Preventing Debt Crises
by
Rodrigo Olivares Caminal* and Paola Subacchi**

1. Introduction

The financial response to the COVID-19 crisis has driven debt accumulation at an unprecedented speed, and this has increased the risk of debt distress and the odds of an international debt crisis. Many countries are at risk especially the poorest ones where economic activity was seriously undermined by the Covid-19 pandemic and now is grappling with the impact of the war in Ukraine. Some countries, for example Zambia and Sri Lanka, have already defaulted on their debt obligations. According to the World Bank, of the 73 countries that are eligible for the Debt Service Suspension Initiative, 28 are at high risk of debt distress, five are already in distress and three – Chad, Ethiopia, and Zambia – are in negotiations for a debt restructuring.[2]

Debt restructuring seems like the obvious solution for a country in debt distress, but it is far from being optimal. Ex-post debt restructuring, as opposed to ex-ante measures to manage debt accumulation, are costly for the country involved and for international lenders, both in terms of negative impact on economic growth, hardship for people, stress for the banking system and capital losses.

Despite the costs and complexity, ex-post intervention when a debt crisis is already under way seems to be the default option for many governments and multilateral institutions. The problem with this approach is that it only deals with problems as they occur and will not help to prevent further instances of debt distress.

The focus should be on preventative measures that assess whether there is a real need to incur new debt—i.e., whether, and under what conditions, countries should incur new debt obligations—and to improve transparency in sovereign borrowing. Although the Common Framework shows some improvements to broaden stakeholders' participation by bringing China into the equation, it is still an ex-post partial solution to a broader problem.[3]

Therefore, there is a need to shift focus before debt continues piling up and prevent other episodes from happening to an ex-ante solution paying careful attention to upholding sound macroeconomic policies as the necessary condition for proper debt management, and good practices in the decision-making process related to borrowing. The focus should be on the ex-ante measures: greater transparency, proper debt management, and accountability. Although there are frameworks in place that help stakeholders to improve their situations, such as debt ceilings, golden clauses, or detailed debt management policies, these have not been properly applied given the debt accumulation context. Finally, enhanced transparency and greater accountability, supported by a well-functioning domestic legal system will facilitate accountability.

2. Legal requirements to incur the debt: Due Process

* Professor of Banking and Finance Law at the Centre for Commercial Law Studies, Queen Mary University of London. His e-mail is R.Olivares-Caminal@qmul.ac.uk
** Professor of International Economics, Global Policy Institute, Queen Mary University of London. Her email is P.Subacchi@qmul.ac.uk.
[2] See World Bank, Debt Service Suspension Initiative, available at https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative
[3] See IMF, Questions and Answers on Sovereign Debt Issues: The G20 Common Framework for Debt Treatments Beyond the DSSI, available at https://www.imf.org/en/About/FAQ/sovereign-debt#Section%205

Contracting debt cannot be randomly or discretionary left to the needs of the government without both, proper budgeting, and detailed incurrence processes. Countries must have a proper legal framework outlining who is authorized to contract debt, how much debt, when and under what conditions. In general, firstly the legislative (Congress or Parliament) issues a law determining under which conditions the executive power, through the relevant proxy, can issue or contract debt. The executive shall be required to prepare a budget on a yearly basis, which, to be effective, requires again the approval of the legislative. Once the legislative approves the budget, the executive branch can then authorize in each case and within the constraints of the budget, which agency or body will be responsible for issuing or contracting the required debt obligations.

For example, in the case of Argentina, at a congressional level, public borrowing is regulated by the Law on the Financial Administration of the Public Sector No. 24.156 which sets forth that any debt must be first considered in the budget for the reference year. At a secondary level, Decree No. 1,344 (4 October 2007), determines that the Treasury Secretariat and the Finance Secretariat at the Ministry of Finance are responsible for coordinating the financial administration of the national public sector. For example, Argentina's 2017 US$ 20,000,000,000 bond issuance under this framework, was included in the budget for the year 2017 under the overarching Law on the Financial Administration of the Public Sector No. 24.156 and delegated powers on the national administration that enacted presidential Decree No. 29/2017 (**when**) authorizing the Ministry of Finance (**who**) to issue and register bonds amounting to $20 billion (**how much**) before the Securities and Exchange Commission of the US **(where)**. The decree also authorized the Ministry of Finance to designate the advisors and financial institutions to place the new debt in the market and sign agreements with fiduciary agents, payment agents, information agents, escrow agents, registration agents and risk rating agencies as is required for the issuance and placement of the new bonds in the capital markets. This Decree also authorized the Ministry of Finance (through the Treasury Secretariat and the Finance Secretariat) to set the terms and conditions under which the debt would be issued, including the extension of jurisdiction in favour of the courts of New York and London, the inclusion of collective action clauses and pari passu clauses, as well as limited waivers of immunity (**what conditions**). With this double authorization in place, i.e., congressional approval of the budget and authorization form the executive power to issue the debt, the Ministry of Finance issued Resolution 219-2017 authorizing the issuance of new public debt instruments, approved the prospectus for the issuance, and designated the underwriters, the fiduciary and paying agents and the process agent. Argentina provides an example of proper due process as contrasted with other recent episodes (Ukraine, Mozambique, and Venezuela), but not necessarily of proper debt management as is explained below.

Recently, there have been several episodes where the issue of due process when incurring the debt has come to the forefront, namely three and involving Ukraine[4], Mozambique[5] and Venezuela. Law Debenture Trust (acting upon request of Russia) and Ukraine have locked horns in the UK Supreme Court over a $3 billion debt claim. A trustee of the $3 billion notes – Law Debenture – which are governed by English law is asking to be paid the money owed by Ukraine to Russia, plus accrued interest. One would expect a contract entered by a sovereign to be honoured, especially one signed by the Ukrainian Minister of Finance himself. The gordian knot, however, is whether the obligation was validly entered by Ukraine, who now questions the capacity and authority of the Minister of Finance to enter the loans. In a similar fashion, Mozambican authorities have filed a similar claim in London against lenders, claiming they are not liable for more than $622 million of loans as it was purportedly not properly authorized to guarantee under domestic law, questioning the authority and

[4] Ukraine v Law Debenture Trust Corp Plc [2018] EWCA Civ 2026 (14 September 2018).

[5] The cases are The Republic of Mozambique v. Credit Suisse International and others, case numberCL-2019-000127, in the Commercial Court, Queen's Bench Division of the High Court of Justice of England and Wales, and The Republic of Mozambique v. Credit Suisse International and others, case number CL-2019-000775,in the Commercial Court, Queen's Bench Division of the High Court of Justice of England and Wales.

capacity of the Mozambican Ministry of Finance who signed the documents. This seems to be a rapidly expanding global phenomenon, as US courts are dealing with a similar situation regarding collateralised obligations of Venezuela's state-owned oil company (PdVSA) that were also allegedly entered into without proper authorization and in breach of its constitution.[6] The common thread in these three live cases is whether investors are able to rely on, and states are bound by, sovereign finance documents signed by the named minster with the highest authority in fiscal matters.

The Law Debenture case raises two relevant issues: did Ukraine have capacity to contract and did the Minister of Finance have authority to bind Ukraine by signing the documents. Law Debenture acting on behalf of Russia, argues in accordance with established English law precedents that Ukraine as a sovereign state has unlimited contractual capacity. It is generally understood that capacity impacts the ability to enter a contract; if there is a lack of capacity to enter into a contract, it is as if the contract never existed. Ukraine, after a change of government, raised a defence claiming that the former Minister of Finance acted *ultra vires* in issuing the disputed $3 billion notes*;* beyond the scope of powers allowed or granted by law due to a budgetary borrowing ceiling. However, as this is a contract governed by English law, the UK Supreme Court must now determine if Ukrainian law restrictions are allowed to supersede the English law principle that a state has unlimited capacity. If this happens, the contract will be rendered null and void. All previous intervening courts have upheld the prevalence of English law to this question.

The second layer of analysis requires assessment of whether the agent acting on behalf of the state had sufficient authority to act. If the person acting on behalf of the state did not have authority, the state will not be bound by the relevant contract. There are two types of authority: actual and ostensible (or apparent). Even if the actual authority is questioned as in this case, it is difficult to understand how it can be credibly claimed that the Minister of Finance did have ostensible authority, especially after the debt was approved by the Ukraine Cabinet of Ministers. Moreover, the fact that the Ukraine made interest payments for 18 months implies that the state acknowledged the debt and ratified the relevant contracts.

Ukraine, as a sovereign state, has unlimited capacity to contract and should be bound by its Ministry of Finance. There should be a similar outcome in the Mozambican case also being heard in London by a lower court. The UK Supreme Court has, once more, the important task of cementing legal certainty. All of this irrespective of what might happen on another aspect being discussed in the case, the other gordian knot of whether Ukraine entered the obligation under duress (i.e., under unlawful force) from Russia. This is a different matter and one that should not cloud the issue of capacity and authority which can bring certainty and foster international finance transactions. English law has long-provided investors with the confidence to lend to emerging economies, allowing those economies to raise much-needed money from international markets whilst investors have the certainty that they can enforce those lending arrangements if there is default. Any UK Supreme Court finding that local law removes this certainty will jeopardize the ability of these economies to raise important finance, particularly in the aftermath of the pandemic.

Given these recent developments where the validity of debt issuance and contracting was at the centre of discussion, countries are making efforts to improve their process to incur debt. For example, the Ministry of Finance and National Planning of Zambia will introduce the Loans and Guarantees, Grants (Authorisation) Bill to Parliament to repeal the current Loans and Guarantees (Authorisation) Act. This aims to improve transparency in debt management, including loan contraction, and to provide a framework for evaluation, issuance, and monitoring of public guarantees. Given the Constitution of Zambia requires control of loan contraction by Congress and the bill attempts to rectify

[6] See Roman J. Duque Corredor, Opinion regarding the unconstitutional nature of the PDVSA2020 bond, available at https://www.acienpol.org.ve/wp-content/uploads/2020/04/Nulidad-de-la-Bonos-2020-de-PDVSA.pdf

the shortcomings in the current law, including the definition of public debt, reporting requirements, and adherence to global best practices in public debt management.[7]

The Republic of Congo provides serves as another example of good practices. It will also start posting the borrowing plan for the following budget year as an annex to the budget presented to Parliament to bolster the credibility of the debt management strategy and enhance communication between debt managers and the budget authorities. The borrowing plan will specifically be an annex to the 2023 budget and will include information for each category of debt instrument as well as the nominal borrowing amount for the fiscal year 2023.[8] In the case of Cameroon, the National Committee on Public Debt (CNDP) plays a central role in debt management and all debt proposals, including those of SOEs, as well as projects financed through PPPs, and all requests for guarantees and endorsements require the CNDP prior approval. In 2019, Cameroon issued a manual on public debt management, clarifying procedures and responsibilities for loan operations. [9]

The due process to incur debt is necessary to corroborate whether the debt is being issued efficiently and validly. On the one hand, the legislative control of the budget, and hence, the proposed debt, has an objective related to accountability of the authorities and limiting the discretionary power of the executive to incur debt. The control of the budget by the Congress or Parliament provides the opportunity for analysing the purpose of the debt and eventually carry an analysis on its merits, which relates to contribution to development of the country.

On the other hand, prospective creditors (i.e., mainly investors in bonds and loan lenders) can assess whether the debt has been budgeted and therefore has a *prima facie* 'veil' of being valid and enforceable. In the case of bonds, the issuer will represent and warrant the issuance has received the necessary approvals, usually also ratified by means of a legal opinion provided by the attorney general. For example, the base prospectus regulating the $20 billion Global Medium Term Note Programme of the Arab Republic of Egypt sets forth that "*The establishment of the Programme by the Issuer was authorised by a resolution of the Minister of Finance dated 26 May 2015. The issuance of Notes under the Programme during the fiscal year 2018/19 is authorised by the State Budget Law № 100 of 2018 regarding the State budget for the fiscal year 2018/19. The Issuer has obtained or will obtain from time to time all necessary consents, approvals and authorisations in connection with the issue and performance of the Notes.*"[10] Same is the case for multilateral, bilateral and commercial loans. Lenders usually hire a local law firm to review the approval process of the loan and issue a legal opinion on whether all the conditions and approvals have been met for the debt to be valid and enforceable.

3. Debt Management: economic analysis as to whether the debt is necessary

The debt management office (DMO) is in charge of carrying the national government's debt management policy, which mainly comprises minimising financing costs over the medium and long term, taking account of risk. This includes ensuring that the debt is properly serviced, rolling it over if needed and issuing or incurring new debt as necessary.

---

[7] Zambia- IMF: Request for an Arrangement Under the Extended Credit Facility-Press Release; Staff Report; Staff Supplement; Staff Statement; and Statement by the Executive Director for Zambia, Attachment I. Memorandum of Economic and Financial Policies, 2022–25, September 2022.

[8] Republic of Congo-IMF: First Review under the Three-year Extended Credit Facility Arrangement, Requests for Modification of Performance Criteria, and Financing Assurances Review-Press Release; Staff Report; and Statement by the Executive Director for the Republic of Congo, Attachment I, Memorandum of Economic and Financial Policies, 2022–24, July 18, 2022.

[9] Cameroon – IMF: Second Reviews under the Extended Credit Facility and the Extended Fund Facility Arrangements, and Requests for Waivers for Performance Criteria Applicability and Modification of Performance Criterion—Press Release; Staff Report; and Statement by the Executive Director for Cameroon, August 2022.

[10] Base prospectus for the U.S.$20,000,000,000 Global Medium Term Note Programme of the he Arab Republic of Egypt, dated February 18, 2019.

3.1. Medium-Term Debt Management Strategy

The World Bank and the IMF have created the Medium-Term Debt Management Strategy (MTDS) as a framework to direct government authorities' debt management choices and actions. The MTDS relates borrowing to macroeconomic policy, aids in maintaining manageable levels of debt, and promotes the growth of domestic debt markets. This strategy will assist in creating a sovereign debt portfolio for each country that reflects its cost and risk preferences and satisfies its financing needs, with the aim that the government must borrow money and manage its debt effectively. Implementing an MTDS can help governments to achieve this objective, facilitate the growth of sustainable government securities market, strengthens fiscal policy, reduces macro-financial risks, and assists governments in managing risk exposures resulting from their debt portfolio.[11]

With the aid of an analytical tool and an eight-step process, the MTDS framework enables governments to evaluate the potential risk and cost trade-offs they may encounter while implementing various debt management techniques. The MTDS includes the goals and scope of debt management, the makeup process of the debt portfolio for the country and the determination of risk priorities, the potential sources of domestic and international financing, the macroeconomic environment and structural elements, baseline pricing assumptions and shock scenarios, and the evaluation of alternative funding options based on estimates of cost and risk.[12]

A MTDS also includes a *benefit v. burden* analysis, key to determining whether to contract debt or not. The authorities should ask themselves whether the burden of debt outweighs the benefits. In this sense, public-private-partnerships (PPPs) recently became the spotlight in the benefit v. burden discussion. Although PPPs might seem the cheaper option at first glance because they are financed by private sector, they come at a cost because the private investor will require the government to commit in some way or another, and this translates into a contingent liability in the form of partial risk guarantees, indemnities, or price support mechanisms, among others (which are explicit or implicit contingent guarantees of the government). Additionally, in general, the government will be able to issue debt at a lower rate than the private investor.[13] In 2015, the National Audit Office (NAO) of the UK published a report comparing two projects that were developed using different strategies. While the Cross-rail project used public finance, the Thameslink used private finance. According to NAO's estimations, the overall financing costs of the Cross-rail were 3-4% as the project was financed at the Gilt rate[14], while the Thameslink overall costs were at 6-7%, using private finance at rates 2-3% above Libor.[15] Needless to say, this can fluctuate over time based on actual market conditions.

In this line, the Government of Zambia will submit modifications to its PPP Act to Parliament by the end of June 2023 to increase the use of PPPs finance developmental projects while lowering the fiscal risks associated. As a result of the modifications, the Minister of Finance and National Planning will have the authority to accept or reject PPP projects depending on probable financial repercussions. This legislative review intends to facilitate the delivery of affordable, worthwhile, and sustainable infrastructure projects and service delivery. Additionally, the government committed to work on risk management to prevent or reduce the occurrence of contingent liabilities from PPP projects.[16]

---

[11] Medium-Term Debt Management Strategy (worldbank.org)
[12] Ibid 5.
[13] The fiscal costs of PPPs in the spotlight, Ms. María José Romero, Policy and Advocacy Manager, Publicly Backed Private Finance, the European Network on Debt and Development, March 13, 2018.
[14] Government bonds in the U.K. are known as gilts and could be the equivalent of U.S. Treasury.
[15] The choice of finance for capital Investment, briefing by the National Audit Office, HM Treasury, UK, 17 March 2015.
[16] Zambia- IMF: Request for an Arrangement Under the Extended Credit Facility-Press Release; Staff Report; Staff Supplement; Staff Statement; and Statement by the Executive Director for Zambia, Attachment I. Memorandum of Economic and Financial Policies (MEFP), 2022–25, September 2022.

Additional focus should also be put on SOEs and fiscal spending to support SOEs. For example, the Industrial Development Corporation (IDC) of Zambia, a SOE that aims to implement strategies to develop industrial capacity,[17] developed a ring-fence strategy to safeguard the Treasury from the activities of SOEs under its control. The implementation of measures includes restricting the contracting of debt financing by only allowing commitments where debt can be repaid with additional cash flows. IDC will also introduce the Group Treasury Administration Policy, a framework for responsible treasury management, effective capital allocation, and best practice reporting. [18]

3.2. Debt Management Office

A key component to develop a MTDS is having in place an effective DMO. The decisions of the DMO should be solely based on debt-management strategies, without political interference from other areas of government. Usually, DMOs will have a back office responsible for tracking information, a middle office responsible for providing advice and analysis to the government to make sure it complies with the country's financial needs, with a manageable level or risk and cost and a front office that oversees the implementation of the financing based on the criteria determined by the middle office. Additionally, a debt audit department performs regular financial and loan performance audits to lower the likelihood of cost deteriorations and aid in spotting potential problems early on. Sometimes, the latter is performed in a separate body (i.e., the national general audit office).

In this sense, Pakistan is in the process of establishing a DMO in charge of designing and implementing the debt management strategy. The DMO will replace the existing Debt Policy and Coordination Office and will nucleate other responsibilities from other governmental bodies that are currently fragmented. The country is also in the process of setting up the front office/middle office/back office of the new DMO. The envisaged DMO will work closely with the Economic Affairs Division to ensure the accurate compilation and reporting of debt-related statistics.[19] The Republic of Congo, in turn and in accordance with the recommendations received through the IMF technical assistance, is examining the Caisse Congolaise d'Amortissement's (CCA) organizational structure and adopting pertinent regulations to increase its effectiveness. This will entail strengthening the operation of the Committee National de la Dette Public and the framework supporting coordination between the Treasury and the organizational chart of the CCA will be reviewed to reflect best practices in the organization of a debt management office.[20]

Nigeria's experience is a good example to demonstrate why having a DMO is so important to elaborate an efficient debt management strategy—according to the World Bank Nigeria faces a moderate risk of debt distress. Nigeria's DMO was set up in 2000 to centrally coordinate the management of Nigeria's debt to coordinate debt incurrence as it had previously been incurred by diverse institutions. For instance, the External Finance Department managed Paris Club debts, the Multilateral Institutions Department managed all multilateral debt, the Africa, and Bilateral Economic Relations (ABER) Department was responsible for consulting with the African Development Bank and its subsidiaries, ECOWAS, and all non-Paris Club bilateral creditors, while the Treasury Department was responsible directing the Central Bank for payment of all external debts.[21]

Nigeria acknowledged that this dispersed approach to debt management produced inefficiencies and inadequate coordination, including, incorrect and incomplete debt records as a result of an inadequate system for recording debt data and poor information exchange between agencies,

---

[17] About Us - Industrial Development Corporation (IDC) Zambia Limited
[18] Ibid. Zambia - IMF, MEFP, September 2022.
[19] IMF, Combined Seventh and Eighth Reviews of the Extended Fund Facility for Pakistan, Attachment I, Memorandum of Economic and Financial Policies, August 29, 2022.
[20] Ibid. Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement. MEFP July 18, 2022.
[21] About DMO - Debt Management Office Nigeria

contradicting data from the numerous organizations performing the debt management role, absence of consistent, clearly defined borrowing policy and debt management techniques, and insufficient manpower, which impacted outputs and performance.[22]

Nigeria's DMO has front, middle and back offices. The Portfolio Management Department (PMD) is part of the DMO's front office jointly with the Market Development Department (MDD) and Strategic Programmes Department (SPD). The PMD oversees financial market operations, which includes overseeing auction management and other borrowing activities. In turn the PMD has a "Loans and Other Financing Products Unit" (LFP) which is responsible for loans, guarantees and PPP, a Contingent Liability & Risk Asset Management (CL&RAM) Unit responsible for managing contingent liabilities and a Securities Issuance Unit (SIU).[23] The Policy, Strategy and Risk Management Department (PSRMD)—the middle office—is in charge of creating medium- and long-term debt strategies with the goal of keeping borrowing costs to a low while taking reasonable risks, including preparing an annual Debt Sustainability Analysis (DSA) and debt portfolio risk analysis.[24] Finally, the Debt Recording and Settlement Department performs core functions of the back office, including maintaining the debt database and provide information that supports the reporting and analytical work of the DMO and calculating the existing debt service obligations and the projection of future debt payments.[25]

3.3. Proper Recording

Information recording is a crucial component to the MTDS as well as for good transparency practices. Transparency can be understood as making information publicly available, so that it is accessible to interested stakeholders and the wider public.[26] However, the type of information matters since reporting aggregate numbers without a detailed breakdown means that users will be unable to ascertain whether specific loans are included in the total debt figures reported by the government in question.[27]

The first step in ensuring debt transparency is to identify the information types that must be disclosed. Once that has been established, information tracking must be conducted efficiently; otherwise, even if the most correct data is present, it will be useless if tracking and recording are not conducted in a systematic way. Daily data recording is required, but there also needs to be a process in place for recording data in unusual situations.[28]
Measures to enhance transparency were introduced in response to bad debt transparency and poor reporting situations. Zimbabwe, for example, enacted the Public Debt Management Act in 2022 requiring the mandatory disclosure to the Treasury by public entities and local authorities of information on borrowings, debt service, and overdraft facilities. The country is also working in a MTDS to guide future debt management operations. [29]

Zambia, on its part, has made efforts to regularly engage creditors in a transparent and collaborative process to validate and reconcile debt data. The government also regularly provides the IMF with detailed information on all external debt contracted or guaranteed by the public sector, including both

[22] Ibid. Nigeria DMO.
[23] Departments - Debt Management Office Nigeria (dmo.gov.ng)
[24] Departments - Debt Management Office Nigeria (dmo.gov.ng)
[25] Departments - Debt Management Office Nigeria (dmo.gov.ng)
[26] Shakira Mustapha and Rodrigo Olivares-Caminal, Improving transparency of lending to sovereign governments, ODI Working Paper 583, July 2020.
[27] Shakira Mustapha and Rodrigo Olivares-Caminal, Improving transparency of lending to sovereign governments, ODI Working Paper 583, July 2020.
[28] African Legal Support Facility, Understanding Sovereign Debt: Options and Opportunities for Africa, September 2020.
[29] Zimbabwe- IMF: 2022 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Zimbabwe, April 8, 2022.

disbursed and undisbursed debt. Additionally, the government often makes debt data available in its semi-annual and annual economic reports and is committed to release a Debt Statistical Bulletin on a quarterly basis that will include both domestic and international debt, including contracted loans, fresh disbursements, details on guaranteed loans, and any liabilities resulting from public-private partnerships, and also, expanding the report to include non-guaranteed State-Owned Enterprises (SOEs) debt.[30]

The Republic of Congo is building a comprehensive debt database that includes all public institutions, local governments, guaranteed and unguaranteed debt, as well as both domestic and foreign debt. The country aims to have all debt held by the central government (domestic, external, guaranteed, and unguaranteed debt), all debt held by local governments and public institutions, and all debt held by the ten largest SOEs in the database. The Republic of Congo's SOEs were ordered to provide information regarding their guaranteed and non-guaranteed debt in December and June of each year.[31] The CCA will oversee this database.

The use of technology is also a key aspect to enhance debt management capabilities, including debt recording. In this sense, Niger plans to acquire the Debt Management and Analysis System (SYGADE) and provide capacity building for the staff of the public debt directorate.[32] Meridian is another option. This software was developed by the Commonwealth Secretariat and provides a Debt Recording and Management System (DRMS) designed based on the IMF and World Bank Public Sector Debt Guide, which ensures proper recording and reporting of debt instruments. Nigeria, Ghana, Sierra Leone, The Gambia, and Liberia are some of the countries that implemented Meridian.[33] Other countries use the Debt Management Financial System for Analysis and Statistics (DMFAS) software which is part of the broader technical assistance Programme developed by UNCTAD which also offers capacity building.[34] UNCTAD is on the way of developing a new version (version 7.0) of its DMFAS software to enhance debt data transparency by broadening the scope of debt data, improving reporting capabilities, and delivering technical changes to fully record, report, monitor, manage, and analyse all forms of public sector debt. Additionally, it will make it easier to export data for use in risk analysis, debt sustainability analysis, and design of medium-term debt strategies. DMFAS is widely used across the globe, including Latin America, Africa, the Middle East, and Asia.[35]

3.4. Budgeting

The gap between what the government receives in taxes and other revenues and what it spends each year is broadly speaking referred to as the deficit. Budgeting debt is a key component of the MTDS and requires planning how much debt will the country require in the future to cover either fiscal deficit or spending needs and relates to the concept of future cash flow.

Inevitably, budgeting debt requires sine qua non to determine first the fiscal budget. Accurate fiscal budgeting must include the identification, analysis, and mitigation of risks and shocks to which an economy is expose. The objective is to completely identify the many risks to the fiscal outlook, assess how they affect public finances, and take preventative measures to mitigate them. An example on this, is Niger who is working with the IMF to develop a budget contingency plan to reduce the fiscal risks associated with the various shocks to which the economy is exposed, modernizing public finance

[30] Ibid. Zambia - IMF, MEFP, September 2022.
[31] Ibid. Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement. MEFP July 18, 2022.
[32] Niger- IMF, First Review Under the Extended Credit Facility Arrangement and Request for Modification of Performance Criteria-Press Release, Attachment I, Memorandum of Economic and Financial Policies of the Government of Niger, July 19, 2022.
[33] Liberia: "Use Commonwealth Meridian to Manage Debt Portfolio" | Commonwealth (thecommonwealth.org)
[34] Debt Management and Financial Analysis System | UNCTAD
[35] Debt management and financial analysis system programme: Annual Report 2021 | UNCTAD

management tools further, increasing transparency, and strengthening the credibility of fiscal planning.[36]

Another case is that of Cameroon, where discrepancies between the projected needs and the actual financing have made the MTDS ineffective in anchoring the country's debt policy in its medium-term debt management framework. As a result, efforts to strengthen Cameroon's National Public Debt Committee's (CDNP) role are needed to improve better estimates of the financing needs and annual borrowing plans.[37] Further efforts are warranted to strengthen active engagement of the CDNP and enhance the effectiveness of the MTDS, including through improved estimates of financing needs, development of consistent annual borrowing plans, and an enhanced communication strategy to facilitate creditors' understanding of the authorities' debt management objectives.

Budgeting is specifically important for commodities' exporters in which debt repayment is heavily dependent on revenues resulting from the exports, like oil exporters countries. The IMF has recommended to anchor the fiscal policy to a revenue source not prone to volatility, calibrate short term spending and break the link between budgets and oil price volatility.[38] This is because fluctuations in international oil prices can represent a significant variation in the revenue generation. In this way, Congo anchored the medium-term fiscal policy on the consolidation of non-oil primary balance between 2021 and 2027. The country further reduced the risks of external shocks from variation in oil prices by restructuring debts owed to two commercial creditors which were linked to oil prices.[39]

Any budget should also include ceilings to debt issuance and floors to the international reserves, especially for emerging economies and low-income countries. A debt ceiling or limit is the total amount of money that a government can borrow to meet its existing legal obligations. For example, Pakistan has established a ceiling on the amount of government guarantees that applies to the stock of publicly guaranteed debt issued by the central government and includes both domestic and external government guarantees. Pakistan also established a ceiling on net government budgetary borrowing from the State Bank of Pakistan. Moreover, Pakistan also presented a statement of contingent liabilities to the National Assembly containing a list of all guarantees expected to be issues in 2023.[40]

Budgeting is a simple but strong concept and one that generates fiscal discipline. Therefore, the budget should contemplate internal and external shocks that can require additional spending, but once the budget is drafted, is important for the country to commit to the budget execution and avoid additional expenses not originally contemplated in the budget—in other words, fiscal discipline. In this sense, the Republic of Congo is working with the IMG and World Bank to develop and implement a template for public procurement for ministries and agencies of the government. This filled-in template will be an element of future budgets being prepared on an annual basis. Except for emergency items that will require the Minister of Finance's prior approval, the budget law for 2023 will specifically declare that procurement cannot take place outside the scope of the template.[41]

3.5. Devising an adaptable set of debt instruments

[36] IMF, First Review Under the Extended Credit Facility Arrangement and Request for Modification of Performance Criteria-Press Release, Attachment I, Memorandum of Economic and Financial Policies of the Government of Niger, July 19, 2022.
[37] Ibid. Cameroon – IMF: Second Reviews under the Extended Credit Facility and the Extended Fund Facility Arrangements, August 4, 2022.
[38] IMF, Regional Economic Outlook, November 2013, Middle East, and Central Asia
[39] Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement, Requests for Modification of Performance Criteria, and Financing Assurances Review-Press Release; Staff Report; and Statement by the Executive Director for the Republic of Congo, Attachment I, Memorandum of Economic and Financial Policies, 2022–24, July 18, 2022.
[40] Ibid. Pakistan MEFP, August 29, 2022.
[41] Ibid. Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement. MEFP July 18, 2022.

A MTDS should consider many risks, like the fluctuation of interest rates which is affected by the increase of the rates of developed economies and makes debt from low-income countries and emerging economies less attractive to investors. These in turn creates uncertainty while issuing debt in the international commercial and capital market and poses refinancing and rollover risks. Emerging economies and low-income countries also tend to put pressure on local commercial banks to hold government securities issued in the local market, creating sustainability issues. To cope with these risk factors, countries should devise an adaptable set of debt instruments in terms of costs and tenor to effectively tap into the debt market.

Argentina is an interesting case showing a build-up of debt maturities in the short term. Argentina executed a Stand-By Arrangement (SBA) with the IMF in 2018 gaining access to SDR 41 billion (equivalent to circa $57 billion, or 1,277 percent of quota). This was the largest disbursement in IMF history. However, because of internal and external shocks, the country could not keep up with the proposed program and after only four reviews the agreement was cancelled. Argentina currently has outstanding repurchases obligations under the 2018 SBA of about $40.9 billion (estimated at March 2022).[42] As acknowledged by the IMF, the program and the SBA were subject to forecast errors and implementation risks. Among other factors, Argentina held a big portfolio of short-term debt in foreign currency that did not fully correlate with the available data, indicating a need for a debt rollover, moreover when taken into consideration with the debt vulnerabilities caused by central bank liabilities (LEBACs) which were not evident when the SBA was executed back in 2018. The problem was exacerbated with the so-called repos which were subject to margin calls and termination clauses, i.e., could not be renewed.

A combination of factors, including poor planning, lack of a proper debt management and risk hedging, poor policy implementation, etc., led to a new debt restructuring by Argentina in 2020 mainly driven by the concentration of debt maturing in the short-term. However, in addition to private debt maturing in the short term, the SBA repurchases were also scheduled in the short-term posing additional repayment problems for Argentina. Obligations to the IMF under the 2018 SBA matured largely during 2022-2023, representing 20 percent of Argentina's nominal value of exports and 39 percent of gross international reserves.

Argentina managed to obtain the consent of 99.01% of the aggregate principal amount outstanding of all series of eligible bonds under the restructuring amounting to $ 65 billion and exchanged the bonds for long term debt maturing in 2038 and 2046.[43] To solve the liquidity issues regarding the IMF repayments, the IMF therefore approved a 30-month extended arrangement under the Extended Fund Facility (EFF) amounting to SDR 31.914 billion (equivalent to circa $44 billion) in March 2022. The implementation of the EFF arrangement will help Argentina to tackle the balance of payments issues arising from these large repurchases owed to the IMF under the SBA. In colloquial terms, the IMF lent Argentina additional money in a staggered maturity calendar for Argentina to be able to repay the debt under the de SBA (i.e., to repurchase the SDRs allocated under the SBA). This allowed Argentina to overcome a spike in payments in 2022 and 2023 more than $15 billion per year to a moderate spread over nine years between 2026 and 2034.[44]

In a similar fashion, Pakistan, is in the process of updating and implementing an MTDS to lessen debt risks on a variety of fronts and reducing refinancing risk. Pakistan have set standards for interest rate

---

[42] Argentina -IMF, Staff Report for the 2022 Article IV Consultation and Request for an Extended Arrangement under the Extended Fund Facility—Press Release; Staff Report; And Staff Supplements, March 2022.

[43] The Argentine Republic announces the results of the exchange of external public debt under foreign law Monday, August 31, 2020, available at: [The Argentine Republic announces the results of the exchange of external public debt under foreign law – Ministry of Economy (economia.gob.ar)]

[44] Ibid. Argentina -IMF, Staff Report for the 2022 Article IV Consultation, March 2022.

risk, currency risk, and for the proportion of products that adhere to Sharia law. It is also redoubling its attempt to extend the maturity profile of domestic debt, by decreasing the issuance of treasury bills and has committed to a floor on the cumulative gross issuance of PIBs, Sukuks, and Eurobonds to support the MTDS implementation and the elongation of the maturity profile.[45]

In this sense, the country is working to create a flexible range of debt products to adapt quickly to shifting domestic and global market conditions and financial industry trends. At the same time, these set of debt instruments will help to implement long-term macroeconomic strategies to reduce country-specific risks. Regarding Pakistan's borrowing from outside sources, the country has increased the number of Naya Certificates, which draw on Pakistani emigrants living abroad, issued a $1 billion international Sukuk in January 2022, and placed a $1 billion Eurobond in July 2021 in a multi-tenor transaction of 5-, 10-, and 30-year instruments. Cabinet cleared the way for additional Sukuk issuances on once the market conditions had stabilized. Additionally, Pakistan updated the domestic debt instruments by reintroducing 15-, 20-, and 30-year fixed-rate Pakistan Investment Bonds (PIBs) and Shariah-compliant Sukuks of longer tenors (5 years) and introducing new long-term instruments (including 3- and 5-year floating-rate PIBs). The country is also exploring new instruments such as: (1) green bonds, (2) gender bonds to promote gender equality and women empowerment and (3) Panda bonds to tap into the Chinese market through Renminbi-denominated instruments.[46]

Despite its debt default, Zambia is putting in place several policies that target both domestic and foreign debt to tackle its debt unsustainability. Firstly, in December 2019, the Cabinet of Zambia ordered the government to stop contracting non-concessional public external debt. Secondly, the government is trying to shift the origin of funds from commercial to multilateral creditors, to attempt to control the rate of external debt build-up. Thirdly, since July 2020, the government has been collaborating with financial and legal consultants to complete an asset liability management exercise that hoping to achieve a debt restructuring. Regarding the latter, Zambia is using the G20 Common Framework for the debt resolution and has previously applied to the DSSI to obtain debt suspension.[47]

The government of Zambia is enhancing issuance of treasury bills and bonds by means of public auctions in the local market. In an attempt to lower the refinancing risk of domestic issued debt, the issuance concentrates on longer-dated instruments while taking market circumstances and costs into account. Over the medium run, the goal is to reach a debt stock ratio of treasury bills to government bonds of 40 to 60 percent, meaning that the share of treasury bills in the domestic debt stock will be capped. By enhancing the local debt market, Zambia hopes to reduce the exposure to debt denominated to foreign currency and the risks resulting from exchange rate volatility.[48] These measures will allow Zambia to diversify its risk and hedge some of the external debt issues. Looking forward, this shall reduce the dependence on the foreign markets.

The Republic of Congo, on its part, is working with the IMF's technical team to develop a MTDS to lower the costs to finance state needs while keeping debt risks within reasonable bounds. The idea is to also enhance the local and regional market for government securities.[49]

4. Transparency and Disclosure

[45] IMF Executive Board Completes the Combined Seventh, and Eighth Reviews of the Extended Fund Facility for Pakistan, Attachment I, Memorandum of Economic and Financial Policies (MEFP), August 29, 2022.

[46] IMF Executive Board Completes the Combined Seventh, and Eighth Reviews of the Extended Fund Facility for Pakistan, Attachment I, Memorandum of Economic and Financial Policies (MEFP), August 29, 2022.

[47] Zambia- IMF: Request for an Arrangement Under the Extended Credit Facility-Press Release; Staff Report; Staff Supplement; Staff Statement; and Statement by the Executive Director for Zambia, Attachment I. Memorandum of Economic and Financial Policies (MEFP, 2022–25, September 2022.

[48] Ibid. Zambia – IMF. MEFP. September 2022.

[49] Ibid. Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement. MEFP July 18, 2022.

Investors' confidence in the debtor will increase if they have access to accurate and timely debt information. The likelihood of responsible lending is undermined by inadequate information or ambiguous terms. This is precisely the reason bonds have a chapter on risk considerations and why securities rules compel issuers of bonds that trade on the capital market to submit quarterly reports. Transparency requires proper disclosure of information on fiscal spending and debt incurrence.

For example, the US which is usually seen as the paradigm in debt transparency, publishes a Monthly Treasury Statement of Receipts and Outlays of the United States Government (MTS) and the Monthly Statement of the Public Debt (MSPD). The MTS provides information on receipts and outlays, surplus or deficit and means of financing on a modified cash basis. This information is provided by federal entities, disbursing officers, and the Federal Reserve Banks.[50] The MSPD provides information about the total public debt outstanding for the US and includes information regarding outstanding Treasury securities, and information regarding the statutory debt limit.[51] Another example to illustrate good practices can be drawn from Nigeria's DMO which publishes regular information about the debt profile of the country, including domestic and external debt, sub-national debt, and total public debt. In turn, Nigeria's DMO also provides disaggregate information on bond issuances and a bond issuances calendar.[52]

However, not all countries have the same practice or level of disclosure. However, while the sovereign borrower bears primary responsibility for reporting public debt data, international financial institutions (IFIs) and creditors can also play an important role in supporting transparency.[53] In order to assist countries to cope with transparency and disclosure requirements, several public-sector initiatives have promoted transparency in sovereign debt markets including the OECD's sustainable lending principles for official export credits (2008) and the UNCTAD Principles on promoting responsible sovereign lending and borrowing (2012). More recently, the G20 countries endorsed the Operational Guidelines for Sustainable Financing in 2017[54], which includes enhancing information-sharing and transparency of official bilateral lending to low-income countries. This initiative was complemented at the private sector level by the Institute for International Finance (IIF), a global industry association for the world's largest financial institutions, with the Voluntary Principles for Debt Transparency in 2019.[55] The latter is intended to improve the transparency of private sector transactions with low-income countries. These two recent initiates are analysed below.

However, economic actors may have legitimate reasons to preserve the confidentiality of market-sensitive information. Confidentiality may even be in the public interest in some cases. Examples of sensitive material information include contracts entered for the purposes of hedging risks or those involving national security issues.[56] Premature disclosure of information may adversely affect market sentiment as well as the economy and there is a case for delaying the disclosure of potentially sensitive information but only for time necessary to further the underlying policy objective and should be clearly authorised, with the reason for the delay stated. Ultimately, demands for greater transparency need to be carefully balanced against the need to protect sensitive information.

[50] Monthly Treasury Statement
[51] Cash and Debt Forecasting | U.S. Department of the Treasury
[52] Debt Profile - Debt Management Office Nigeria (dmo.gov.ng)
[53] Shakira Mustapha and Rodrigo Olivares-Caminal, Improving transparency of lending to sovereign governments, ODI Working Paper 583, July 2020.
[54] G20, Operational Guidelines for Sustainable Financing (2017).
[55] Institute for International Finance, Voluntary Principles for Debt Transparency (2019), available at https://www.iif.com/Portals/0/Files/Principles%20for%20Debt%20Transparency.pdf.
[56] Shakira Mustapha and Rodrigo Olivares-Caminal, Improving transparency of lending to sovereign governments, ODI Working Paper 583, July 2020.

Despite any shortcomings, the G20 guidelines and the IIF principles are welcome developments, in particular, for acknowledging that creditors—both bilateral sovereign creditors and private-sector creditors—have a responsibility to disclose the terms and conditions of their lending to sovereign governments.

4.1. The G20 operational guidelines for sustainable financing' (2017)

The G20 Guidelines, which were released in 2017, have a chapter on information sharing and transparency. These recommendations are used by official bilateral creditors to assess their degree of compliance with the guidelines, along with a standardized diagnostic tool created in collaboration with the IMF and the World Bank. Central banks, governmental organizations, national banks, and other public sector organizations make use of the G20 Guidelines. The principal details that must be given are the loan amount, debtor, intended use of the funds, interest rate, grace and maturity periods, and collateral (if any).

This G20 Guidelines although are a significant step forward, they still have significant limitations. For instance, there were no non-G20 countries participating in their drafting, the World Bank and the IMF did not release the evaluation tool's findings, is not possible to track whether the loan's terms and conditions were disclosed to the general public or only to the IMF and the World Bank, and it is not possible to assess whether the borrower had included the loan in national statistics or debt calculations.

4.2. The Institute for International Finance 'Voluntary principles for debt transparency' (2019)

In response to the discovery of several non-transparent private sector loans to developing countries, which contributed to the deterioration of their debt sustainability, the IIF developed the 'Voluntary principles for debt transparency'. This is a self-policing initiative is intended to enhance transparency in private-sector lending, particularly to the most vulnerable low-income countries.

The key features of the principles are as follows. Although any sort of lending can be governed by the IIF Transparency Principles, lenders need to voluntarily abide by them. They are focused on direct and indirect transactions in foreign currency conducted by the most vulnerable low-income countries. Names of parties, currencies, interest rates, loan amount, usage of collateral, applicable law, and dispute resolution are just a few of the details that must be recorded. The lender is responsible for disclosing the information, and they have up to four months from the date the loan is disbursed to do so.[57]

The IIF Transparency Principles encourage consistent and prompt disclosure in relation to financial transactions made with sovereigns (central governments), sub-sovereigns, or any other public corporations (SOEs), as well as by any other entity that is guaranteed by a sovereign, sub-sovereign, or public corporation (contingent liabilities).[58]

5. The Rule of Law

Upholding the rule of law is essential for the functioning of every society. According to the rule of law, everyone is equally subject to the law and is governed by impartial courts, including government officials. Effective judicial protection is at the heart of the rule of law, which calls for independent, and effective national judicial systems.

---

[57] Principles for Debt Transparency.pdf (iif.com)

[58] Voluntary Principles for Debt Transparency > The Institute of International Finance 3387 (iif.com)

The IMF has found that fragile states (FS) are often characterized by low levels of administrative capacity and a fragmented rule of law.[59] According to studies conducted by the World Bank, it has been demonstrated how important justice is for promoting a positive economic climate, reducing corruption, and restraining the misuse of authority.[60] Countries are therefore working to make improvements in this area. For example, the government of Benin has recently reaffirmed the importance of governance and the rule of law as the main pillar of its action program for 2021-26 and will conduct and publish with the IMF technical assistance team a governance diagnostic assessment by end-February 2023. This will include regulation and supervision of government contracts to enhance transparency in government spending and strengthen transparency of beneficial ownership information about government contractors.[61] Zimbabwe has also put in place a National Development Strategy (NDS) which focuses on strengthening the rule of law to unlock private investment and facilitate the respect of property rights.

Working on strengthening the rule of law is quintessential to make sure that if things are improper, there will be accountability and, in this way, correct wrongs and make sure that all has been done to prevent them from happening again by curving behaviour.

4.1 Accountability

Accountability is the other side of the coin of the rule of law. While the rule of law comprises several principles (supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency) under which all persons, institutions, and entities are accountable; accountability refers to the processes, norms, and structures that hold individuals (including government officials) legally responsible for their actions and that impose sanctions if they violate the law.

The goal of providing transparent information is to allow citizens, institutions, civil society, and lenders scrutinising what the government does with debt and spending and held authorities accountable for negligent and unlawful actions. Accountability cannot be achieved if data collection and recording processes are flawed since the public, creditors, and international financial institutions will not have access to accurate information. For example, the IMF has stressed that South Sudan needs to increase the accountability of those that hold public power. Particularly, that the oil sector needs more transparency, including the use and accounting of oil revenues and that the country "needs to create appropriate fora (not limited to its Parliament) for the discussion of public policies, leaving space for civil society to scrutinize the conduct of government."[62]

In the case of the Republic of Congo, the IMF recognized that an efficient leveraging of oil and other resources has been hampered by institutional deficiencies and that the lack of accountability in the administration of public revenues, spending, and debt are significant difficulties.[63] Niger, with technical assistance from the IMF, is working to adopt an oil revenue management strategy to enhance governance and transparency of oil exports, establishing safeguards so that Ministry of

---

[59] Ibid. Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement. Annex I. Drivers of Congo's Fragility, July 18, 2022.

[60] Justice and Rule of Law (worldbank.org)

[61] Benin – IMF: 2022 Article IV Consultation and Requests for an Extended Arrangement under the Extended Fund Facility and an Arrangement under the Extended Credit Facility—Press Release; Staff Report; Staff Statement; and Statement by the Executive Director for Benin, July 2022.

[62] Republic of South Sudan: 2022 Article IV Consultation and Second Review Under the Staff-Monitored Program, August 3, 2022

[63] Ibid. Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement. MEFP July 18, 2022.

Finance can control oil revenues.[64] In the case of Zimbabwe, the country is enhancing the public financial management (PFM) system to reduce the number of transactions that take place outside the records and control of the PFM that can result in a build-up of arrears and extra-budgetary expenses that endanger the viability of the budget. [65] Therefore, policy initiatives across the board are emphasising the importance on improving accountability to maximize the use of resources and prevent unpleasant surprises that can affect debt sustainability.

Multilateral lending transposes a high degree of accountability and scrutiny imposed on multilateral lenders by their own internal policies and procedures.[66] Another issue is the accountability of SOEs as they can have a serious impact on budgetary provisions, particularly due to the contingent nature that the distress or collapse of an SOE. South Africa was suddenly saddled with circa $25billion on debt due to liabilities in one of its SOEs.[67] In July 2022, as an example of corrective measures to prevent episodes to that of South Africa, the Congress of Pakistan enacted a new law to regulate oversight and ownership arrangements of SOEs. The country is also collaborating with the Asian Development Bank to adopt a SOE ownership policy that clarifies ownership arrangements and the division of roles within the federal government.[68]

Finally, given the increasing trend on ESG bonds, accountability will become the centre of the spotlight since investors will want to corroborate that the funds are effectively used to fulfil the ESG purpose. In other words, ESG pressure means that countries will need to check their accountability re the use of capital raised to satisfy ESG criteria. In this sense, in 2021 Belize achieved a deal with a committee of institutional investors that held around 50% of the outstanding principal amount of Belize's 2034 bond, after six months of negotiations with creditors. This also extends to debt restructuring situations where debtors and lenders could reach an agreement, as in the case of Belize, to issue new ESG-compliant debt to replace old debt. In the case of Belize, the so-called "debt for ocean swap" was the restructuring's defining characteristic. According to the planned restructuring, Belize used money from the Nature Conservancy's Blue Bonds for Ocean Conservation program to partially pay for both the acquisition and redemption of its old bonds. The Nature Conservancy helps sovereigns refinance a portion of their national debt as well as secure money for conservation initiatives through the Blue Bonds for Ocean Conservation program, offering credit upgrades to enable sovereigns to restructure debt on better terms.[69][70]

The U.S. International Development Finance Corporation (DFC) provided political risk insurance to support the transaction while the country raised $364 million through the "Blue Bonds" and use the proceeds to repurchase the 2034 bonds at a discount.[71] The Government of Belize also agreed to pre-fund the "Marine Conservation Endowment Account" with $23.4 million as a significant component of the deal. Future maritime conservation initiatives in Belize will be supported by this account, which

[64] Niger- IMF, First Review Under the Extended Credit Facility Arrangement and Request for Modification of Performance Criteria-Press Release, Attachment I, Memorandum of Economic and Financial Policies of the Government of Niger, July 19, 2022.

[65] Ibid. Zimbabwe Article IV Consultation, April 8, 2022.

[66] Improving transparency of lending to sovereign governments, Shakira Mustapha and Rodrigo Olivares-Caminal, Working paper 583, July 2020.

[67] See Joseph Cotterill, South Africa to transfer up to two-thirds of Eskom debt to government, Financial Times, 26 October 2022, available at https://www.ft.com/content/a7e86be5-8b9a-477f-bfd3-04645e9f1a81

[68] Ibid. Pakistan MEFP, August 29, 2022.

[69] Press Release, *Belize Announces Successful Settlement of Cash Tender Offer and Redemption of All of Its U.S. Dollar Bonds due 2034,* Government of Belize Ministry of Finance Belmopan, Belize, News Advisories Details (centralbank.org.bz) and Press Release, *Belize Announces Final Results of Its Offer to Bondholders,* Government of Belize Ministry of Finance Belmopan, Belize, News Advisories Details (centralbank.org.bz)

[70] Memorandum from Belize to The Bank of New York Mellon, as Trustee, September 10, 2021,

[71] DFC Provides $610 Million in Political Risk Insurance for Innovative Debt Conversion in Support of Marine Conservation in Belize | DFC

is run by a Nature Conservancy affiliate. Additionally, Belize vowed to strengthen conservation efforts to save the ocean and pledged an additional $180 million over the next 20 years for the conservation of its marine habitats.[72]

This is a paradigmatic transaction and the accountability to which the Belizean authorities will be held is paramount to determine the success of the transaction and whether similar transaction can be structured in the future.

4.2 Fight opportunism and corruption

Fighting opportunism and corruption might seem a cliché, but countries should be aware that corruption contributes to institutional fragility and to debt situations in two ways. Directly by deviating the funds raised from debt for other purposes or indirectly creating issues with key exporting sectors like oil and mining that generate the most needed revenues in foreign currency to repay debt.

The Mozambican tuna scandal is a clear example of this. The former Mozambican government set up three SOEs between 2013 and 2014, which incurred loans amounting to circa $2 billion. The initial financing plans included: (a) a $622 million loan to the Mozambique Asset Management Company for shipyard construction and maintenance; (b) a $535 million loan to ProIndicus, a state-run security company; and (c) a $850 million loan to Ematum, a state-run fishing company, for the construction of a tuna fleet.

The SOEs obtained the loans from the banks VTB and Credit Suisse which were guaranteed by the federal government. Of the three loans, only the one to Ematum was publicly disclosed and converted into tradeable notes. The tradeable notes of the Ematum loan were then legally extinguished in April 2016 through an exchange for USD 727m of sovereign Eurobonds issued by the central government, which resulted in an entirely new legal obligation (novation).

The executive branch kept the Proindicus, and MAM loans operated under a cloak of secrecy to acquire military equipment for the security services and the Ministry of Defence. When the IMF was made aware of the other two loans in 2016, it set off an economic crisis that resulted in the default of all external commercial debt. The local currency lost almost 65% of its value in just six months, the IMF and bilateral donors suspended their financial support, and economic growth fell to 3.8% in 2016 from 6.6% the year before. Since 2016, controversies have persisted as evidence of bribes and widespread fraud surfaced, raising the question of whether the loans should be acknowledged and restructured or rejected, i.e., raising questions on whether the due process to incur debt was rightfully followed. The country's administrative auditing court further compounded matters by ruling that the state guarantees of the ProIndicus and MAM loans were unconstitutional since they violated the constitution and earlier budgeting regulations.[73] At the end, the government declared its intention to restructure all of its external commercial debt in October 2016 due to concerns over the rising debt levels relative to GDP. The key takeaway here is that the Mozambique incident serves as an illustration of why transparency and accountability are crucial for any nation, jointly with a well-established procedure to issue debt.

Therefore, accountability also requires a commitment to fight corruption and opportunism. Countries have been focusing lately on improving the legal framework to combat corruption more effectively. For example, Zimbabwe's overall and external public debt is in distress and unsustainable. In 2020, the IMF issued a Governance Diagnostic Report that identified governance weaknesses. In the latest

---

[72] How Belize is Transforming the Caribbean | The Nature Conservancy

[73] Olivares-Caminal, Rodrigo, "Why Mozambique need to pay its non-odious debt?" FT Alphaville, 4 April 2019.

Article IV consultation, the IMF urged the authorities to finalize the whistle-blower bill and implement an asset declaration policy for top public officials in accordance with global standards and best practices and ensuring that the Zimbabwe Anticorruption Commission (ZACC) has enough fiscal resources to carry out its responsibilities. Furthermore, IMF required the Auditor General's audit and regular publications on the utilization of the new Special Drawing Rights allotment are publicly available.[74]

Angola's 2018 Article IV consultation noted the country's limited ability to enforce the rule of law. Since then, satisfactory progress has been made to fight against corruption and asset recovery. Among others, the Attorney General's Office (PGR) completed a 2018-22 anti-corruption plan aimed at boosting the prevention and repression of corruption offences as well as enhancing the capability of anti-corruption units and courts. In January 2019, the National Assembly amended the criminal code, which now includes a new chapter on economic and financial crimes with severe penalties for both active and passive corruption. PGR states that it has recovered an estimated $7 billion in financial and real assets as of September 2021, with high-ranking officials having been convicted.[75]

Pakistan has taken recent measures to strengthen governance and control corruption.[76] To improve the institutional framework of the anticorruption institution, including, the National Accountability Bureau, Pakistan created a task force that with participation and input from reputable independent experts. The task force will suggest structural reforms to improve the independence of institutions devoted to combating corruption, guard against political meddling and persecution, and establish mechanisms for accountability and transparency to guard against abuse. Pakistan also established a digital asset declaration system which will improve public access to annual declarations of elected and unelected federal government cabinet. The country is also working to enhance the use of AML tools to support anti-corruption efforts by helping financial entities to improve monitoring capacities to identify politically exposed persons and apply enhanced due diligence measures. This has been done by increasing the resources of the Financial Monitoring Unit (Pakistan's financial intelligence unit), including, hiring additional analyst positions to cope with the increased number of suspicious transaction reports.

On its turn, Zambia has been trying to implement a zero-tolerance policy to combat corruption. Among other measures, the government took disciplinary action against officers of the Ministry of Health involved in the deviation of funds intended for the fight against the COVID-19 Pandemic. Additionally, a Comprehensive Governance Assessment is being conducted with the assistance of the IMF which will be used to create an action plan outlining future initiative to improve governance and minimize corruption.[77] Congo enacted a new anti-corruption law in March 2022 aimed to persecute corruption and has worked with the IMF to regulate conflict-of-interest rules and procedures envisaged in the anti-corruption law.[78]

Conclusion

There is a need to shift focus before debt accumulation reaches unsustainable levels – and not after. The focus should be driven by the preventative measures discussed in this paper: proper debt management, transparency, the rule of law and accountability. Although there are many frameworks in place that should help stakeholders manage debt accumulation, it is clear these have not been properly or thoroughly applied given the current excessive debt exposure for many countries. This is a fault of both debtors and creditors.

---

[74] Ibid. Zimbabwe Article IV Consultation, April 8, 2022.

[75] Angola – IMF, 2021 Article Iv Consultation and Sixth Review Under the Extended Arrangement Under the Extended Fund Facility and Request for a Waiver of Non-observance of a Performance Criterion, January 2022.

[76] Ibid. Pakistan MEFP, August 29, 2022.

[77] Ibid. Zambia, MEFP.

[78] Ibid. Republic of Congo: First Review under the Three-year Extended Credit Facility Arrangement. MEFP July 18, 2022.

On the debtors' side, it is straight forward. Debtors have either not been prioritising debt management or have not been using it efficiently, despite the many benefits that this can bring. Debtors need to have proper debt management mechanisms in place and understand how internal and external shocks can affect repayment capabilities and roll over capacity. However, the consequences are being learnt the hard way, except for a few cases where the hard work has proved beneficial during the pandemic. Implementing debt management tools and full transparency have no immediate benefits and high costs, both in terms of investment to develop the frameworks and political costs of disclosing the entire debt portfolio. Given the usual short-term vision of some authorities, the answer could be simply the lack of incentives and immediate benefits of applying these tools.

However, creditors could also be to blame for not making proper analyses of the risks of lending to a country that it is highly indebted, and for being tempted by the high interest rates offered by some high-risk countries. Creditors should also perform a dynamic roll over and cost-benefit analysis to assess whether the debt can be considered sustainable in different simulation scenarios, to avoid excessive over lending.[79] The shift in the composition of creditors has also played a key role. The usual players, such as the IMF, WB, and Paris Club members, previously had total dominance, but, due to the liberalisation of capital flows and the rapid development of the capital markets since the 1980s, there has been a significant increase in bilateral lending by non-concessional lenders and the private sector. Even so, the multilateral creditors do have responsibilities in this debt accumulation problem.

In terms of transparency, the main problem remains the new forms of bilateral credit arrangements that are often performed via alternative financing methods, such as off-balance lending, execution of swap agreements, or via the participation of SOEs. In most of those cases, it is difficult to obtain a clear picture of the facilities' terms and conditions, given the nature of confidentiality clauses that are usually included, thus affecting transparency. The lack of clear disaggregated and truthful public data and information regarding public debt has been a problem for lenders to assess the actual status of public accounts and repayment schedules. Accurate publication of data has also become difficult due to debt structure being now more complex and diversified in the private sector.

Lack of accurate data about public debt also makes the IMF's DSA difficult and borrowing and investments decisions harder.[80] The application of a centralized information platform regarding the composition of the public debt has also proven problematic for most developing countries. Software such as Meridian has improved the availability of such data, but there is much to be done by key players to support this. Ultimately, the lack of accurate and complete data complicates restructuring procedures.

Transparency and debt management are not magical fixes, but they can contribute significantly to solving the debt problem. Without transparency, there can be no proper debt management strategy (nor accountability), planning, or debt sustainability analysis. All stakeholders—borrowers and lenders—have a role to play to create greater transparency, especially bilateral lenders. Once transparency is achieved, we can focus on debt management, analysing status and planning in the short, medium, and long-term. In all cases, countries need sound macroeconomic policies in place as these tools alone are not enough.

Although it is true that the focus of the debt burden issue is slightly shifting from the ex-post responses of debt restructuring to *ex ante* analysis, cooperation by all stakeholders in the debt building process remains critical. Lenders should also provide incentives by including robust loan clauses and covenants

[79] Vincent S.J. Buccola, An ex-ante approach to Excessive State Debt, Duke Law Journal, November 2014.
[80] Global Economic Prospects, World Bank Group, Flagship Report, January 2021.

such as accurate presentation of financial information, inclusion of certain financial ratios, and even debtors' compliance with some of the guidelines described above so to have more suitable contractual tools. The downside is that sometimes these are difficult to implement when sovereign borrowers are involved.

To achieve debt sustainability, good lending practices are equally as important as good borrowing practices. Debt sustainability requires a sense of shared responsibility among all stakeholders. Although it is a long and tedious path, this is the only way to make debt sustainable over the long term. The final building block is that of the rule of law and accountability, i.e., assuming responsibility, which can only be built on the back of a strong rule of law.

Finally, it is important to stress that the onus should be on measures of debt prevention, which are preferable to *ex post* debt-restructuring. Otherwise, the problem cannot be prevented and despite how efficient we become at restructuring the debt, crises will continue to occur.