AFRODAD

AFRICAN FORUM AND NETWORK
ON DEBT AND DEVELOPMENT

THE AFRICAN BORROWING CHARTER

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ABOUT AFRODAD

VISION
A prosperous Africa based on an equitable and sustainable development.

MISSION
To contribute to Africa's inclusive economic growth and sustainable development through influencing policy change on debt management and development finance anchored on a right based approach.

AFRODAD OVERALL STRATEGIC GOAL
The overall goal of AFRODAD is 'to influence African Governments to institute and implement policies and practices for sustainable development and eradication of poverty'.

THEMATIC FOCUS AREA 1: DOMESTIC RESOURCE MOBILISATION
Thematic Goal: To contribute to the development and implementation of transparent, accountable and efficient mechanisms for mobilization and utilization of domestic resources in Africa.

THEMATIC FOCUS AREA 2: DEBT MANAGEMENT
Thematic Goal: To contribute to the development and implementation of sustainable debt policies and practices in Africa.

THEMATIC FOCUS AREA 3: INTERNATIONAL PUBLIC FINANCE
Thematic Goal: To influence the quality, impact and effectiveness of international public finance, in line with the agreed development cooperation effectiveness principles.

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BACKGROUND AND RATIONALE FOR THE CHARTER

AIM OF THE CHARTER

The Borrowing Charter aims to sustainably balance public debt levels with the necessity to accelerate inclusive development and enhance public service delivery in Africa, the Borrowing Charter aims to contribute to improvements in the transparency of the political, institutional and administrative processes used; and the accountability of the State actors involved in: the contraction and management of public debt; the issuance of public guarantees; the selection and implementation of debt financed projects; and the formulation and execution of overall fiscal policy, within the context of strengthened legal frameworks and the rule of law.

All the actions and expected commitments set out below are in pursuit of the African shared vision of "The Africa We Want: Agenda 2063" for "A prosperous Africa based on inclusive growth and sustainable development".[1]

GUIDING PRINCIPLES

The Charter hinges on the following broad principles and guidelines[2]:

1.0 AGENCY:

African Governments are agents of the State and, as such, when they contract debt obligations, they have a responsibility to protect the interests of their citizens. All public debt and guarantees shall be approved by Parliament which shall also provide oversight on performance of the loans on behalf of citizens.

1 See http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf the version based on wide Africa wide Consultation by the African Union.
2 Drawn heavily on the UNCTAD principles. See http://unctad.org/en/Docs/osgdp20102_en.pdf

2.0 LEGAL FRAMEWORK:

Public debt contraction and use shall be anchored in constitutionalism; backed by a legal framework and rule of law; based on coherent and coordinated structures with predictable rules and regulations, supported by a debt management strategy for long term debt sustainability.

Violations of relevant laws and regulations shall attract sanctions and penalties.

3.0 TRANSPARENCY AND ACCOUNTABILITY:

The process for obtaining financing and assuming public debt obligations and liabilities shall be transparent and accountable. African Governments have a responsibility to put in place and imple¬ment a comprehensive legal framework that clearly defines procedures, responsibilities and accountabilities. They should particularly put in place arrangements to ensure the proper parliamentary approval and oversight of official borrowings and other forms of financing, including guarantees made by State-related entities.

4.0 DISCLOSURE AND PUBLICATION:

African governments have an obligation to disclose and publish relevant terms and conditions of all financing agreements to citizens and should respond openly to requests for related information from them. Legal restrictions to disclosing information should be based on evident public interest and should be applied reasonably.

Furthermore, African Governments recognize that civil society organizations, communities and movements have a right to engage on issues of public debt through their research and advocacy work as they are directly affected.

Information disclosure is key to transparency and accountability but is also a Right as enshrined in The African Charter on Human and People's Rights[3].

5.0 PROJECT FINANCING:

In the context of project financing, African governments have a responsibility to conduct a thorough ex ante investigation into the financial, operational, civil, social, cultural and environmental implications of the project and its funding. Results of the project evaluation studies should be made public.

6.0 ADEQUATE MANAGEMENT AND MONITORING:

African governments have a responsibility to put in place and implement a debt sustainability and management strategy and to ensure that their debt management is adequate and effective monitoring systems are in place to ensure achievement of planned development results. An audit institution should conduct independent, objective, professional, timely and periodic audits of debt portfolios to assess quantitatively and qualitatively the recently incurred obligations. The findings of such audits should be public to ensure transparency and accountability in debt management. Audits should also be undertaken at sub-national levels.

7.0 AVOIDING INCIDENCES OF OVER-BORROWING:

African governments have a responsibility to weigh costs and benefits when contracting loans. They should seek a loan if it would permit additional public or private investment, with a prospective social return at least equal to the likely interest rate. In order to inform determination

3 https://au.int/en/treaties/african-charter-human-and-peoples-rights

of the prospective social return, governments should undertake ex ante human rights impact assessments for specific project financing. Such impact assessments should also be systematically undertaken within national debt sustainability assessments as part of a debt management strategy. The development effectiveness of project financing should also be determined in reference to national development strategies.

8.0 BINDING AGREEMENTS:

A public debt contract is a binding obligation and should be honoured. Exceptional cases nonetheless can arise which could invalidate the debt (including making it odious) or a state of economic necessity which could prevent full and/or timely repayment. In that regard, the government has an obligation to seek competent judicial authority to rule that circumstances giving rise to legal defence will have occurred.

9.0 RESTRUCTURING:

In order to maintain international market credibility and stability, debt restructuring should be an option of last resort. However, if a restructuring of public debt obligations becomes unavoidable, it should be undertaken efficiently, effectively and equitably.

PAST EXPERIENCE AND NEW TRENDS

The African Borrowing Charter seeks to protect the continent from unsustainable and unsafe public debt contraction and accumulation,in order to stem the risks of possible deterioration in the fiscal positions of African states and living standards of African citizens. This cautionary goal stems from Africa's past experiences with heavy indebtedness.

The high levels of indebtedness faced by African countries during the 1970s, 1980s and 1990s until securing debt relief through the Heavily Indebted Poor Countries (HIPC) Initiative initiated in 1996 and the Multilateral Debt Relief Initiative (MDRI) initiated in 2005 did leave scars on the development of the African continent. African countries borrowed heavily during the 1970s supported by high commodity prices and the eagerness of commercial lenders to off-load their petrol-dollar surpluses. The deteriorating terms of trade and increasing interest rates did not deter African countries from borrowing during the 1980s driven by the need for development.

The region during the 1980s had in the meantime experienced stagnation and even decreases in industrial output and exports. By 1990, the African countries were under debt stress and unable to service the loans. The inability to service loans accumulated arrears which were capitalized. The debt stock had increased from US$ 9.9 billion in 1970 to US$ 271.9 billion by 19904. External debt as a percentage of GDP which was at 13% in 1970 had risen to 112.4% in 19905. The debt was unsustainable, as African countries were unable to repay current and future debt service obligations without recourse to debt rescheduling, debt relief or accumulation of arrears. The unsustainable debt burden contributed, among other things, to fiscal un-sustainability, a decline in social indicators, decline in industrial output and undermined development institutions. Broadly, it compromised poverty reduction efforts too[6].

4 See Uka Enzewe: The African Debt crisis and the challenge of development Table 1 : https://www.econstor.eu/bitstream/10419/140384/1/v28-i01-a07-BF02928100.pdf

5 ibid

6 See The African Development Bank (2013): Monitoring Fiscal Sustainability in Africa at www.afdb.org/uploads/tx_llafdbpapers/Prresentation.pdf

Debt relief was inevitable and was secured through debt cancellations by bilateral and multilateral donors through various initiatives and finally through the Heavily Indebted Poor Countries (HIPC) Initiative initiated in 1996 and the Multilateral Debt Relief Initiative (MDRI) initiated in 2005. Post HIPC efforts saw a decline in the debt burden in 26 African countries from a GDP weighted average of 104% down to 27% in 2006[7]. Debt relief was secured through concerted lobby and advocacy efforts of African governments, African and global civil society movements. One key point to remember here is that the larger part of the debt was owed to bilateral governments and multilateral financial institutions.

The post 2008 global financial crisis period began to exhibit trends towards high levels of public debt of African countries with indications of some already entering unsustainable indebtedness levels in 2018 with some countries reaching Debt to GNP ratio of 200%. The changing landscape of development finance has made African countries seek other sources of development finance. The decline in ODA and the shrinking space for concessional finance have led African countries to increasingly rely on borrowing.

African countries that have graduated into Middle Income Country status (such as Zambia, Ghana, Senegal) are no longer able to access concessional loans from regional banks and the International Development Association (IDA) and are therefore resorting to other forms of development finance. Some projections indicate that over the next twenty years, concessional finance will not be available to most African countries. For that reason, there is going to be an increasing shift to market based financial instruments including sovereign bonds, public private partnerships, blended finance and new bilateral lenders especially China.

Recent increases in borrowing from the new sources pose a risk largely because African countries are still fragile: they have weak

7 ODI Working Paper 397

infrastructure, narrow production bases, are mostly still highly dependent on commodities, have shallower financial markets, weak institutions (including project and debt management), limited administrative capacity, less efficient tax systems as well as weak legal frameworks. In more recent times a number of African countries have increasingly turned to issuing international sovereign bonds. The World Bank IDS (International Debt Statistics) show that Sub-Saharan African bonds issued to private creditors (without making the distinction on whether on domestic or international markets) rose from $18.3 billion in 2008 to $77.5 billion in 2016. It is estimated that around US$25 billion is set to mature in 2018 and some African countries (reportedly Ghana, Mozambique, Zambia, Rwanda, Senegal and Tanzania) are already contemplating seeking refinancing.

There may be some advantages to Eurobonds: Governments have more control and flexibility of the use of the debt proceeds as the terms and conditions are generally more favourable than other external debt instruments. For that reason, these bonds have been issued for various reasons including deficit financing. The bonds could also potentially strengthen macro-economic discipline, transparency and accountability if used properly as they could be under the watch of citizens and the international market participants. Equally, if used properly they could be used for long term investments which traditional ODA is insufficient or not able to accessible.

There are however, many risks associated with Eurobond issuances: these include the fact that repayment is at maturity and not amortized. In the absence of a viable sinking Fund, the debt may be unsustainable. Secondly as the bonds are denominated in a foreign currency (usually in US$), there are foreign exchange risks where any forms of devaluation could generate more debt; interest rates can change, increasing the cost of the debt. Eurobonds are also potentially more difficult to restructure due to the large number of creditors involved in the deal.

Public Private Partnerships (PPPs) are increasingly becoming popular with African governments as it is possible not only to leverage the abundant private sector resources for large scale infrastructure projects which governments themselves may not be able to embark on but also share project risks between the public and private sectors. There are many risks associated with PPPs which governments will need to examine based on experiences in other countries. Fundamental to those that are those associated with issues of transparency and accountability in particular around the costs associated with the associated debt especially given that they are treated as off-budget transactions.

There are also other sources of financing development which have an impact on debt sustainability. One important one is the non-traditional lenders under the South-South Cooperation of which China, India and Brazil are significant. These in themselves pose other risks.

It should be noted that while the last debt relief was possible via the HIPC and MDRI, as it stands today there are no new mechanisms for debt relief. The Sovereign Debt Restructuring Mechanism proposed in 2001 by the International Monetary Fund was opposed by the US government and is therefore moribund. In 2014, the UN General Assembly adopted a resolution "towards the establishment of a multilateral legal framework for public debt restructuring processes." Little has happened since then as the resolution is non-binding.

Fiscal instability has been a major feature of African economies directly related to debt issues. Lack of fiscal discipline in African countries has led to persistent budget deficits and mounting debt stock[8]. Sub-Sahara Africa has equally shown a decline in budget transparency, participation and oversight. The Open Budget Survey of 2017 shows that of the 27 countries in Africa is less open about their fiscal activities than other countries in the world. In the Open Budget Index 2017 Sub-Sahara Africa scored 29 as

8 African Development Bank: Monitoring Fiscal Sustainability in Africa: Symptoms and Sources, August 2013

compared to 73 by Western Europe and United States of America[9]. Lack of transparency and accountability contributes to persistent budget deficits and debts.

Given that African countries are dependent on volatile commodity revenues, making their budgets vulnerable to fiscal pressures, there is a need for a legal framework which will call for fiscal discipline.

The need for Africa to look inward for solutions towards sustainable debt is inevitable.

9 Open Budget Survey Table 3 on page 20 at https://www.internationalbudget.org/wp-content/uploads/open-budget-survey-2017-report-english.pdf

THE CHARTER

This, the African Borrowing Charter is issued this …. Day of … 2018 by Heads of States and Government of the undersigned African countries, outlining the principles, conditions, rules and responsibility structures under which the contraction, utilization and monitoring of public debt will be done, and defining the rights, privileges and responsibilities of the undersigned African countries in the full debt governance and management process in Africa.

PREAMBLE

Committing to to pursuit of the shared aspiration of a prosperous Africa based on inclusive growth and sustainable development as enshrined in the "Africa We Want" Agenda 2063,

Recalling that most countries in Africa had faced a debt crisis during the 1970, 1980s and 1990 which had impacted negatively on development of the African people;

Being aware that current and future governments are agents of the State and have a responsibility to protect the interests of citizens when they contract debt obligations;

Being fully aware that it is the citizens who must ultimately repay the money and therefore their engagement with governments as individuals, civil society organizations and movements on public debt is legitimate and is secured by the African Charter on Human and People's rights;

Recognizing that public debts contracted are binding to successive governments and future generations, adherence to prudent public borrowing and debt management practices is essential for intergenerational development;

Aware that African countries face tremendous problems in loan contraction and approval processes and public debt management contributing to unsustainable debt levels which can compromise expenditures on education, health and other social and development needs;

Concerned at the increasing levels of unsustainable indebtedness as a result of external shocks, high financing costs and sometimes fiscal unsustainability resulting from fiscal indiscipline on the African continent and the risks that these carry with them.

THEREFORE

The signatories have developed/adopted this Charter aimed at sustainably balancing public debt levels with the necessity to accelerate inclusive development and enhance public service delivery in Africa; contributing to improvements in the transparency of the political, institutional and administrative processes used; and the accountability of the State actors involved in the contraction and management of public debt, the issuance of public guarantees, the selection and implementation of debt financed projects and the formulation and execution of overall fiscal policy, within the context of strengthened legal frameworks and the rule of law.

1.0 UNDERTAKINGS

1.1 THE LEGAL FRAMEWORK

In order for public debt to be sustainable there is need for a robust legal framework, which also ensures that there is wide consultation on the requirements to be fulfilled, the prudency of government borrowing, the level of transparency and accountability in borrowing processes and agreements, and the right oversight in the utilization of the borrowed moneys. Good practice should be mandatory, entailing that all loans are appraised ex-ante and assessed in their performance as well as after their utilization. A good legal framework[10], ultimately, seeks to protect the public from irresponsible fiscal decisions being made at the sole

10 Drawn from good practices in South Africa, Kenya, Nigeria, Uganda, Zambia and Zimbabwe.

discretion of those in office. A good legal framework secures equitable distribution of public resources and balances the intergenerational burdens between the current and future generations. A good legal framework should at a minimum contain the following principles:

1. When tabling the annual national budget, the minister responsible for finance shall, in relation to public debt, indicate to parliament estimates of interest and debt servicing charges and any repayments on loans; indicate intentions regarding borrowing and other forms of public liability, which shall increase the public debt during that year and future financial years; and accumulated borrowings for previous financial years.

2. The minister of finance shall be required to report at the end of every month in Government Gazette and public media actual borrowings for that period and for the financial year up to the end of that year.

3. A loan obtained by government shall be applied solely for the purpose for which it was obtained and in accordance with the terms and conditions under which it was obtained, unless parliament is consulted and votes in favour of applying the funds towards another purpose.

4. The minister of finance shall report to parliament every six months on all loans acquired by the government. The report should include:

    (i) The names of the parties to the loans;
    (ii) The amount of the loan and the currency in which it is expressed and in which it is repayable;
    (iii) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment;

(iv) *The amount of the loan advanced at the time the report is submitted;*
(v) *The purpose for which the loan was/is used and the perceived benefit of the loan and such other information as the Members of Parliament may consider appropriate.*

5. The report to Parliament shall further include a record of all guarantees given by the government within the reporting period as well as the cumulative figures of the guarantees. With regard to each guarantee, the record should include:

   (a) *Names of parties to the loan that is guaranteed;*
   (b) *The principal amount of that loan; and*
   (c) *Terms and conditions applicable to the loan.*

6. A public institution shall not be allowed to borrow, guarantee a loan or commit public finances unless such is authorized under an Act of Parliament or law relating to that institution. All public debt shall only be contracted through the minister of finance.

7. Where a person or entity lends money to a public institution in violation of the constitution or an Act of Parliament, the state and that public institution shall not be bound by the contract.

8. Purposes for which money can be borrowed should be restricted to funding capital developments or any other purpose approved by parliament by a special resolution.

9. The minister of finance shall submit to parliament a debt management strategy over the medium term with regard to actual liability and potential liability in respect of loans and guarantees and its plans for dealing with those liabilities. The information in the debt management strategy should include:

(a) *The total stock of debt as at the date of the statement;*
(b) *The sources of the loans made to the government and the nature of the guarantees given by the government;*
(c) *The principle risks associated with those loans and guarantees;*
(d) *The assumptions underlying the debt management strategy; and*
(e) *An analysis of the sustainability of the amount of debt, both actual and potential (s. 33(3)).*

10. The constitution shall give locus standi to any person to apply to court to enforce the provisions of the constitution or an Act of Parliament relating to public finance and public debt.

1.2 THE DEBT MANAGEMENT OFFICE/BUREAU:

1). In order to support efficient and effective debt management, African countries should establish a Public Debt Management Office as a body corporate whose functions include preparing a Medium Term Debt Management Strategy; preparing and publishing and annual borrowing plan; advising the Minister of Finance on all government borrowings; **appraising** all loans and guarantees provided, undertaking annual debt sustainability analyses; and preparing forecasts of public debt.

2). Duties will include with functions to include:
(a) *Establishing an effective debt management system; maintaining a reliable, public database of all loans taken or guaranteed by the government;*
(b) *Preparing and implementing plans for efficient management of external and domestic debt; and*
(c) *Minimizing the cost of public borrowing; Forecasting loan servicing obligations for each financial year;*
(d) *Securing development results of the borrowed resources;*

(e) *Promoting the development of the market institutions for government debt securities;*
(f) *Maintaining the Debt to GDP ratio prescribed by the Fiscal Responsibility Act;*
(g) *Ensure the sharing of the benefits and cost of public debt between the current and future generations.*

3). The Office/Bureau should be mandated to advise the government on the financing gap each year and amounts of money to be borrowed. Such advice of the Bureau shall form the basis for the national borrowing programme for the succeeding financial year as may be approved by Parliament.

Although the power to borrow or guarantee a loan vests in the minister responsible for finance, the minister can only do so if the terms and conditions of the loan are in accordance with standard terms and conditions approved by the National Assembly.

1.3 MACRO-ECONOMIC POLICY FRAMEWORK AND FISCAL RESPONSIBILITY ACT[11]

The link and the interdependence between debt management, fiscal policy and monetary policy is a complex one. The levels of government revenue and expenditure determine the amount of debt that needs to be issued. Conversely, the debt structure and level affect fiscal costs of debt servicing and can jeopardize fiscal sustainability. Poor fiscal management and high debt levels can lead to inflation and high interest rates which in turn can lead to lower government revenues. Monetary policy in terms of exchange rates can limit the amount of debt that can be acquired and in turn, poor debt management can constrain the Central Bank's willingness to devalue a currency (to reduce imports and

11 These exist in many countries including UK, Croatia, Nigeria, Guyana, Mexico, Hungary and New Zealand.

encourage exports) as this would precipitate a debt crisis. Fiscal policy and monetary policy are interdependent as high inflation and interest rates may reduce government revenue and poor fiscal management can lead to rise in interest rates and currency devaluation. Fiscal policy, monetary policy and debt management need not only be coordinated for achieving macro-economic stability but delivered in an accountable and transparent way for long term sustainable economic and social development. All these hinge on strong fiscal responsibility as it is most volatile to political expediency.

African nations shall enact a **Fiscal Responsibility Act** that will impose on the national Treasury duties for ensuring sound public finances. The main objective of the Act will be to maintain transparency, parliamentary oversight, and the medium and long-term sustainability of public finance through the establishment of (periodically reviewed) long-lasting fiscal rules on the basis of which the government shall run its fiscal policy. The Act will draw on international good practices that will result in greater efficiency in the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters.

The Act shall enshrine various duties of the Treasury or any other agency to include the following:

1. Set long-lasting fiscal rules aimed at enshrining good practices for sound fiscal management of revenue collection and spending as a basis for achieving sustainable fiscal regime to secure long term inclusive development and growth;

2. Strengthen fiscal responsibility through use of the three-year Medium Term Expenditure Framework and annual Fiscal Impact Assessment of proposed Acts, decrees, or other government regulations and measures related to expenditures;

3. Undertake fiscal and financial studies, analysis and diagnosis and disseminate results to the public;

4. Building reserves in times of improved terms of trade to counteract price volatilities and fiscal pressures;

5. Focus on long term rather than short term gains through improved use of medium term expenditure frameworks to secure **inter-generational planning;**

6. Fiscal Strategy Papers which would include the following:
   a). estimates of aggregate revenues for each financial year in the next three financial years, based on the predetermined Commodity Reference Price adopted and tax revenue projections;
   b). aggregate tax expenditure projection for the government for each financial year in the next three financial years;
   c). minimum capital expenditure floor for each financial year in the next three financial years;
   d). a Consolidated Debt Statement setting out and describing the fiscal significance of the debt liability of the Government and measures to reduce any such liability;
   e). Targets for debt sustainability (e.g. to reduce debt to 70% as percentage of GDP in x years); and
   f). statements describing the nature and fiscal significance of contingent liabilities and quasi-fiscal activities and measures to offset the crystallization of such liabilities.

7. Annual assessment of Fiscal risks as may arise from external shocks, performance of public-private partnerships and other unforeseen macro-economic developments;

8. In preparing the Medium-Term Expenditure Framework, the government should hold public consultation, on the Macro-Economic Framework, the Fiscal Strategy Paper, the Revenue and Expenditure Framework, the strategic, economic, social and developmental priorities of government, and such other matters as the Minister deems necessary:

   Provided that, such consultations shall be open to the public, the press and any citizen or authorized representatives of any organization, group of citizens, who may attend and be heard on any subject;

9. The Macro-economic framework, the Fiscal Strategy Paper and the Medium-Term Expenditure Framework, shall be approved by Parliament;

10. **Debt Rule:** Public debt will be at maximum of **50% of GDP** in any one given year[12].

12 As adopted by the West African Economic and Monetary Union (WEMU) members: Benin, Burkina Faso, Cote d'Ivore, Guinnea-Bissau, Mali, Senegal and Togo.

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