of data on the status of all public debt, including the purpose for which the debt was raised, the expected maturity of the debt, interest payments, and other terms of the debt arrangement. Moreover, regular reporting mechanisms, particularly to parliament, can ensure continuous transparency and auditing, and enhance accountability and productive feedback mechanisms.

In the African context, two of the most prominent crises related to public debt, Mozambique²² in 2016/17 and Senegal²³ in 2024/25, were both related to lack of transparency problems which could have been prevented. Mozambique defaulted on its debt, causing significant economic and social pain, while Senegal is struggling to manage the crisis resulting from the discovery of a 'hidden' debt following the change of government 2024 that has significantly undermined its credit worthiness, and forcing it to borrow at higher interest rates. Following the revelation of the debt, Senegal's debt to GDP ratio has exploded to over 130%, the highest on the continent, and has complicated planned arrangements with the IMF, with significant consequences to the country's economy and politics.

The Senegal example particularly shows the criticality of debt transparency for democracy, as the newly elected government was forced to face a hidden debt that has constrained its ability to deliver on its campaign promises. Precluding the recurrence of these problems of hidden debt requires a reassessment of and reforms to the constitutional and legal framework around debt, as well as mechanisms to ensure the enforcement of existing standards.

Intergenerational justice

Modern democracy is largely constructed around a form of legitimate government for a limited term, subject to regular renewal of popular consent. The democratic cycle does not and cannot be aligned with debt cycles. Public debt, particularly long-term debt, often has consequences long after the extant government, and even generation, has passed. Democracy may therefore encourage a bias towards debt accumulation for the benefit of securing temporal popular approval and mandate, without seriously considering the consequences for the future generation. There is some evidence that politicians, facing electoral competition, may think short-term and run budget deficits, that is, spend more money than they raise.²⁴ Voters may also prefer politicians that promise either lower taxes or higher spending. The combination of low taxes and high public expenditure creates a perennial budget deficit. In order not to alienate voters, politicians may be tempted to fill the deficit through more borrowing rather than taxes.

Such myopic borrowing habits may focus on current and short-term prospects at the expense of the future generation who cannot yet vote. Intergenerational equity therefore requires protection against inequitable borrowing temptations and habits in the form of constitutional or legislative restrictions on borrowing.²⁵ Constitutions can play a role in inculcating systemic consideration of the future generation in this regard. For instance, the 2010 constitution of Kenya requires that the 'burdens and benefits of the use of resources and public borrowing be shared equitably between present and future generations' (Kenya Constitution, 2010, article 201(c)).

In addition to the political incentives to focus on securing the support of the current generation, governments, as individuals, are vulnerable to what behavioral psychologists call the 'present bias'. Such bias means that unsustainable debt may not simply be a result of corruption and

political short termism, but a deeper psychological tendency to focus on the present, without seriously considering the consequences in the future, which are harder to predict in any case due informational and expertise gaps.

In this context, constitutional and legal regulation can provide precommitment devices to temper the effects of present bias. Constitutions may in addition include procedures to ensure the systemic representation and consideration of the interests of future generations in the public debt management process, such as through inputs from public bodies representing such groups.

Debt breaks and limited purpose

Constitutions may also impose debt brakes such that the extent of a country's debt does not exceed a defined limit (e.g. Germany, Poland). There are currently no constitutions in Africa that impose strict debt limits on total debt. Some sub-regional organizations, such as the East African Community, the West African Economic and Monetary Union and the Central African Economic and Monetary Community establish debt ceilings. Nevertheless, the sub-regional entities have not established procedures and institutions to monitor and ensure compliance with the ceiling, reducing their practical utility.

Moreover, there are some countries that impose limits through legislation. For instance, the Mauritian Public Debt Management Act establishes a 75% limit by 2030, and a 60% limit by 2035.²⁶ Under the Act, the limit may be crossed only in cases of natural disaster or other emergency, serious economic slowdown requiring fiscal stimulus, and where the cabinet decides that borrowing is necessary to fund a large investment project which is considered timely and prudent. The ceiling has been changed regularly, underscoring the flexibility and reducing the constraints of legislative ceilings, compared to constitutional limits.

In addition, constitutions may define the purpose for which debt may be raised. This is rare at the constitutional level in Africa, but can exist at the legislative level. For instance, in Nigeria, borrowing is allowed only to cover costs for capital investment and human development,²⁷ which appears to exclude debt to cover recurrent costs, such as salaries.

Both of these approaches – constitutional debt ceilings and limits on the purpose of debt – can be controversial, especially in view of the difficulty of adjusting constitutional rules. Accordingly, the primary focus often tends to be around ensuring transparency, oversight and intergenerational equity. Constitutions may also establish fiscal councils, which are intended to address problems of informational gaps and debt/deficit bias.²⁸ Such councils can ensure the recognition of and compliance with fiscal rules and overall constitutional fiscal objectives, including any limits on debt levels and purposes.



A broader framework of transparency enables the proper and continuing monitoring and evaluation of public debt, and can reduce instances of what is called ‘hidden debt’.



Ernest Ankomah/Getty Images

ACCRA, Ghana - Nov. 5, 2022: Ghanaians march during the 'Ku Me Preko' demonstration to protest against the soaring cost of living, aggravated since the Russian invasion of Ukraine. Some expressed opposition to the government's pursuit of IMF assistance.



AGENDA 2063 The Africa We Want

Aspiration 1

A prosperous Africa based on inclusive growth and sustainable development

Aspiration 2

An integrated continent, politically united and based on the ideals of Pan Africanism and the vision of Africa's Renaissance

Aspiration 3

An Africa of good governance, democracy, respect for human rights, justice and the rule of law

Aspiration 4

A peaceful and secure Africa

Aspiration 5

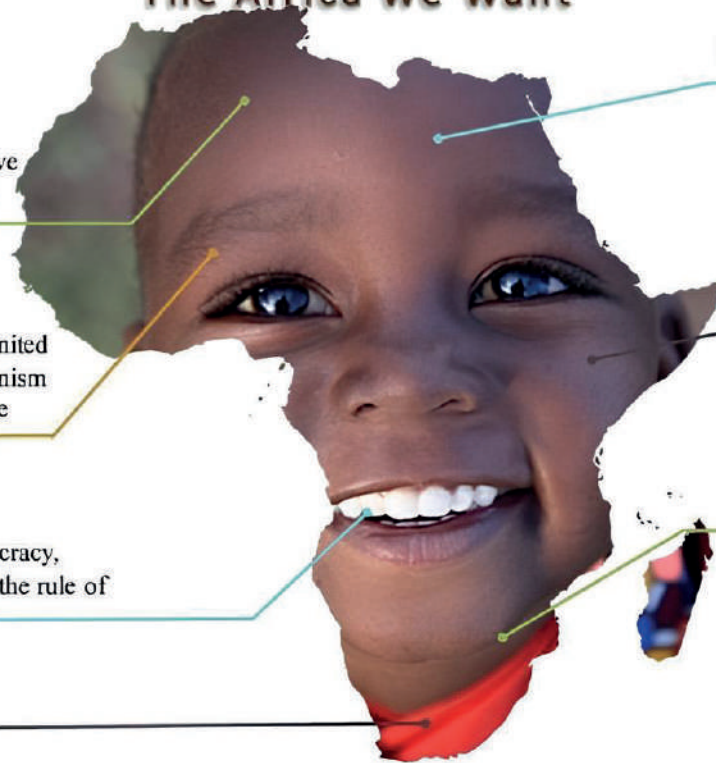
An Africa with a strong cultural identity, common heritage, values and ethics

Aspiration 6

An Africa where development is people-driven, unleashing the potential of its women and youth

Aspiration 7

Africa as a strong, united and influential global player and partner



Conclusion and Policy recommendations

While recognizing progress in the past decades, regular alternation of power remains a distant dream in many African countries, and the number of countries experiencing alternation is increasingly narrowing. This policy paper has noted the value of alternation of power to the credibility of elections, relative stability, prospects of accountability, the management of diversity and arguably responsive and effective governance. Nevertheless, alternation of power, while desirable, remains insufficient. Notably, addressing winner-takes-all politics, which is often a constitutional and legal creation, not only undermines the prospects of alternation of power, but also stability and good government. As such, work around constitutionalism should focus also on the scourge of winner-takes-all politics, and address its constitutional-legal foundations and manifestations.

The policy paper also emphasizes that public debt is not merely a financial or

economic issue. It goes to the heart of democracy, constitutionalism, fundamental rights and (intergenerational) justice. The question of public debt is inextricably linked to the overall political and constitutional dispensation. Indeed, empirical evidence has linked high levels of public debt stress with poor performance in overall governance.²⁹ As such, where the political process is personalised, corruption is pervasive, public influence on policy making is low, and where the overall system of checks and balances is ineffective, the public debt system is likely to be tainted. Strengthening the overall governance framework through promoting constitutionalism, accountability, transparency and participation should be a critical part of efforts to promote sustainable economic development and public debt systems.

Stakeholders interested in the promotion of constitutionalism and democracy must therefore also focus on public debt, and the role constitutions can play in this process.

At a minimum, constitutions can provide mechanisms to ensure effective oversight, deliberation, transparency and intergenerational justice in public debt management. Constitutions may also regulate the purpose for which public debt may be deployed, and even impose caps on it, as well as establish fiscal councils. Nevertheless, there are limits to what constitutions can do and the optimal levels of constitutional regulation of public debt will depend on the specific context of each country.

In view of the above, this Policy Paper makes the following recommendations:

- **Strengthening term limits:** The promotion of regular alternation of power through term limits should remain central to advocacy for credible elections and constitutionalism in Africa. Thus, national and continental stakeholders should continue to call for respect for term limits, and the establishment of such limits where they do not exist.
- **Reforming the electoral system.** Stakeholders should push for more representative electoral systems such as proportional representation or mixed member proportional representation systems at national and local levels to reduce the prospects of domination by one party. More representative systems offer better opportunities for increased representation and participation of a wider range of (minority) political groups that would otherwise be sidelined or unrepresented.
- **Promoting oversight over the executive:** Strengthening democratic institutions to enable credible oversight of executive power requires, inter alia;
 - o Empowering the judiciary to resolve a wide range of issues (such as electoral petitions, constitutional questions including attempts to alter term limit provisions) fairly and impartially.
 - o Guaranteeing the independence of rule of law institutions such as electoral commissions, law enforcement bodies, the bureaucracy, and public accounts committees through transparent and competitive appointment processes and legislative provisions guaranteeing security of tenure.
- **Empowering the opposition:** Promoting inclusive governance by introducing transparent and inclusive decision-making processes to allow opposition groups the opportunity to make meaningful contributions to these processes.
 - o This could include adopting legislative or constitutional provisions which provide specific roles for the opposition. This would be in line with the ACDEG (articles 3(11)) which requires member states to accord legal recognition of the rights and role of political parties, including opposition parties.
- **Institutionalising national consensus in significant constitutional amendments.** Major constitutional amendments such as term limits provisions and electoral reforms tend to be contentious and potentially fractious. As a matter of principle, these should require broad national consultation and consensus-building processes, for instance through referendums, national dialogues, citizen assemblies, etc.
- Legislative provisions should stipulate mandatory cooperative and deliberative processes to encourage stakeholder participation and to prevent governments changing electoral rules unilaterally.
- Specifically on public debt, to enhance the prospects of effective and sustainable public debt, while reducing instances of unsustainable and even hidden debt, this policy paper proposes a range of recommendations.

- Stakeholders at the domestic level should:

- o Conduct a baseline assessment of existing constitutional and other legal frameworks on public debt, particularly related to oversight and deliberation, transparency and intergenerational justice.

- o Seek the elaboration and enforcement of constitutional provisions around public debt, including through strategic litigation.

- o Call for constitutional and legal reforms as may be needed.

- Stakeholders at the sub-regional and regional level, including the African Union, Regional Economic Communities, and the African Development Bank, should seek to convene regular platforms to enable assessment and peer exchange of insights and innovative experiences and failed approaches across the continent. Such platforms are crucial to reform arrangements and practices that can often be results of historical path dependency, rather than choices based on reflection and deliberation.

- o For instance, constitutional requirements for parliamentary approval of debt agreements are more common in African countries with British colonial history than French history.

- The work of the African Union in relation to public debt has so far mainly focused on enabling the formation of common African positions on debt in negotiations with external entities as well as the idea

of setting up an African Credit Rating Agency.³⁰ In addition, it should also seek to encourage and enable exchange of ideas towards the establishment of a responsible public debt governance system. Without such a system, the future of economic integration and a continental credit rating agency would fall short of its ambitions.

- o In this regard, one of the core pillars of the African Peer Review Mechanism (APRM) relates to economic governance and management, including public financial management. The continental work on public debt may therefore be coordinated through the APRM.

References

- ¹ Kristin McKie, 'Presidential term limit contravention: Abolish, extend, fail, or respect', (2019) 52(10) *Comparative Political Studies* 1500-1534.
- ² Alimi Salifou, 'Democratic backsliding in sub-Saharan Africa: The rise of autocracy in the Republic of Benin?' in Laura-Stella Enonchong, Elvis Fokala, Adem Abebe (eds) *Democracy in Africa: Regression and Resilience* (JUTA 2022).
- ³ Simon Otjes, David M. Willumsen, Djessie Ligthart, 'Government Alternation and Satisfaction with Democracy.' (2025) 49(4) *West European Politics* 1070.
- ⁴ Karla Hoff, Shale Horowitz, Branko Milanovic, 'Political Alternation, Regardless of Ideology, Diminishes Influence Buying: Lessons from Transitions in Former Communist States' (Carnegie Endowment for International Peace 2005) < <https://www.policyarchive.org/handle/10207/6595>> (accessed 28 May 2026)
- ⁵ Hakeem Onapajo and Dele Babalola, 'ECOWAS and the Challenge of Preventing a Resurgence of Coups d'État in West Africa: An Assessment of the 'Zero Tolerance' Policy' (2024) 31(1) *South African Journal of International Affairs* 23; Laura-Stella Enonchong, 'The Return of the Coup d'Etat' in Tom G. Daly and Anna Dziedzic (eds). *Research Handbook of Constitutions and Democracies* (Edward Elgar Publishing 2026).
- ⁶ Laura-Stella Enonchong, Ashu Eware, 'Conflict Transformation Through Institutional (Re) Construction: An Examination of the Common Law Division of the Supreme Court of Cameroon' 2024 (14) 1 *African Conflict and Peacebuilding Review* 28.
- ⁷ Centre for Preventive Action, 'Instability in South Sudan' 01 May 2026. <<https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan>> (accessed 28 May 2026).
- ⁸ Adem Abebe, 'Tackling Winner-Takes-All Politics in Africa: Inclusive Governance through Constitutional Empowerment of Opposition Parties.' In Tom Ginsburg, AZ Huq, T Khaitan (eds). *The Entrenchment of Democracy: The Comparative Constitutional Design of Elections, Parties and Voting* (Cambridge University Press 2024); Itojong Ayamba, Filijovic Marko, Achum Tobechukwu, 'Conflict, Elections and the Politics of Winner-Takes-All in Africa' (2024) 3(1) *International Journal of Geopolitics and Governance* 133-145.
- ⁹ Abebe, 'Tackling Winner-Takes-All Politics in Africa' 131-132.
- ¹⁰ Clemens Graf von Luckner and Juan P. Farah-Yacoub 'The human cost of a failing global debt system', Open Society Foundation, June 2023, <https://www.opensocietyfoundations.org/uploads/d3b9702b-68dd-4083-95ba-f49c8b6fe705/the-human-costs-of-a-failing-global-debt-system-20230620.pdf> (accessed 14 May 2026);
- ¹¹ Jose Ignacio Hernandez 'Public debt transparency and global public law', *Verfassungsblog*, 25 September 2025, <https://verfassungsblog.de/public-debt-transparency-and-global-public-law/> (accessed 15 May 2026).
- ¹² Abebe Aemro Selassie 'Africa faces mounting risks just as growth gains take hold', *IMF Blog*, 23 April 2026, <https://www.imf.org/en/blogs/articles/2026/04/23/africa-faces-mounting-risks-just-as-growth-gains-take-hold> (accessed 14 May 2026).
- ¹³ This section focuses on what can be done domestically. Creditors should have a duty of due diligence to prevent debt distress and assess basic compliance with constitutional requirements. There is an increasing discourse on what countries, which are home to the creditors, can do in this regard.
- ¹⁴ Jonathan Portes and Simon Wren-Lewis 'Issues in the design of fiscal policy rules', 2014, available at <https://niesr.ac.uk/publications/issues-design-fiscal-policy-rules> (accessed 27 May 2026).
- ¹⁵ Elsie Addo Awadzi 'Designing legal frameworks for public debt management', 2015, *IMF Working Paper*, WP/15/147, <https://www.imf.org/external/pubs/ft/wp/2015/wp15147.pdf> (accessed 15 May 2026).

¹⁶ Adem Kassie Abebe 'Taming the Spectre of Unsustainable Public Debt in Africa: A Heightened Role for Constitutions', in Charles M. Fombad and Nico Steytler (eds) *Constitutionalism and the Economy in Africa* (OUP, 2022).

¹⁷ Elsie Addo Awadzi 'Designing Legal Frameworks for Public Debt Management' (2015) IMF Working Paper, WP/15/147 4.

¹⁸ African Charter on Democracy, Elections and Governance, article 33(4).

¹⁹ For a series of papers exploring the role of parliament in debt oversight in Africa, please check the Public Debt Integrity Series: The role of parliaments in public debt oversight in Africa, Westminster Foundation for Democracy and AFRODADA, <https://www.wfd.org/what-we-do/resources/public-debt-integrity-series-role-parliaments-public-debt-oversight-africa> (accessed 15 May 2026).

²⁰ Karla Vasquez et al 'The legal foundations of public debt transparency: Aligning the law with good practice', International Monetary Fund, February 2024, WP/24/29, <https://www.imf.org/-/media/files/publications/wp/2024/english/wpiea2024029-print-pdf.pdf> (accessed 15 May 2026).

²¹ Sebastian Horn, Philipp Nickol, and Cesar Sosa-Padilla 'Hidden Sovereign Debt in Developing Countries', WIDER Background Note /5 Helsinki: UNU-WIDER, 2025, doi.org/10.35188/UNU-WIDER/SSFC2695 (accessed 27 May 2026).

²² Shaen Corbet and Charles James Larkin 'Understanding the Tuna Bond Scandal' (SSRN Scholarly Paper, January 2023), papers.ssrn.com/sol3/papers.cfm?abstract_id=4640799 (accessed 27 May 2026)

²³ Portia Crowe and Libby George 'Explainer: Senegal's Billions in Hidden Debt, and Why It Is an IMF Headache', Reuters, 24 July 2025, www.reuters.com/world/africa/senegals-billions-hidden-debt-why-it-is-an-imf-headache-2025-07-24 (accessed 27 May 2026).

²⁴ Lars Calmfors and Simon Wren-Lewis 'What should fiscal councils do?' 2011 (26) 68 *Economic Policy* 651; Mark Crain and Robert Ekelund 'Deficits and Democracy' 1978 (44)4 *Southern Economic Journal* 813.

²⁵ Schragger has argued, however, that constitutional limits are undesirable and that distrust of ordinary political processes is unwarranted - Richard Schragger 'Democracy and Debt' (2012) 121 *Yale Law Journal* 860

²⁶ The Act is available at https://www.bom.mu/sites/default/files/public-debt-management-act-20081_0.pdf, accessed 24 May 2026.

²⁷ Nigeria Fiscal Responsibility Act 31 of 2007, art 41.

²⁸ Lars Calmfors and Simon Wren-Lewis 'What should fiscal councils do?' 2011 (26) 68 *Economic Policy* 651.

²⁹ Transparency International U.S., *Corruption and Debt: The Case for Leveraging U.S. Diplomacy for Governance Reforms in IMF Lending* (14 August 2024), <https://us.transparency.org/resource/corruption-and-debt-the-case-for-leveraging-u-s-diplomacy-for-governance-reforms-in-imf-lending/> (accessed 14 May 2026).

³⁰ Benedikt Erforth 'Judging one's own credit: Risks and promises of an African Credit Rating Agency', 5 March 2026, <https://www.swp-berlin.org/en/publication/mta-spotlight-66-risks-and-promises-of-an-african-credit-rating-agency> (accessed 15 May 2026).

FURTHER REFERENCES

Abebe AK, 'Tackling Winner-Takes-All Politics in Africa: Inclusive Governance through Constitutional Empowerment of Opposition Parties.' In: T Ginsburg, AZ Huq, T Khaitan (eds) *The Entrenchment of Democracy: The Comparative Constitutional Design of Elections, Parties and Voting* (CUP, 2024)

Abebe, AK 'Taming the Spectre of Unsustainable Public Debt in Africa: A Heightened Role for Constitutions', in Charles M. Fombad and Nico Steytler (eds) *Constitutionalism and the Economy in Africa* (OUP, 2022).

Akech, Migai 'Constraining Government Power in Africa' (2011) 22(1) *Journal of Democracy* 96

Awadzi, Elsie Addo 'Designing Legal Frameworks for Public Debt Management' (2015) IMF Working Paper, WP/15/147 4

Ayamba, Itojong., Marko, Filijovic and Tobechukwu, Achum 'Conflict, Elections and the Politics of Winner-Takes-All in Africa (2024) 3(1) *International Journal of Geopolitics and Governance* 133

Calmfors, Lars and Simon Wren-Lewis, Simon 'What Should Fiscal Councils Do?' (2011) 26 (68) *Economic Policy* 651

Crain, Mark and Ekelund, Robert 'Deficits and Democracy' 1978 (44)4 *Southern Economic Journal* 813

Centre for Preventive Action, 'Instability in South Sudan' 01 May 2026, < <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan>>

Enonchong, Laura-Stella 'The Return of the Coup d'Etat' in Tom G. Daly and Anna Dzedzic (eds). *Research Handbook of Constitutions and Democracies* (Edward Elgar Publishing 2026)

Enonchong, Laura-Stella, Ashu Eware, 'Conflict Transformation Through Institutional (Re) Construction: An Examination of the Common Law Division of the Supreme Court of Cameroon' 2024 (14) 1 *African Conflict and Peacebuilding Review* 28

Hoff, Karla, Shale Horowitz, and Branko Milanovic, 'Political Alternation, Regardless of Ideology,

Diminishes Influence Buying: Lessons from Transitions in Former Communist States' (Carnegie Endowment for International Peace, 2005) <<https://www.policyarchive.org/handle/10207/6595>>

Horn, Sebastian; Nickol, Philipp and Sosa-Padilla, Cesar 'Hidden Sovereign Debt in Developing Countries', WIDER Background Note /5 Helsinki: UNU-WIDER, 2025 <doi.org/10.35188/UNU-WIDER/SSFC2695>

McKie, Kristin, 'Presidential Term Limit Contravention: Abolish, Extend, Fail, or Respect', (2019) 52(10) *Comparative Political Studies* 1500

Prempeh, Kwasi 'The Persistence and Perils of Winner-Takes-All Politics' in (ed) *Promotion of Constitutionalism through Term Limits in Africa* (ANCL, National Democratic Institute (NDI), 2023/2024), <https://ancl-radc.org.za/images/term_limit_anthology/Term%20Limits%20Anthology%20-%20FINAL%20English.pdf>

Prempeh, Kwasi 'The Puzzling Persistence of Imperial Presidency in Post-Authoritarian Africa' (2008) 35(4) Hastings Constitutional Law Quarterly 761

Salifou, Alimi, 'Democratic backsliding in sub-Saharan Africa: The rise of autocracy in the Republic of Benin?' in Enonchong L, Fokala E, Abebe A (eds.) Democracy in Africa: Regression and Resilience (JUTA, 2022)

Schragger, Richard, 'Democracy and Debt' (2012) 121 Yale Law Journal 860

Transparency International U.S., 'Corruption and Debt: The Case for Leveraging U.S. Diplomacy for Governance Reforms in IMF Lending' (14 August 2024), <<https://us.transparency.org/resource/corruption-and-debt-the-case-for-leveraging-u-s-diplomacy-for-governance-reforms-in-imf-lending/>>

van Cranenburgh, Oda 'Restraining Executive Power in Africa: Horizontal Accountability in Africa's Hybrid Regimes' (2009) 16(1) South African Journal of International Affairs 49

Vasquez, Karla et al 'The Legal Foundations of Public Debt Transparency: Aligning the Law with Good Practice', International Monetary Fund, February 2024, WP/24/29, <<https://www.imf.org/-/media/files/publications/wp/2024/english/wpiea2024029-print-pdf.pdf>>



Scan to visit the ANCL
website:



AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS
RÉSEAU AFRICAÏN DE DROIT CONSTITUTIONNEL
REDE AFRICANA DE JURISTAS CONSTITUCIONALISTAS



NDI

NATIONAL
DEMOCRATIC
INSTITUTE