Executive Power and the Future of Constitutionalism in Contemporary Africa: Term Limits and Public Debt Accountability

By Dr. Henry Paul Gichana

The interplay between executive power and constitutionalism lies at the heart of democratic governance and constitutional order across the African continent.

The second liberation of the 1990s was a watershed moment in Africa. Following decades of single-party rule and military governance, a wave of constitution-making swept across African countries producing some of the most forward-looking constitutional texts in the world. Some of these include: the 1992 Malawian Constitution, the 1996 South African Constitution and, later, the 2010 Kenyan Constitution. These were not merely legal documents. These constituted moral compacts - expressions of what citizens demanded from those who sought to lead them (otherwise referred to as social contracts). Central among those demands was this: that no individual should be permitted to entrench themselves in power. Constitutional term limits, therefore, became the written expression of this demand.

Africa's challenge with presidential term limits

However, a constitution's value is only as great as the institutions and the political culture willing to enforce it. This is where the African story becomes complicated.

A survey conducted by Afrobarometer between late 2021 and mid 2023 across 39 African countries (with analysis continuing into 2024) revealed overwhelming public support for strict presidential term limits. According to the Survey, 72% of citizens supported limiting their president to a maximum of two terms in office. Notwithstanding this sentiment, which is often entrenched in the constitutions of various African countries, experience across various African countries reveals that adherence to these limits in practice has been a challenge.

This, in part, explains why Africa has some of the longest serving heads of state and government who are still in power. These include: Teodoro Obiang Nguema Mbasogo (Equitorial Guinea, currently the world's longest serving president having served for 46 years); Paul Biya (Cameroon, 43 years); Denis

Sassou-Nguesso (Republic of the Congo, 40 years); Yoweri Museveni (Uganda, 39 years); Isaias Afwerki (Eritrea, 31 years); Ismail Omar Guelleh (Djibouti, 25 years); Paul Kagame (Rwanda, 24 years; and Faure Gnassingbe (Togo, 21 years). Most of these owe their longevity in power to a constitutional change that abolished term limits allowing them to continue governing. This happened in Cameroon (2008), Republic of the Congo (2015), Uganda (2005), Djibouti (2010) and Rwanda (2015).

The above is against the historical background of other long-serving African leaders such as Haile Selassie (Ethiopia, 44 years), Muammar Gaddafi (Libya, 42 years), Omar Bongo (Gabon, 41 years) and Robert Mugabe (Zimbabwe, 37 years).

Africa's challenge with public debt accountability

Although it received far too little attention in constitutional discourse, public debt accountability has the potential to be the most consequential governance challenge of the next generation. The numbers are sobering.

Sub-Saharan Africa's public debt has grown substantially over the past decade. According to the African Development Bank's African Economic Outlook 2026, Africa's continental debt is reported to be at $1.2 trillion, with 22 (some reports indicate 25) countries being in debt distress (up from 10 in 2020). Debt servicing consumes about 25% of revenues in Sub-Saharan Africa with many countries spending more on debt servicing than they spend on health or education.

Several African countries have experienced sovereign debt defaults or restructurings (which are often treated as "soft defaults") due to fiscal distress, external shocks, or unsustainable borrowing. Countries such as Nigeria, Cote d'Ivoire, Senegal, Democratic Republic of Congo and Somalia have a history of defaults in public debt repayment. Others, such as Zambia (2020), Ghana (2022), Ethiopia (2023), Mozambique (2016) and Republic of Congo (2017) appear on the list of Sub-Saharan Africa countries that have recently defaulted on their loans. Some, such as Kenya, Egypt, Tunisia and Angola, though not having formally defaulted, have faced severe debt distress and come close to defaulting on their debt obligations.

From a constitutional context, defaults are often illustrative of violations of public finance management laws, absence of parliamentary approval of borrowing, violation of transparency and disclosure obligations as well as debts contracted in odious circumstances.

The link between term limits and public debt accountability

While early constitutional drafting focused a lot on regulating the exercise of political and administrative power (the political and administrative constitution), most later constitutions understood that true state power lies in a State's finances (the financial constitution). With this came a new language of fiscal constitutionalism. The goal was to transform fiscal policy from a purely technical matter into a constitutionally governed process. This aspect of the exercise of executive power is scarcely understood hence most governments still struggle with it.

Executive term limits and public debt accountability are, therefore, constitutionally connected concepts. Both focus on executive accountability and the imposition of constitutional constraints on the exercise of a country's executive power. The patterns and practices cited above, therefore, are not anomalies, they are symptoms of unchecked executive power.

The questions that both seek to respond to, therefore, is one that has haunted African governance since the first constitutional conferences of independence: Who governs the governors? How do we ensure meaningful constraints on the exercise of executive power in Africa. And in this endeavour how do we leverage the role of courts as well as that of regional and continental mechanisms.

A secondary but equally relevant link to this focus is the linkage between the accumulation of executive power through the abolition or manipulation of terms limits and its direct impact on public debt accountability. Countries with long-serving executive heads are more likely to have substantial public debt. Leaders who expect to remain in power indefinitely have a tendency to pursue policies designed to entrench their authority rather than protecting long-term national interests. The weakening of oversight institutions in such States facilitates debt opacity leading to the unchecked accumulation of debt. Conversely, leaders operating within firm constitutional limits are more likely to prioritize institutional resilience, continuity and fiscal sustainability. This in turn ensures checks and balances that regulate State borrowing.

The place of constitutionalism

Constitutionalism is both a normative and structural concept in public law. At its core, it means that government power must be limited by law and exercised under a supreme constitution. But constitutionalism involves more than the mere existence of a constitution. A country may have a constitution and still be governed arbitrarily. It therefore encompasses the supremacy of the Constitution, limited government, separation of powers, judicial review, the rule of law, protection of fundamental rights, and popular sovereignty.

Given the limits imposed by a culture of constitutionalism, the concept then serves as source of executive restraint and a mechanism to ensure intergenerational responsibility by protecting term limits and facilitating accountability in public debt contraction. Constitutionalism, therefore, becomes a source of rules for ensuring executive restraint.

African leaders use various strategies to circumvent term limits. These include adoption of a new constitution then arguing that this resets their terms (as was the case in Rwanda); mobilization of parliamentary majorities to amend the constitution to abolish term limits; or in some situations utilizing emergencies and crises to postpone elections and impose transitional periods. All these have been applied across various countries in Africa. This undermines the goals behind the limits which include preventing the personalisation of the State; reducing incentives for authoritarian consolidation and creating space for political renewal through generational changes in leadership. A culture of constitutionalism, therefore, serves to safeguard the limits and ensure the achievement of these goals.

With respect to public debt, constitutionalism exists to ensure compliance with constitutional safeguards that guide the exercise of executive power to borrow. These include transparency through public disclosures of the purposes and use of the proceeds of borrowing; democratic control and pre-approval of all borrowing through parliament, intergenerational equity considerations prior to debt contraction and accountability in the expenditure of proceeds.

Courts, both national and international, therefore, become critical in supporting this system of restraints on executive power by making findings of violations whenever constitutional rules are violated.