



African Forum and Network
on Debt and Development

BORROWING CHARTER

Principles and Guidelines on sovereign financial borrowing
for Sub-Sahara African countries

ABOUT AFRODAD

Vision

AFRODAD aspires for an equitable and sustainable development process leading to a prosperous Africa.

Mission

To secure policies that will redress the African debt crisis based on a human rights value system.

Objectives include the following:

- 1 To enhance efficient and effective management and use of resources by African governments;
- 2 To secure a paradigm shift in the international socio-economic and political world order to a development process that addresses the needs and aspirations of the majority of the people in the world.
- 3 To facilitate dialogue between civil society and governments on issues related to Debt and development in Africa and elsewhere.

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PREAMBLE

Sub-Saharan African(SSA) countries face tremendous challenges in public and publicly guaranteed external borrowing processes and public debt management systems. These challenges have to do with sources of development finance, loan approval processes, loan conditions and conditionality, macroeconomic and regulatory policies, overall institutional capacity, and creditworthiness. The underlying internal causes of debt crises of the previous decades are attributable to weak loan contraction processes and public debt management systems in most SSA countries.

The debt crisis contributed heavily to the social and economic problems in most Sub-Saharan African countries in the 1980s, the 1990s, and 2000s, affecting their macroeconomic stability and international creditworthiness. The debt overhang stunted investment, growth and trade. Debt payments crowded out public expenditure on education, health and other social needs in most indebted countries.

In response to the debt crisis, creditors have devised and implemented two main measures with the aim of reducing the external debt of poor countries pursuing IMF and World Bank adjustment and reform programmes and helping them achieve debt sustainability: the Heavily Indebted Poor Countries (HIPC) Initiative and the Multilateral Debt Relief Initiative (MDRI).

Although it is recognised that some HIPCs have benefited from debt relief through reduced debt-service payments and a corresponding increase in social expenditures, the impact of these measures appears to be limited and of short duration. Despite some savings from debt relief, debt repayments remain high for many developing countries particularly in the light of a reduction of Official Development Assistance (ODA), lower export earnings and meagre resource flows.

This Borrowing Charter contains Principles and Guidelines on sovereign financial borrowing. It seeks to guide and inform sovereign states borrowing so as to improve the current weak administrative, institutional and legal procedures for loan contraction and public debt management systems that have contributed to

the build-up of unsustainable debts. The Principles and Guidelines are based on various findings from AFRODAD debt researches over the years in SSA.

AFRODAD therefore urges SSA countries as borrowers to sign-up and implement the principles and guidelines in the Charter, to ensure efficient use of borrowed funds, prevention of a recurrence of the debt crisis and make governments accountable to its citizens.

The Charter contains the following principles and guidelines:

- 1 Adherence to prudent public borrowing and debt management practices
- 2 Existence of predictable rules and regulations
- 3 Coordinated and coherent structures and obligations
- 4 Existence of an autonomous Debt Management Office
- 5 Public participation, inclusivity and information disclosure
- 6 Respect for human and people's ecological rights
- 7 Mutual respect and equal partnership with lenders and international financiers

I ADHERENCE TO PRUDENT PUBLIC BORROWING AND DEBT MANAGEMENT PRACTICES

1.1 Political Support: The member states parties to this Charter must give prudent public borrowing and public debt management the necessary high level political support to ensure debt sustainability.

1.2 Stable Economic Environment: The member states parties to this Charter must ensure that public debt is prudently managed under the following conditions:

1.2.1 An environment of macroeconomic stability, fiscal sustainability, low interest costs and manageable risk in the raising of funding for sovereign entities.

1.2.2 A public debt and aid strategy consistent with broad macroeconomic policy. To guarantee external debt sustainability, the government must ensure that the rate of growth of the present value of new debt disbursements is equal or less than the rate of growth of the country's exports.

1.2.3 Debt should be treated as a way of obtaining public resources and these resources must be obtained and managed in a way that conforms to the country public financial management rules.

1.2.4 It is prudent to set up an independent debt monitoring board that checks the conformity of any new loan with contraction laws and overall economic policy before its approval. The board should include civil society representatives.

1.3 Constitutional Provisions: The member states parties to this Charter must establish legal frameworks and structures that will be responsible for coordinating and managing public debt.

1.4 Public Consent and Transparency: The member states parties to this Charter must undertake to adopt legislative measures that ensure that all public borrowing and debt management receives Parliamentary approval.

1.5 Capacity Building: The member states parties to this Charter must ensure that their countries have comprehensive, sustainable and long-term debt management capacities. This includes having:

1.5.1 A set of Debt management tools: Accurate and up-to-date records of all public and public-

ly-guaranteed external loans, schedules on debt servicing obligations including contingent liabilities; the capacity to project the impact of borrowing decisions of various domestic entities on the country's overall debt profile; national budget and balance of payments.

1.5.2 The following minimal requirements must be met to ensure that all public staff dealing with loan contraction and public debt management are geared for effective delivery of their duties and responsibilities:

1.5.2.1 Ensure appropriate continuous training of office bearers involved in loan contraction and public debt management-auditors, accountants, economists, lawyers and public administrators.

1.5.2.2 Ensure that qualified and experienced and motivated staff are retained and supported by the necessary infrastructure, technology and financial resources.

1.5.2.3 Encourage hiring of external experts to fill the skills gap.

1.5.2.4 Encourage joint audits between statutorily recognised audit firms that are licensed to practice as external auditors.

2 EXISTENCE OF PREDICTABLE RULES AND REGULATIONS

2.1 Legal Framework: All public loan contraction and debt management rules and regulations must be anchored on constitutional provisions and other precise pieces of legislation defining how public loans should be obtained, used and serviced.

2.2 Borrowing Powers: The Legal Framework must stipulate clearly who has powers to borrow on behalf of the state.

2.2.1 There must be clear legal/constitutional guidelines regarding to responsibilities and associated accountabilities among government agencies involved in debt management, particularly as regards the Ministry of Finance, the Central Bank and any separate or other debt management agency and well-articulated responsibilities for staff with clear monitoring and control policies and reporting arrangements.

2.3 Borrowing Ceilings: There must be laws, regulations and policies which stipulate the limits of external public debt borrowing. This must include sovereign guarantees for private borrowing and should be linked to the country's debt ratios and GDP/exports.

2.4 Borrowing Approval: The Legislative arm of government – Parliament should approve loans before contracts are signed so as to ensure that the loan contraction process is done within the established guidelines and laws, and can be serviced within the National Budget. Parliaments represent the citizens who bear the burden of repayment.

2.5 Authorization process: A policy on borrowing which spells out authorization processes, composition of negotiating teams and preparations for negotiations should be put in place.

3 COORDINATED AND COHERENT STRUCTURES AND OBLIGATIONS

3.1 Institutional Framework, Coordination and Communication: The member states parties to this Charter must establish a National Debt Management Office (DMO), to ensure coordination and smooth communication among the various stakeholders, including Civil Society Organisations and in the case of project financing including affected communities in the loan contraction and debt management processes.

3.2 Ministry of Finance: Responsible ministry (e.g. Ministry of Finance) must present borrowing requirements to government for authorization and to Parliament for approval as may be required in accordance with the laws and regulations of member state.

3.2.1 The Ministry of Finance: must supervise the finances of a country so as to ensure that a full account thereof is made to Parliament and that its financial control is maintained.

3.2.2 Line Ministries: Line ministries must provide

regular progress reports on all external loan supported programmes/projects to Ministry of Finance.

3.2.3 Line ministries: must participate in all consultations and negotiations of all loan agreements for projects and programmes under their jurisdiction.

3.2.4 Line ministries: must implement, monitor and evaluate all projects and programmes within their jurisdiction in close collaboration with funders, Ministry Of Finance, civil society and beneficiaries.

3.3 Parliamentary oversight: Parliament must play the critical role of ensuring accountability in loan contraction and debt management processes.

3.3.1 An Effective and responsible Parliament must mitigate the risks of excessive and unproductive borrowing by reinforcing the countervailing mechanisms of government accountability and legislative scrutiny, and should exert pressure on the Executive to improve fiscal and budgetary performance.

3.3.2 The Attorney General: The Attorney General must provide legal advice during the loan contraction process so as to ensure that the process is consistent with national legislation and the principles and guidelines of this Charter.

3.4 Public Enterprises borrowing: Government must establish procedures and criteria for issuing guarantees to public enterprises. This is important because if public enterprises fail to meet the interest and amortization charges, government will have to pay.

3.5 Central Bank Role: The Central Bank must act as financial advisor of government on issues of loan contraction and debt management. The Bank should ensure transparency and continue to play surveillance and monitoring roles in all financial issues of government.

3.5.1 National legislation must state clearly the powers of the Central Bank, its relation to the Minister of Finance, its autonomy/independence, its accountability to Parliament and the nation, caution must be exercised to avoid arbitrariness/abuse of such powers.

3.5.2 The Central Bank must maintain a secure and efficient payment and settlement system.

3.5.3 The Central Bank must obtain all details of all financial assets of government and quasi-government from financial institutions and report the same to the Debt Office and the Ministry of Finance.

3.5.4 The Central Bank must facilitate settlement of Debt service payments on instructions of the Debt Management Office.

3.6 Auditor General: The Auditor General's office is responsible for auditing Government finances.

3.6.1 The auditor General must be well equipped and timeously report on the country's public accounts.

3.6.2 The Auditor General must undertake independent analysis and ensure that data is disclosed to foster improved management of the debt and understanding of the current and future financial implications of the commitment. Conducts audits to ensure compliance with set benchmarks of financial transactions in debt management.

3.7 Accountant General: The Office of the Accountant General must provide guidelines and procedures for management of public funds. The office must provide the overall framework for control of public resources and expenditure to be debated and approved by Parliament.

3.8 The need for a Single Debt Management Structure:

The member states parties to this Charter must for the purposes of having a well-coordinated loan contraction and Debt Management system establish a Debt Management Office. Debt Management functions should be consolidated into a single debt management office consisting of back, middle and front office functions. The front office deals with Debt policies, policies for borrowing, procedures for debt negotiations, technical knowledge, techniques for negotiating; the middle Office focuses on Analysis- portfolio and risk, suitability of proposed loans while the back office deals with Databases, Maturity of loans, Debt data validation, Grants, and conditionality.

3.9 Joint External Debt Committee (JDDC): A JDDC

must be put in place to direct external debt policy as well as ensure alignment of Fiscal, Monetary and Debt Policies. It must comprise staff from the DMO, Ministry of Finance, Central Bank, Accountant General, the Auditor General and the Securities and Exchange Commission.

4 EXISTENCE OF AN AUTONOMOUS DEBT MANAGEMENT OFFICE

4.1 *Coordination of all Debts:* A Debt Management Office enables a country to consolidate, streamline and strengthen all debt management functions into a single specialized semi-autonomous entity. This allows better organizational control and eliminates the overlap and duplications associated with a situation where several agencies are involved, and where information flow is weak and poorly coordinated.

4.2 *Debt Management Information System:* The Debt Management Office functioning and responsibility must be well written and documented, with a procedures manual, with computerized support relevant debt management software packages.

4.3 *Existence of specialized Services:* Autonomous Public Debt Management Offices (DMOs) must confer distinct organizational and staffing advantages and flexibilities not ordinarily open to debt management

offices/units which are ‘embedded’ in Ministries of Finance and/Central Banks.

4.4 Type of Debt Management Office: The role of a debt office depends on its debt management functions, such as the duties that laws and regulations assign to it, on the strategy it chooses to adopt and on the means placed at its disposal to achieve its goals. .In order to ensure that debt management processes such as debt servicing are done more efficiently; roles and responsibilities must be clear and debt data must be consolidated.

5 PUBLIC PARTICIPATION, INCLUSIVITY AND INFORMATION DISCLOSURE

5.1 Ownership and Accountability: National ownership is crucial for the success of all loan- and grant- funded development projects. The people, who are the ultimate beneficiaries of loans taken in their name, have the right to participate in the decision making process pertaining to the loan. This must be done through parliamentary representation; direct citizen participation or citizen participation through their civic organizations/representations. Civic groups especially watchdogs and interest groups must be recognized as vehicles to enhance public finance ownership and accountability.

5.2 Transparency and full engagement of citizens: The loan contraction process must be transparent and participatory, involving citizens and affected communities through giving them adequate time and information to debate and provide informed opinions

on the taking-on of the loan, including purpose, terms and conditions of the loan in accordance with the national constitution.

5.3 Legal and institutional recognition of civil society:

Governments parties to this Charter must commit to set up official platforms and processes through which citizens can debate and influence economic policy proposals to strengthen public ownership of the economic and debt strategies. Government legislation must state clearly that civil society is encouraged to:

5.3.1 Play an advisory role in the process of loan contraction and debt management working as ‘think tanks’ working closely with negotiators and governments by influencing policy decisions, giving legal, technical or expert advice.

5.3.2 Carry out research and advocacy during the project/programme proposal development and loan agreement negotiation stages.

5.3.3 Reach out to and assist affected communities in debating and undertaking impact analysis of projects by which they will be affected. Any decisions regarding project financing must take the affected communities’ opinions into account.

5.3.4 Monitoring development projects and programmes, including how they are financed. This allows civic groups to monitor the effect of loan-funded programmes and projects, as well as the funds freed up as a result of debt relief initiatives.

5.3.5 Conscientise the public and raise awareness on issues of loans, grants and development finance issues.

5.4 Public disclosure of information: Government legislation on Public Finance and accountability must clearly stipulate that information on the use of borrowed funds must be made available to the public especially civic group that are interested in monitoring government loans and grants. The loan contract must be available to the public and transmitted to various stakeholders using appropriate and locally-accessible means of communication. This could be via Members of Parliament, announcements through websites, national press, radio and/or television.

5.5 Language: The contract must be made available in the main national languages (including the language(s) of affected communities). Both original and translated versions should have equal validity in a court of law.

6 RESPECT FOR HUMAN AND PEOPLE'S ECOLOGICAL RIGHTS

6.1 Public right to sustainable development: In line with the African Charter on Human and People's Rights member states must ensure that citizens are able to exercise their right to sustainable development even in the process of loan contraction and debt management.

6.2 Address negative effects of borrowing: Government must ensure that any adverse effects of the implementation of developments projects are reduced to the minimum for ordinary people especially vulnerable groups such as women and children. Activities financed must not violate human rights and must not contribute to the violation of human rights. These rights are set out in the internationally recognised human rights treaties and conventions to which either borrower or lender is signatory.

6.3 Avoid Displacements: Large scale development projects must by all means avoid displacement of the indigenous people, the rural poor and urban slum-dwellers from their land, livelihood and community. Should development projects for any noble reason result in displacements adequate compensation must be granted to the affected communities.

6.4 Avoid environmental damage: Any public borrowing must not support any venture that contravenes accepted minimum standards on social, labour and environmental protection.

7 MUTUAL RESPECT AND EQUAL PARTNERSHIP WITH LENDERS AND INTERNATIONAL FINANCIERS

7.1 Mutual respect: The member states parties to this Charter must ensure that loan contraction and debt management issues between lender and borrower nations are done with mutual respect and dignity. The fundamental principles of both the 2005 Paris Declaration on Aid Effectiveness and the Accra Agenda for Action must be applied to ensure equal partnership between donors and borrower nations.

7.2 No to conditionality: The member states parties to this Charter must resist the use of conditionality by donors and international financial institutions when borrowing funds. This causes them to be accountable to the lender and not to their own citizens thus undermining the ownership principle in the Paris Declaration on Aid Effectiveness 2005.

7.3 Respect and Empowerment of local institutions: Both Financers and Lenders should provide government watchdog bodies and parliaments with financial and technical assistance to enable them to play an effective role in negotiating and monitoring external loans.

7.4 Fair and Transparent Arbitration: The loan document should provide a provision for an independent and transparent arbitration procedure in case of repayment difficulties or dispute (at the request of borrower or lender). There will be a stay on debt repayments while negotiations are underway. The borrower will also be protected from litigation while negotiations are in progress. Borrowers and lenders will abide by the decision of the independent arbitrator and there is a right to appeal.

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***PRINCIPLES AND GUIDELINES ON SOVEREIGN FINANCIAL
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Who we target

AFRODAD's major target groups are the policy makers in national governments and their institutions, the inter-governmental institutions and sub-regional organisations. These include the Economic Commission for Africa and the African Union, United Nations, and International Financial Institutions such as the African Development Bank, World Bank and International Monetary Fund.

Human Rights Statement

AFRODAD affirms the statements within the International Bill of Human Rights and maintains that the right to development “is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised” (Universal declaration of Human Rights). Accordingly, AFRODAD adopts a Human Rights approach to its activities as a basic operative framework for sustainable development for all.



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