



**AFRICAN FORUM AND NETWORK
ON DEBT AND DEVELOPMENT**

THE LEGAL AND INSTITUTIONAL FRAMEWORKS ON SOVEREIGN DEBT CONTRACTION AND MANAGEMENT IN GHANA

Validation Webinar

Date: 13th November 2024 at 1200hrs GMT/1400hrs CAT/1500hrs EAT

Registration Link: https://us02web.zoom.us/webinar/register/WN_UuoPZHVqT6ymRHlkX2QIQw

Introduction

The African Forum and Network on Debt and Development (AFRODAD) is a Pan-African civil society organisation established in 1996 to advocate for debt cancellation and addressing debt related issues in Africa. Over the past 25 years, AFRODAD has built expertise on public debt management issues and its intersectionality with domestic resource mobilisation, and international public and private finance in Sub-Saharan Africa and continues to be concerned that African economies do not become highly indebted and in debt distress as in the 1980s. We work with government officials across Africa, Members of Parliament, media and journalists, civil society organisations, and representatives from the global financial architecture at continental and global levels. We advocate for accountable and transparent public debt and financial management; strengthening of legal and policy frameworks to curtail leakages through illicit financial flows and profit shifting; prioritising revenue generating opportunities through all forms of finance in Africa. Our work focuses on influencing African governments and institutions to adopt accountable and transparent public debt management policies and practices for sustainable development and eradication of poverty. Since our establishment, we have been contributing to finding sustainable solutions to Africa's challenges in debt management and resource mobilisation, including financial development. Our main focus areas are Sovereign Debt Management, Domestic Resource Mobilisation, International Public and Private Finance and Legal Analysis of these aspects.

Over the past year, AFRODAD in conjunction with its partner, the International Lawyers project (ILP), has been working on a project to develop legal studies analysing in detail the legal and institutional frameworks governing sovereign debt contraction and management in different African countries including Ghana, Malawi, Ethiopia and Chad. This webinar serves as a platform for the validation of the Ghanaian study. The webinar will provide a detailed discussion on the findings of the study, which findings are summarised in the background section hereinbelow. The webinar will bring together academia, civil society, government officials, parliamentarians, legal professionals, and other stakeholders in the public debt arena in Ghana for a detailed discussion on the debt situation in Ghana against the context of the findings of the study.

Background

Ghana was once under British rule. There was no motivation for newly independent Ghana to turn to external or domestic creditors to finance its plans and projects in the early years after independence because most of the cash for infrastructure development came from foreign exchange earned from cocoa exports. But the international slump that followed Kwame Nkrumah's government's reliance on cocoa export earnings had a negative effect on the economy and the government's capacity to finance its aggressive industrialisation goal. As a result, to handle the nation's debt, the military governments would turn to the International Monetary Fund (IMF). An enhanced dependence on debt necessitated a strong framework for managing debt. An analysis of Ghana's debt load since independence presents a dismal picture of the country's capacity to manage its debt sustainably.¹

Ghana's government declared in July 2022 that it had formally contacted the IMF to request an extension of its credit facility and assistance in debt restructuring, as the country's debt levels had become unmanageable and were threatening its capacity to pay bills when they became due. Years of excessive borrowing after her debt stock was reduced through the Heavily Indebted Poor Countries (HIPC) Initiative effort and the accompanying Multilateral Debt Relief Initiative (MDRI) culminated in this announcement. Ghana has experienced roughly sixteen (16) debt restructurings between the time of its independence and 2023, with the years 1980 to 2000 representing the peak of the country's debt crisis.²The institutions used to contract debt are a key component of the present debt stock that contributed to the current state of affairs. As a result, there has been an increase in the interest rate and debt servicing costs. Ghana's creditors have changed in the post-HIPC and MDRI era from being bilateral and multilateral to being commercial—banks, mutual funds, pension funds, etc. As of 2023, commercial debt accounted for roughly 57% of Ghana's overall debt, with export credits and other concessional obligations making up the remaining 34% and bilateral and multilateral debt accounting for the remaining 10%.³

What do the figures actually look like? According to an overall accounting of Ghana's debt, as of December 2022, the debt stock was valued at GH¢546.15 billion, or roughly \$63.32 billion. This amounts to approximately 88.1% of GDP (or 105% of GDP when major state-owned enterprises and related debts are taken into account), and it was anticipated to increase to approximately 98.7% of GDP by the end of 2023.⁴ It must also be mentioned that the 2023 Debt Sustainability Analysis (DSA) demonstrated that Ghana was in debt distress, while the 2024-2027 Medium-Term Debt Management Strategy indicated that

¹ AFRODAD, 'The Legal Foundations of the African Public Debt' (AFRODAD) <<https://afrodad.org/sites/default/files/publications/Afrodad-The-legal-foundations-08112023-1.pdf>> accessed 13th October 2024.

² Ministry of Finance Ghana, 'Public Debt <https://mofep.gov.gh/public-debt> accessed 11th October 2024.

³ World Bank, Joint World Bank and IMF Sustainability Analysis <https://documents1.worldbank.org/curated/en/973971632340489819/pdf/Ghana-Joint-World-Bank-IMF-Debt-Sustainability-Analysis.pdf> accessed 13th October 2024

⁴ International Monetary Fund. African Dept. (2024). Ghana: Second Review Under the Arrangement Under the Extended Credit Facility, Request for Modification of Performance Criteria, and Financing Assurances Review—Debt Sustainability Analysis. *IMF Staff Country Reports, 2024*(213), A002. Retrieved Oct 13, 2024, from <https://doi.org/10.5089/9798400282713.002.A002>

the debt-to-GDP ratio was as 72.3% as of December 2023.⁵ Ghana's present debt crisis has been attributed to several factors.⁶

The fundamental legal instrument governing public debt and its management in Ghana is the Constitution of Ghana 1992, which is the supreme law of the land. The management of public debt is a matter of financial and fiscal policy, which ultimately comes under the purview of Parliament under the Ghanaian Constitution.⁷ The Constitution grants validity to all other legislative instruments to make particular provisions on public debt. Consequently, it states that unless authorised by or under the authority of a parliamentary act, the Ghanaian government may not raise any loans on behalf of any other public institution or authority.

As a result, the Public Financial Management Act, 2016 (Act 921) was passed by Parliament using its legislative authority to establish a complex system for the reduction and administration of public debt, among other things. In doing so, the Public Debt Management Office was established, tasked with spearheading the government's debt management plan and delivering policy directives via a suite of policy documents within designated timeframes. This directive has, in fact, been mainly followed. Act 921 mandates that the Public Debt Management Office to publish and revise the Medium-Term Debt Management Strategy, which it has done since 2015.

Some judicial involvement has also featured in Ghana's public debt. A citizen of Ghana filed a case before the Supreme Court in 2024, *Elikplim Agbemava v. Attorney General*, asking for an interpretation of the Constitution's Articles 181(3) and (4).⁸ The Petroleum (Exploration and Production) Act 2016 (Act 919) actually caused controversy in the case because it exempted the Ministry of Finance, the Petroleum Commission, the Ghana National Petroleum Corporation (GNPC), and any other state organ from having to seek parliamentary approval before approving loans up to USD 30 million. Plaintiff argued that this clause should be declared unconstitutional because it violates Article 181 of the Constitution. For all intents and purposes, the Supreme Court distinguished between "...operationally autonomous agencies of government" and the central government. As such, the latter may enter into loan agreements without the need for parliamentary supervision or approval. The problem with the aforementioned decision is that it provides the executive branch with a way to avoid parliamentary scrutiny and consent when taking on debt through public organisations.⁹

Additionally, the Auditor General is authorised under the Constitution to audit the public accounts of Ghana and report periodically to Parliament drawing attention to any irregularities in the accounts audited and to any other matter which in the opinion of the Auditor General ought to be brought to the notice

⁵ Ministry of Finance, '2024-2027 Medium-Term Debt Management Strategy (MTDS)'

<https://mofep.gov.gh/sites/default/files/news/2024_2027_MTDS_Abridged.pdf> accessed 14 October 2024.

⁶ International Monetary Fund. African Dept. (2024). Ghana: Second Review Under the Arrangement Under the Extended Credit Facility, Request for Modification of Performance Criteria, and Financing Assurances Review—Debt Sustainability Analysis. *IMF Staff Country Reports*, 2024(213), A002. Retrieved Oct 13, 2024, from <https://doi.org/10.5089/9798400282713.002.A002>

⁷ Constitution of Ghana, Article 187

⁸ *Agbemava, tuah-yeboah, Bediatuo Vrs Attorney General [2018] GHASC 52 (21 November 2018)* <<https://ghalii.org/akn/gh/judgment/ghasc/2018/52/eng@2018-11-21>> accessed 9th October 2024.

⁹ *Ibid.*

of Parliament.¹⁰ Further notification and reporting requirements are provided in the Public Financial Management Act which mandates the Minister of Finance to present to Cabinet a Fiscal Strategy Document spelling out a Medium-Term Debt Management Strategy on a yearly basis.¹¹

Further, there exist no explicit legal restrictions on the amount of money the central government may borrow under Ghanaian law. These are the things that policies like the fiscal policy document and the medium-term debt plan dictate. Local governments are expressly prohibited from obtaining loans from overseas markets, nevertheless.

Following from the above summary of the study, the following are our suggestions for strengthening Ghana's institutional frameworks: strengthening judicial review and enforcement; strengthening public participation and consultation; strengthening compliance and accountability mechanisms; revisiting and improving debt management policies; and strengthening parliamentary oversight and transparency. Further recommendations will be provided during the webinar.

In light of the above, this webinar aims to bring together key stakeholders, including civil society, academia, government officials, parliamentarians and legal professionals, among others, to assess the current state of sovereign debt management in Ghana and discuss the findings of the study. The webinar will explore existing frameworks, identify gaps, and recommend strategies to enhance governance, transparency, and accountability in sovereign debt management to chart the way forward for improved public debt management in the country. Overall, the webinar serves as a platform for validation of the study and for dialogue, knowledge sharing, and collaborative problem-solving to address the complexities of sovereign debt management in Ghana and pave the way for more robust and effective governance practices in the future. Ultimately, the webinar seeks to contribute to a sound legal framework governing public debt, informed decision-making and policy formulation to ensure sustainable debt levels and mitigate financial risks in Ghana.

Objectives

1. To assess the adequacy and effectiveness of existing laws and institutions in governing sovereign debt contraction and management in Ghana.
2. To delve into the intricacies of domestic and external sovereign debt contraction and management procedures, highlighting compliance with legal requirements and potential areas for improvement.
3. To assess Ghana's current sovereign debt situation in light of its legal and institutional framework on public debt contraction and management.
4. To explore measures to enhance transparency and accountability in sovereign debt contraction and management, including public consultation requirements, penalty provisions for violations, and mechanisms for dispute settlement.
5. To explore the legal reforms required on public debt contraction and management in Ghana.
6. Validated study on the legal and institutional frameworks governing sovereign debt contraction and management in Ghana.

¹⁰ Constitution of Ghana, Article 187

¹¹ Public Financial Management Act, 2016, Act 921, Section 15(f).

Expected Outcomes

1. Identification of gaps in Ghana's legal and institutional framework on sovereign debt contraction and management.
2. Awareness building on debt contraction and management procedures in Ghana.
3. Improved understanding of Ghana's current debt situation.
4. Enhanced transparency around public debt contraction and management in Ethiopia.
5. Legal reforms on sovereign debt contraction and management in Ethiopia.

Format and Participants

The primary aim of the webinar is to involve various stakeholders such as civil society, academics, government officials, parliamentarians, and legal experts in order to present a range of viewpoints on sovereign debt management in Ghana from a legal standpoint. Thus, a keynote address exploring the research on Ghana's institutional and legislative frameworks on contracting and management of the country's sovereign debt will be included in the webinar. Panellists' responses and an interactive discussion with the audience will follow.

Agenda

Time (EAT)	Item	Person(s) Responsible
3.00 - 3.10	Welcome and scene-setting	Afshin Nazir, AFRODAD
3.10 - 3.30	Keynote Presentation on Legal and Institutional Frameworks on Sovereign Debt Contraction and Management in Ghana	Abdul Aziz Gomda, Barrister and Solicitor, The Supreme Court of Ghana
3.30 - 4.00	Interactive dialogue and reactions from panellists	Panellists <ul style="list-style-type: none">• Mary Ongore, Legal Manager, Sustainable Finance, International Lawyers Project (ILP)• Iddrisu Alhassan, Lawyer and Legal Practitioner, Centre for Public Interest Law (CEPIL)• Dr. Charles Ofori, Policy Lead, Climate Change and Energy

		Transition, Africa Centre for Energy Policy (ACEP)
4.00 - 4.40	Q&A session	ALL
4.40 - 5.00	Closing Remarks	ALL

Contact Persons

In case of any questions or clarifications around this webinar, please reach out to the persons listed below.

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