



SAIPAR/AFRODAD WORKSHOP

ON

THE AFRICAN BORROWING CHARTER

Protea Hotel, 26th April 2018

Rapporteur: Neo Simutanyi

Lusaka, April 30 2018

Background:

While foreign debt was either reduced or completely written off for most African countries in the mid-2000s, through the financial support of bilateral development aid, Africa's current macroeconomic performance shows that many countries have accumulated new debts, are facing debt repayment problems thereby putting many countries at the risk of debt distress. The negative consequences on a country faced with a debt crisis as experienced during the 1990s are now well-known. Many African countries, including Zambia (and reportedly Ghana, Mozambique, Rwanda, Senegal and Tanzania) are approaching a debt crisis and already contemplating seeking refinancing. While different countries in Africa may be experiencing this based on their own realities, the emerging pattern points to the need for discussion on short, medium to long-term solutions required to deal and avert such crisis.

This Workshop on the draft Borrowing Charter was organised as one of the many ways towards long term resolution of the problem. The purpose and expected outcome of the workshop was to:

- a) Enrich the Borrowing Charter in its content
- b) Ascertain ways of how to move the Charter forward at the national, sub-regional and regional levels where it will finally be adopted.

Opening of the Workshop:

The Workshop which was facilitated by Mr John Kasanga was attended by about 30 participants, and was officially opened by Prof. Manenga Ndulo, SAIPAR Executive Director. In his remarks Prof Ndulo welcomed the participants to the workshop, with a special welcome to Dr Caleb Fundanga, Director of the Harare-based Macroeconomic and Financial Institute of Eastern and Southern Africa (MEFMI). He noted the on-going collaboration between SAIPAR and AFRODAD in developing the content of the African Borrowing Charter and organising the workshop. He informed participants of SAIPAR's activities, which include: research, hosting resources, such as the Economic Policy Resource Centre (EPRC) and the Zambia Legal Information Institute (ZambiaLII). SAIPAR also publishes Occasional Papers and two journals, the Southern African Journal of Policy and Development and the Zambia Social Science Journal. In conclusion, Prof Ndulo called on participants to contribute constructively to enriching the draft Borrowing Charter and wished participants fruitful deliberations.

Background to the Charter:

Mr Opa Kapijimpanga, the AFRODAD Chairman gave a background to the draft African Borrowing Charter. In his remarks, Mr Kapijimpanga first traced the evolution of the debt crises from the 1070s to the HIPC completion point in 2005 and the Multilateral Debt Relief Initiative (MDRI). He identified four lessons from Africa's debt crises:

- need to understand the underlying cause of the debt crisis;
- need for discipline in the borrowing process;
- need for fiscal responsibility and transparency, including revenue and expenditure mechanisms and accountability (e.g. Nigeria Fiscal Responsibility Act); and
- need for increased domestic resource mobilization to cover over-borrowing for meeting development needs.

Mr Kapijimpanga underscored the fact that Africa is becoming seriously indebted again, despite the debt write-off on the mid-2000s. For example, sub-Sahara's bonds issued to private creditors rose from US\$18.3 billion in 2008 to US\$77.5 billion in 2016, with an estimated US\$25 billion set to mature in 2018. This has prompted some African countries, including Ghana, Mozambique, Rwanda, Senegal, Tanzania and Zambia, to

actively consider refinancing. He stressed that the emerging reality in Africa is that the structure of creditors has changed: as bilateral/concessional debt is on the decline, save for China; multilateral debt, especially from IDA and AfDF is no longer accessible to countries that have attained middle income status. Bilateral development aid is broadly on decline and may not be available to backstop and debt write off as was the case in the mid-2000s. Commercial/market based financial instruments, including sovereign bonds, Public Private Partnerships and blended finance are on the increase as they are more flexible. He noted that there are risks associated with commercial debt, which include: lack of specific targets for negotiation and risk of litigation in the absence of a free and transparent internal arbitration mechanism under the UN system.

In conclusion, Mr Kapijimpanga gave an overview of the draft Borrowing Charter and hoped that participants had an opportunity to read it. He outlined the main aims of the draft Charter as to:

- i) sustainably balance public debt levels with the necessity to accelerate inclusive development and enhance public service delivery; contributing to improvement in the transparency of the political, institutional and administrative processes uses; accountability of state actors involved; and
- ii) ensuring that the contraction and management of public debt, including the issuance of public guarantees, selection and implementation of debt financed projects and formulation and execution of overall fiscal policy taken place within the context of
a strengthened legal framework and rule of law.

The draft Borrowing Charter envisaged that all actions and commitments set out in the Charter would be pursuant to the shared African vision of 'Africa We Want: Agenda 2063', which espouses inclusive growth and sustainable development.

In his guidance to the workshop participants. Mr Kapijimpanga hoped participants would help enrich the draft Charter with their knowledge and insights. However, he pointed out that there was a need to take a long-term view, and not dwell much on the here and now. He further advised that, while the issues were political, there was a need to be non-partisan in the discussions. Lastly, he hoped that the workshop would address itself to two pertinent questions: what is to be done and how do we do that at the national, sub-regional and African level?

The Macro-economic Performance and Borrowing in Africa:

Dr Dale Mudenda, Lecturer in Economics at the University of Zambia presented the paper on Macroeconomic Performance and Borrowing in Africa. In his presentation, Dr Mudenda noted that the overall macroeconomic performance of African countries in the last ten to fifteen years has been poor. Economic growth has either declined or been stagnant; national savings have slowed down, while foreign indebtedness is on the rise, and foreign debt burden growing for most African countries. The implications of this deterioration in macroeconomic performance is that African countries are slipping into a new debt crisis of immense proportions, with at least 40 percent of countries now at risk of debt distress. Further, non-concessional debt is growing to unsustainable levels. Dr Mudenda outlined three effects of the implication of debt distress on African economies:

- cut backs in social sector and infrastructure expenditure;
- reduced social spending has compromised the quality of human capital;
- cuts in infrastructural pending reduces prospects for industrial development, industrialization and economic transformation;

- escalation of taxes, which place high burdens on the poor and vulnerable populations; and
- decline in growth and deterioration in living conditions, with the poor and vulnerable bearing the brunt of the economic decline.

In conclusion, he proposed two broad solutions to stem the risks. These are: (a) a heart-to-heart talk among political leaders at the continental level, building political will through peer-to-peer shake up; and (b) Establishing a legally binding macroeconomic framework capable of forcing political and societal commitments to prudent borrowing. Specifically, an Africa-wide macroeconomic framework proposed within the Charter would have two components: Macroeconomic Framework and Fiscal Accountability Laws. The Macroeconomic Framework would comprise: a fiscal policy and strategy; a monetary and external sector Policy and Strategy and a Debt Strategy. While Fiscal Accountability Laws would ensure that African nations enact Fiscal Accountability Acts and Debt Rules for all public and publicly guaranteed debt, requiring the domestication of the Charter at national level as well as implementation and enforcement of the rules.

The Legal Framework:

In his presentation on the Legal Framework, Dr O'Brien Kaaba, Lecturer in Law at the University of Zambia, outlined a legal framework for the draft Borrowing Charter informed by the Kenyan and Nigerian experiences. He argued that for the Borrowing Charter to be effective and to ensure that African governments were accountable to their citizens on the contraction of debt, fiscal laws should be enacted that would compel Ministers of Finance to seek approval of Parliament before contracting any debt and to periodically inform the public and parliament on the state of the national debt. He argued that the participation of the general public through consultative fora and obligations by elected politicians to seek parliamentary approval on contracting of debt would not only increase transparency, but curtail impunity and lack of accountability in the utilisation of public debt. He emphasised that the fiscal laws should carry severe penalties to ensure compliance and avoid the escalation of debt burdens that now characterise many African countries.

Discussion on the legal framework:

It was observed that politics and governance play an important bearing on the efficacy of legislation on the continent. African parliament not only lack institutional capacity to challenge budget legislation, but also tend to be highly subservient to the Executive in most African countries. Some participants were sceptical about the Africa rising narrative given the patronising attitude of donor countries over debt forgiveness. It may be wrong, therefore, to suggest that African governments played a role in debt forgiveness and were responsible for the boom in commodity prices, as the dynamics were well beyond their control.

Several participants attributed the spectre of public debt to lack of discipline by political leaders. While others felt that what was required was legislation that would compel politicians, especially ministers of finance to be responsible and accountable to their citizens over the procurement of debt. There was a heated discussion regarding the lack of political will to pass legislation that would hold politicians accountable, the lack of information by the public on the level and nature of public debt and the need for a legislation to enforce financial discipline. The consensus was that politicians could not be expected to pass legislation that would impose sanctions on its behaviour and that it was beneficial to some members of government and parliament not to have certain legislation (such as the Financial Accountability legislation) as such laws would interfere with opportunities for 'wealth creation' or corruption. It was recognised that in order to seek the acquiescence of politicians in financial legislation, there would be need for

legislation that is politically viable for politicians to buy-in. Others observed that good laws should establish a standard of behaviour to hold those in office to account. Therefore, good financial laws in themselves may not be sufficient in isolation from political will of those in office to enact laws and enforce them. There was nonetheless, agreement that there is a need for good financial laws as proposed in the Charter and an Africa-wide approach may be able to achieve this. The Charter should include the following issues:

- (i) Need for capacity building on debt management, including establishment of Debt Management Units, especially linked or located in Ministries of Development Planning, with the responsibility for compiling the stock of public and publicly guaranteed debt, its maturity dates and interest;
- (ii) Need to pass a Financial Accountability Bill/legislation to ensure that ministers/politicians adhere to fiscal rules in the debt management;
- (iii) Need to have parliament approval procurement of loans and to account for its use;
- (iv) Need to ensure that all projects are appraised before loans are secured.
- (v) Governments should only borrow when they have thought through the projects they wish to implement and getting loans for its own sake.
- (vi) Need to adopt transparent contracting procedures where loan finance is involved and applying the EITI standard would be useful to enhance accountability.
- (vii) Projects planning should not respond to political whims, such as the electoral cycle, but be based on assessed need and involve parliaments and the general public.

Discussion on Fiscal accountability:

It was observed that fiscal accountability requires semi-autonomous debt management units, whose responsibility would be to compile information on the public debt and make this information available to the public. Currently, many countries do not have identifiable and semi-autonomous debt management units, which leads to a situation where the extent of public debt is unknown and the use to which part of the borrowed money is not disclosed. Some participants, pointed out that debt should be obtained for good reasons, because sometimes money is borrowed simply because it is available and not because it is needed. This has led to a situation, where some countries have ended up borrowing their own money on the international financial markets because some African Central Bank reserve funds are being invested overseas where the returns are negative – rather than being used within the continent.

Others felt that the tendency of over-borrowing has been exacerbated by lack of accountability mechanisms to hold political leaders to account. They lamented the lack of proper project appraisals by independent actors and a framework that would make political leaders adhere to borrowing commitments. A trend of borrowing money without undertaking prior project appraisals was also observed, especially in infrastructural projects, where finance was obtained from bilateral donors (especially China). In most of those cases, projects tend to be over-priced, as the case of the Ndola-Lusaka dual carriageway priced at US\$1.2 billion illustrates.

In order to ensure fiscal accountability there is need for the Central Bank to operate with independence in determining monetary policy. However, it was observed that there

tends to be friction between Central Banks and government over government exceeding borrowing ceiling. As Central Banks operate under political constraints the government has tended to have its way, to the extent of over-borrowing to unsustainable levels and wiping out external reserves. The relationship between the Central Bank and government therefore needs to be anchored in a legal framework that guarantees Central Bank autonomy.

Next steps – way forward:

The following were the specific recommendations made on possible ways of moving the draft African Borrowing Charter forward:

(a) National Level

1. Need to organise workshops for Members of Parliament in order to have champions for the Borrowing Charter.
2. Need to establish coalitions between civil society and the private sector to tackle domestic debt arrears affecting a majority of companies (especially in countries where public domestic debt is huge; such as is the case in Zambia).
3. Need to undertake a domestic legal and political gap analysis.

(b) Sub-Regional

1. Financial Accountability laws should be adopted at sub-regional levels of the Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel-Saharan States (CEN-SAD); East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC) to ensure that governments use peer pressure to compel colleagues to be accountable to citizens on loan commitments;
2. Need to adopt protocols that compel African governments to domesticate international agreements on loan repayment commitments.

(c) Africa

1. Need to lobby the African Union to adopt an African Union Charter on Borrowing.
2. Need to use the African Peer Review Mechanism (APRM), as a mechanism for enforcement national commitments on transparency and accountability over borrowing.
3. Collaborate with UNECA in the finalisation of the African Borrowing Charter and use of its advocacy infrastructure and networks
4. Engage the African Legal Support Facility (ALSF), hosted by the African Development Bank ("AfDB") Group for technical assistance to African countries in negotiation of complex commercial transactions, creditor litigation and other related sovereign transactions.

Participants: AFRODAD/SAIPAR Workshop on the African Borrowing Charter

1. Bradford Machila Lawyer, former MP and Minister
2. Brian Mwiinga Centre for Trade Policy and Development (CTPD)
3. Caleb Fundanga Macroeconomic and Financial Institute of Eastern and Southern Africa (MEFMI)
4. Chanda Chileshe Jesuit Centre for Theological Reflection (JCTR)
5. Chenai Mukumba CUTS International
6. Dale Mudenda University of Zambia
7. Fidelite Nshimiyimana African Forum and Network on Debt and Development
(AFRODAD)
8. Florence Muleya Zambia Institute for Policy Analysis and Research (ZIPAR)
9. Humphrey Mulenga Parliamentary Economic Committee, Zambian Parliament
10. John Kasanga Facilitator
11. Justine Sichone Southern African Institute for Policy and Research (SAIPAR)
12. Katja Fuehrer GIZ
13. Laura Miti Alliance for Community Action (ACA)
14. Manenga Ndulo SAIPAR/University of Zambia
15. Marja Hinfelaar SAIPAR
16. Marriot Nyangu Centre for Trade Policy and Development (CTPD)
17. Miljan Sladoje International Growth Centre (IGC)
18. Mzwanele Mfunwa United Nations Economic Commission for Africa (UN-ECA)
19. Nalucha Nganga-Ziba Action Aid Zambia
20. Neo Simutanyi Centre for Political Dialogue (CPD)/Rapporteur
21. O'Brien Kaaba University of Zambia
22. Opa Kapijimpanga AFRODAD
23. Robert Jenkins Kivu International/British Council
24. Sine Tepe United Nations Economic Commission for Africa (UN-ECA)
25. Tine Banda SAIPAR/AFRODAD Board
26. Tirivangani Mutazu AFRODAD
27. Tommy Singone Civil Society for Poverty Reduction (CSPR)
28. Trevor Simumba Independent Consultant
29. Zengeni Simuchembu Alliance for Community Action (ACA)

Workshop Program

- 09:00 Opening of Workshop
Brief Remarks by Manenga Ndulo, Executive Director, SAIPAR
- 09:10 Background to the Charter: AFRODAD Chairperson, Opa Kapijimpanga
- 09:30 The Macro-economic Performance and Fiscal Accountability: Dale Mudenda
- 10:00 Legal Framework: O'Brien Kaaba
- 10:30 Health Break
- 11:00 Discussion on the Legal Framework
- 12:00 Discussion on Fiscal Accountability
- 12:30 Next Steps
(a) National Level
(b) Sub-regional level
(c) Continental level
- 13:00 Closing Remarks: Marja Hinfelaar, SAIPAR
Lunch