AFRODAD

AFRICAN FORUM AND NETWORK ON DEBT AND DEVELOPMENT

AN AFRICAN ANALYSIS OF

THE ODIOUS DEBT DOCTRINE

ACRONYMS & ABBREVIATIONS

Acronym	Definition / Full Name
AfCRA	Africa Credit Rating Agency
AfDB	African Development Bank
AFSM AU	African Financing Stability Mechanism
AUC DRC	African Union African Union Commission
GDP	Democratic Republic of Congo
IFI	Gross Domestic Product
IFFs	International Financial Institution
IMF	Illicit Financial Flows
MDB	International Monetary Fund
NIEO	Multilateral Development Bank
ODD	New International Economic Order
PEP	Odious Debt Doctrine
UK	Politically Exposed Person
UN	United Kingdom
UNCTAD	United Nations
UNGA	United Nations Conference on Trade and Development United
US	Nations General Assembly
VCLT	United States of America
	Vienna Convention on the Law of Treaties

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Executive Summary

This paper examines how the odious debt doctrine (ODD) can be redefined from an African perspective to provide a basis for its normative prescription and its use to curb illicit financial flows (IFFs) and facilitate sovereign debt relief. The paper is structured in eight parts with a view to providing a systematic response to each of the sub-questions under enquiry.

The first part provides a background and introduces the research. It situates Africa's debt problem in the broader global and regional context while highlighting the political economy that underlies sovereign debt and the larger global financial architecture. The part details the prevailing problem that justifies the research, sets out the objectives the research seeks to achieve and the relevant question and sub-questions that guide the content of the research. It also outlines the methodology applied in arriving at the paper's findings and recommendations.

The second part seeks to provide a common understanding of the key concepts and ideas that are the basis of the research. In this regard, it provides an exposition and critical evaluation of the foundations, content and scope of the ODD. The goal is to be able to re-imagine the definition of the doctrine in a manner that would respond to the unique realities of the African experience. To this end, this part concludes by detailing what requires reconceptualisation in the traditional ODD to constitute an African redefinition of the doctrine.

The third part responds to the question of what is "African" about sovereign debt acquisition, use and repayment that holds potential to impact Africa's approach and response to the issue of odious sovereign debt. The goal is to be able to utilise selected case studies to shed some light into the unique historical, social, political and economic contexts of sovereign debt acquisition, use and repayment that are shared across various African countries. These then form the basis for reimagining the ODD as a means to either prevent or address Africa's odious debts.

The fourth part builds on the third by drawing from the shared African experiences with sovereign debt that may be deemed odious. These are then used to model a taxonomy of what debts may be considered odious under the redefined ODD. Debts falling within these classifications would then necessitate the equitable modification or severance of the rights and obligations of sovereign debt creditors and debtors.

The fifth part investigates the relationship between odious debt and IFFs and how these two reinforce each other. The goal is to establish the nature and extent of influence each has on the other and ways through which the resolution of issues relating to odious debt may provide an avenue for addressing Africa's IFFs problem. In this regard, the paper establishes an inexorable link between odious debt and IFFs such that the resolution of odious debt would substantially reduce Africa's capital flight.

This sixth part assesses the current normative status of the ODD under international law and explores possible avenues for its growth and attainment of prescriptive international normative status. The part also identifies potential barriers to the normativity of the doctrine and proposes ways to mitigate them. This includes recommendations on what legal reforms and mechanisms would be necessary at both national and international levels to facilitate the conferment of prescriptive normative standing to the ODD.

This seventh part explores how African States may strategically utilise the reconceptualised version and taxonomy of the ODD to secure debt cancellation and/or repudiation and to address debt-related IFFs. A critical part of this section is the political economy assessment of the international norm formulation landscape and global interests that may pose a challenge to the application of the doctrine.

This last part highlights key findings and sets out recommendations. The recommendations are specific to the different actors, including the African Union (AU), individual African governments, creditors and other international actors. The part proposes steps that each may adopt to facilitate the prevention of odious debt, the attainment of normative status of the ODD as well as the effective use of the doctrine to secure debt cancellation and/or repudiation and to address debt-related IFFs.

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1. BACKGROUND
& Context

Historically, Africa's place in global systems has almost entirely been based on co-option into existing ideas, institutions and structures. This has, unfortunately, conditioned Africa to believe that its growth and development are defined by and are dependent on its inclusion and having some voice in existing global political and economic systems. Consequently, its constant striving and agitation to be seen, heard, belong, and be treated as an equal in these systems has continued to drive its engagements at the international level. Unfortunately, this need for external validation, recognition and inclusion comes with the fear of exclusion and being a pariah in these systems upon which Africa's political and economic survival has become unduly yet inexorably dependent. The result is timidity in how Africa thinks, in terms of its policy priorities, but even more so, in its engagements at the global stage, which are carefully managed to avoid appearing too bold or threatening to the status quo. These systems have successfully exploited this situation and the self-interest and complicity of Africa's leaders as well as weaknesses in its governance frameworks and institutions to continually perpetuate this dynamic.

To truly advance, Africa must break free from this colonial and neo-colonial conditioning to fully exercise its political and economic sovereignty and independently drive its own development. In the context of its debt problem, the (redefined) odious debt doctrine (ODD) offers an opportunity not only for economic justice but also for tackling Africa's crippling governance deficit as a first step towards this goal. The doctrine generally asserts that sovereign debts that are contracted without popular consent and which do not confer a benefit on the population of the debtor State are unenforceable in international law, more so where the contraction involves the complicity of the creditors.[1] Therefore, it is in Africa's interest to pursue, against all odds, the doctrine's attainment of international normative status, for it to provide a pathway towards Africa's sovereign debt sustainability and the reclamation of its economic sovereignty.

In pursuit of this, Africa must pragmatically accept that international norms as tools for social, political and economic control are not altruistic, disinterested or neutral. They are an embodiment of interests. The interests of those behind their formulation. Therefore, the formulation of international rules and, especially, their attainment of normative prescription is primarily determined by the interests they represent. This political economy of international rule-making explains the existing literature on odious debt, the doctrine's current status in international law and the pressing imperative for Africa to take a leadership role in its redefinition and implementation.

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[1] Alexander Nahum Sack, Les Effets Des Transformations Des États Sur Leur Dettes Publiques Et Autres Obligations Financières (Recueil Sirey 1927).

1.1 Introduction

The African Context and Common Position on Debt

African states have consistently expressed concern over the burdens and structural injustices of external sovereign debt. Far from[1] being perceived as a narrow financial issue, external debt, particularly colonial and other odious debt, has been framed within African policy discourse as a broader question of sovereignty, justice, and global economic equity. Through successive declarations, resolutions, plans of action, and official positions adopted by the Organisation of African Unity (OAU) and subsequently by the African Union (AU), Africa has steadily built a collective stance on sovereign debt, debt for development, and economic self-determination.

The Organisation of African Unity (OAU), established in 1963, initially focused on achieving the political independence of African states. However, its leadership quickly recognised that political sovereignty would be meaningless without economic autonomy. The OAU Charter (1963), while emphasising decolonisation, also committed member states to fostering economic cooperation and self-reliance, acknowledging early that Africa's fight for independence would remain incomplete without economic emancipation.

A significant milestone came with the Monrovia Declaration on National & Collective Self-Reliance (1979). Although it did not directly address external debt, the declaration laid down a continental commitment to economic self-reliance, regional integration, and reducing dependency on external economic structures inherited from colonial rule. It committed African states to promote regional economic integration to strengthen social and economic interaction, laying ideological foundations for later AU positions targeting sovereign debt as a barrier to Africa's economic sovereignty.[2]

Africa's first unified response to its external debt burden formally emerged in the African Common Position on Africa's External Debt Crisis (1987), adopted at the OAU's Third Extraordinary Assembly in Addis Ababa. This document identified external debt as a severe obstacle to implementing Africa's economic recovery strategies, particularly Africa's Priority Programme for Economic Recovery (APPER). It argued that with debt-service ratios exceeding 100% of export earnings in many states, debt repayment would cripple essential public services and economic recovery.[3] The declaration placed blame on both external and internal factors. It condemned exploitative debt structures, unfair commodity pricing, IMF/World Bank conditionalities, and predatory corporate practices, while also acknowledging colonial legacies as root causes of Africa's economic underdevelopment. The 1987 position demanded, among other things, comprehensive debt cancellation for the least developed countries.

[1] Alexander Nahum Sack, Les Effets Des Transformations Des États Sur Leur Dettes Publiques Et Autres Obligations Financières (Recueil Sirey 1927).
[2] OAU, 'Monrovia Declaration on National & Collective Self-Reliance, AHG/St.3(XVI)' (1979).
[3] OAU, 'African Common Position on Africa's External Debt Crisis' (1987).

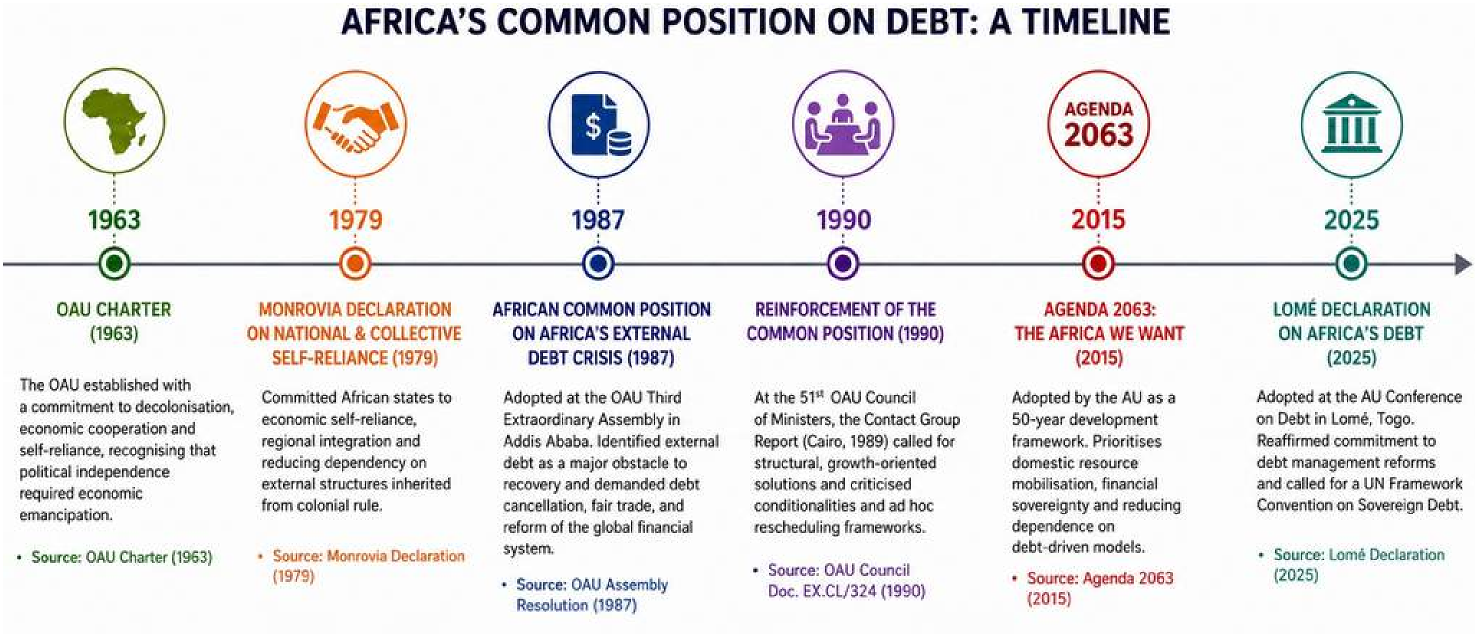
It also advocated for systemic reform of global financial governance and fairer trade terms, situating debt within Africa's broader struggle for self-determination and global justice.[4]
This position was reinforced at the 51st Ordinary Session of the OAU Council of Ministers in 1990, when the Report of the Contact Group on the International Seminar on the African Common Position on Africa's External Debt Crisis was tabled. The report, drawn from a 1989 Cairo conference, assessed debt relief efforts, critiqued the limitations of ad hoc rescheduling frameworks like the Paris and London Clubs, and called for more structural, growth-oriented solutions. It recognised that Africa's debt crisis stemmed from both historical legacies and systemic global inequalities, and that conditionalities and individual negotiations undermined African sovereignty.[5]

In September 2015, the African Union formally adopted 'Agenda 2063: The Africa We Want'. This is a 50-year continental development framework[6] designed to achieve inclusive growth, structural transformation, and economic sovereignty. Emerging from decades of economic instability, debt dependency, and marginalisation in global decision-making processes, Agenda 2063 positioned itself as a successor to earlier continental strategies like the Monrovia Declaration, Lagos Plan of Action, and the New Partnership for Africa's Development (NEPAD). Crucially, it recognised that Africa's continued dependence on external finance, coupled with illicit financial flows (IFFs) and inequitable global trade relations, had undermined its economic self-determination and hindered sustainable development. Agenda 2063 articulated a vision of an Africa whose economies are structurally transformed, industrialised, and driven by domestic resource mobilisation, intra-African trade, and value addition. This is targeted at reducing reliance on debt-driven development finance models inherited from colonial and post-colonial arrangements. The framework prioritised domestic resource mobilisation as a central strategy for financing the continent's development ambitions, asserting that[7] up to 70–80% of Agenda 2063's implementation would need to be domestically funded. This marked a clear departure from debt-heavy models of the past, and a rejection of development finance conditionalities historically imposed by external creditors and multilateral financial institutions. Agenda 2063 identified Africa's over-dependence on external debt as a structural constraint on sovereignty and proposed strategies to establish regional financial markets, continental financial institutions, and sovereign wealth funds.[2] By framing debt within a broader context of economic justice and self-reliance, Agenda 2063 reaffirmed Africa's long-standing historical demands for a multipolar global economic order.

More recently, in May 2025, African Heads of State and Government, Ministers of Finance, central bank governors, and regional financial bodies gathered in Lomé, Togo, for the African Union Conference on Debt, culminating in the adoption of the Lomé Declaration on Africa's Debt. Acknowledging that over 25 African countries faced high risk of debt distress, with unsustainable debt service costs undermining development financing, the Declaration reaffirmed Africa's resolve to pursue comprehensive debt management reforms.[3] This included a resolution to advocate for the adoption of a UN Framework Convention on Sovereign Debt.

[1 Charter of the Organization of African Unity 1963.
[2] OAU, 'Monrovia Declaration on National & Collective Self-Reliance, AHG/St.3(XVI)' (1979).
[3] OAU, 'African Common Position on Africa's External Debt Crisis' (1987).
[4] ibid.
[5] OAU Council of Ministers, 'Report of the Contact Group on the International Seminar on the African Common Position on Africa's External Debt Crisis, CM/1587 (LI)' (1990).
[6] African Union, 'Agenda 2063: The Africa We Want, 2015'.

However, despite adopting ideal common positions and objectives at the regional AU level, African countries have and continue to act and approach sovereign debt-related issues, transactions, negotiations and debt relief initiatives at the international level in a fragmented manner. This not only undermines the collective goals adopted at the AU level but also plays into the hands of creditors and perpetuates the skewed international sovereign debt architecture, whose interests are better served by such political fragmentation.



Contesting Africa's Debt

The consequences of debt are inherently unequal in their distribution. Debt decisions are often made by political elites (albeit often with a popular mandate), whose political tenures are short, yet the repayment burden spans generations. As debt service obligations take up more and more of national budgets, countries are often forced to decide between paying creditors and investing in healthcare, education, or infrastructure. Fiscal austerity and economic restructuring as part of debt management programs create inequalities, erode trust in governments and foster a resurgent interest in questioning not only the amount of debt but also the legitimacy, purposes of debts, and their long-term impact (see the discussion under section 3.2 below). The ODD provides an appropriate mechanism for this contestation.

However, a systematic articulation of an African view of odious debt is still lacking. This view takes into account the region's shared history as well as its prevailing social, political and economic realities. This paper makes a first attempt at this articulation. In doing so, the aim is not to create an alternative

"African" version of the doctrine, but to emphasise African agency in defining, contesting, and eliminating irresponsible sovereign borrowing and lending and to provide mechanisms for facilitating accountability for illegitimate debt. The paper hopes to contribute to a new continental conversation that connects debt justice to larger goals of democratic governance, human development, and economic sovereignty.

[1] ibid.
[2] ibid.
[3] African Union, 'Draft Declaration of the African Union Conference on Debt' (2025).

1.2 Problem Statement and Justification

Africa's development financing gap averages about USD 200 billion per annum.[1] To bridge this gap, African States are annually compelled to resort to external borrowing. However, the global sovereign debt architecture is marked by vast differentials in economic and negotiating power among its various actors; geopolitical and profit maximisation incentives among its creditors; pervasive self-interest (greed) among State representatives as well as differentials in historical, social, economic and political contexts of African States. This exists without an international mechanism for policing this sovereign debt ecosystem in order to ensure responsible borrowing and lending, and that actors do not abuse their relative positions and powers to impose unfair intergenerational debt burdens or to achieve ulterior neocolonial objectives, and to guarantee accountability where any of this happens.

[Consequently, African countries have ended up with unsustainable debt burdens whose debt servicing costs have increasingly crowded out resources for critical public services.[1] Creditors have exploited this lack of formal international regulation and the notion that "States can't go bankrupt" (a guarantee of eventual debt repayment) to engage in irresponsible and even criminal lending practices, including the facilitation of corruption and the resulting IFFs. Some African leaders and their close associates have capitalised on this, as well as weaknesses in their domestic public debt management oversight mechanisms, to inflate costs, facilitate kickbacks and convert the proceeds of sovereign debt into personal wealth channelled to personal offshore accounts with the complicity of some creditors. As a result, successor governments in African States are compelled to rely on creditor goodwill for debt relief or ad hoc mechanisms such as the G20's Common Framework, which, besides being presently complicated by the evolving creditor landscape, only provides temporary relief by kicking the repayment can down the road, without addressing the underlying illegitimacy/odiousness question behind the sovereign debts. In the end, African countries are left all the poorer, underdeveloped, without access to core social services and with no international mechanism for protecting the rights and interests of the people.

[The concept of odiousness and the ODD have thus emerged as tools to plug this gap and ensure responsibility and accountability in sovereign borrowing and lending. The ODD offers a pathway towards debt repudiation and/or cancellation[1] and broader efforts to hold lenders and borrowing regimes accountable. By providing an internationally recognised avenue for challenging debts incurred without consent, without public benefit or contrary to the interests of the people and with lender

[1] African Union, 'African Union Conference on Debt, Lome, Togo, 12 to 14th May 2025 - Declaration' (2025).
[1] El Hadji Guisse, 'Effects of Debt on Human Rights - A Working Paper Submitted to the United Nations Economic and Social Council' (2004); UN Human Rights Council, 'A/HRC/RES/20/10 - The Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights' (2012).
[1] Eric Toussaint, 'Sovereign Debt Repudiations: Stepping Stones in History' (CADTM International, April 2025) accessed 2 July 2025; Yin Shao Loong, 'Debt: The Repudiation Option' (2007); Tim Worrall, 'Debt with Potential Repudiation' (1988) 69 accessed 20 July 2025. Debt repudiation means a unilateral refusal by a debtor State to recognize or pay a debt on morally justifiable grounds even though it could be seen as a default or breach of contract. Debt cancellation (or forgiveness) refers to a voluntary mutual agreement at the instance of the creditor to forgive part or all of the sovereign debt owed.

complicity, the doctrine seeks to dispel the notion of guaranteed sovereign debt repayment and to shift debt repayment responsibility away from citizens of debtor States and onto those who enabled or profited from unjust and/or illegitimate borrowing and/or lending. This provides a mechanism to facilitate economic justice and address systemic shortcomings at global and domestic levels.

The ODD emerged in post-World War I France over debates relating to State and government succession. Consequently, despite its relevance, all iterations of the doctrine have a primarily Western or Eurocentric origin and context. These iterations, therefore, often fail to account for Africa's unique historical, social, political, and economic realities. They also mask the interests of major creditor countries whose financial and geopolitical interests it threatens. This limits the doctrine's content and scope, as well as its international normative status, thereby impacting its applicability and effectiveness for African countries burdened by debts incurred under otherwise odious circumstances. It also muzzles the doctrine's potential to free up much-needed resources to facilitate social and economic development in Africa.

Currently, the legal status of the ODD remains contested in international law. There is no established legal framework or adjudication mechanism to give the doctrine binding normative force. This makes it difficult for affected countries and their citizens to utilise it to challenge illegitimate sovereign lending and the resulting debts.

This context raises critical questions about what reconceptualisation (if any), as well as what legislative and policy reforms, are necessary to facilitate the doctrine's settling as an internationally (or at least regionally) recognised doctrine with practical impact.

1.3. Research Objectives

This paper seeks to achieve the following objectives:

[1] African Union, 'African Union Conference on Debt, Lome, Togo, 12 to 14th May 2025 - Declaration' (2025).

[1] El Hadji Guisse, 'Effects of Debt on Human Rights - A Working Paper Submitted to the United Nations Economic and Social Council' (2004); UN Human Rights Council, 'A/HRC/RES/20/10 - The Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights' (2012).

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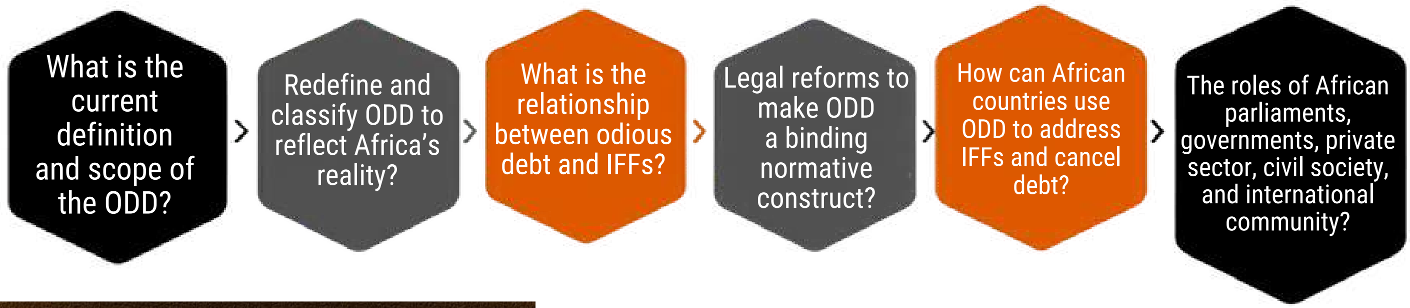
1.4. Research Questions

This paper examines how the ODD can be redefined from an African perspective in order to provide a basis for its normative prescription and its use to curb IFFs and facilitate sovereign debt relief. Specifically, the following sub-questions have been explored:



1.5. Methodology

This study adopts a policy-oriented legal research approach that goes beyond traditional doctrinal analysis to interrogate the intersection of law, economics, and governance in the African debt context. Based primarily on desk research, the paper combined an analysis of both primary and secondary sources relevant to the subject matter. This involved an analysis of relevant primary sources such as international conventions and treaties (including some in draft), national legislation and policy, international and domestic judicial decisions as well as resolutions, declarations of global and regional intergovernmental bodies for evidence of international consensus or lack thereof on various issues touching on State and government succession as well as international responsibility of states and international organisations. The paper also benefited from secondary sources including literature undertaking multidisciplinary academic analyses of sovereign debt, IFFs and the ODD; periodic country reports from international financial institutions such as the IMF, the World Bank and the African Development Bank; reports from global and regional intergovernmental bodies such as United Nations (UN) and African Union (AU) agencies including the General Assembly, United Nations Conference on Trade and Development (UNCTAD) and UN Special Procedures such as Special Rapporteurs, official country-level reports covering countries such as Kenya, Democratic Republic of Congo (DRC), Mozambique and South Africa among others and civil society studies and reports touching on sovereign debt in Africa. The research also included a review and analysis of various applicable international law instruments. The paper also benefited from existing case studies covering Kenya, DRC, Zambia, Mozambique and South Africa. The selection targeted Sub-Saharan African countries with notable sovereign debt-related issues and a history of debt that has the potential to be odious. The research drew on their historical, social, political and economic contexts with a specific focus on their sovereign debt-related data and their experiences with subjugation/hostile debts, regime debts as well as other circumstances that would qualify as odious.

The analysis sought to identify patterns and shared issues that would provide content to the uniqueness of the African experience, hence justify and provide the lens through which to reconceptualise the ODD and extract a model taxonomy specific to Africa.

The information gathered from the above analyses was then utilised to inform the paper's findings, conclusions and recommendations.

This methodology is justified in light of the paper's objective. The goal is to evaluate a doctrine, critique and reconceptualise it from an African perspective and extract a taxonomy applicable to the African context. The paper also seeks to assess the international law normative status of a contested doctrine. Based on the findings, the paper is then required to make policy recommendations for implementation. To achieve this, a doctrinal analysis becomes necessary in examining both the letter of international law and secondary sources analysing the doctrine's status in international law in order to locate the normative place of the ODD. Secondary sources provide the necessary doctrinal commentary, historical development, and theoretical debates that allow the study to identify conceptual gaps and normative inconsistencies surrounding the doctrine. Secondary sources also facilitate critical engagement with existing interpretations of international law and the place of the ODD, exposing their limitations and enabling a constructive reconceptualisation of the ODD. Because much of the discourse on odious debt originates from outside Africa, secondary sources are indispensable for contextualising the doctrine within African political, economic, and legal realities.

This paper integrates secondary sources with primary legal sources, drawing on their interpretive value and policy relevance to develop a coherent and context-sensitive framework for reform.

2. UNDERSTANDING THE ODIOUS DEBT DOCTRINE (ODD)

Reconceptualising the ODD from an African perspective requires re-examining its fundamental tenets and dimensions. Towards this end, this part provides an exposition and critical evaluation of the foundations, content and scope of the doctrine. The goal is to re-imagine, even marginally, the doctrine's definition and boundaries in a manner that would better respond to the unique realities of the African sovereign debt experience.

2.1 The Terminological Foundation of the ODD

At its core, the ODD centres on the plain English meaning of the word (adjective) “odious”. Something is “odious” if it is “extremely unpleasant” or “repulsive”.[1] Synonyms of “odious” include: repugnant, objectionable, reprehensible, unacceptable, disagreeable or distasteful.[2] Moral and/or social acceptability or legitimacy seems to be the unifying factor underlying these words. Therefore, when used in the context of debt, the word “odious” speaks to the moral and/or social acceptability of the debt or the circumstances of its contraction or use. What the ODD seeks to achieve, therefore, is to prescribe a remedy in law (international law) to situations where a sovereign State acquires or is a party to a debt that is perceived to be or was acquired in circumstances perceived to be objectionable or repugnant or illegitimate.[3]

2.2 The Terminological Foundation of the ODD

At the centre of the contestations around the ODD is the question of whether there exists a sacred and inflexible rule of sovereign debt repayment in international law or whether there exist justifiable circumstances under which the rights and obligations of parties to a sovereign debt contract may be legally modified, as a basis for debt repudiation and/or cancellation.[1]Arguments favouring the former (existence of a repayment rule) appear to rely on customary international law’s principle of pacta sunt servanda (international agreements are binding and must be honoured in good faith).[2] The ODD supports the latter alternative notion; that there exist objectionable (odious) facts or circumstances that may be relied upon to legally justify the alteration and/or negation of the obligation to repay under international law.

The sovereign debt repayment rule was first considered in the post-World War I era, in the context of State and government succession.[3] State succession is said to have taken place where “one State is replaced by another in its responsibility for the international relations of a territory”.[4] Government succession, on its part, refers to changes of the legal regimes recognised internationally as being responsible for conducting international relations on behalf of a State whose territory and sovereignty remain unchanged.[1] In the context of State succession, the contestation was whether all debt obligations (including objectionable ones) continue or are maintained against the successor State as opposed to the predecessor State that incurred them (the rule of maintenance). Grotius, Pufendorf and Feilchenfeld are stated to have advocated for maintenance, while O’Connell based his arguments on the notion of equity to argue against it.[2] There seemed to be less contestation (near consensus) on the continuity of debt obligations in the context of government succession.[3]

This is the backdrop against which Russian scholar and jurist Alexander Nahum Sack first conceptualised the odious debt doctrine (in those exact words). For ease of distinction, the “rule of maintenance” will be used in the context of State succession, while the “rule of repayment” will be used in reference to government succession.

1] Oxford Languages, ‘“Odious”’ <https://shorturl.at/TvZdp> accessed 20 July 2025.
[2] ibid.
[3] Robert Howse, ‘The Concept Of Odious Debt In Public International Law’ (2007) 185.

[1] Ashfaq Khalfan, Jeff King and Bryan Thomas, ‘Advancing the Odious Debt Doctrine’ (2003).
[2] King (n 17).
[3] ibid.

2.3 The Emergence and Scope of the ODD

In his book published in 1927, Sack first argued in favour of the existence of an ODD in international law. Drawing from the US's refusal to assume Cuba's sovereign debt to Spain in 1898 after the Spanish-American War,[1] Sack couched the ODD in the following terms:[2]

"…if a despotic power incurs a debt not for the needs or in the interest of the State, but to strengthen its despotic regime, to repress its population that fights against it, etc., this debt is odious for the population of the State."

"The debt is not an obligation for the nation; it is a regime's debt, a personal debt of the power that has incurred it, consequently it falls within this power….'Odious' debts, incurred and used for ends which, to the knowledge of the creditors, are contrary to the interests of the nation, do not compromise the latter– in the case that the nation succeeds in getting rid of the Government which incurs them – except to the extent that real advantages were obtained from these debts."

In its primary conceptualisation, the doctrine had three main components:

1. The debt is incurred by a despotic power;
2. The debt is incurred and used not for the needs or in the interest of the State;
3. The creditor has knowledge that the manner of incurring and the use of the loan is contrary to the interests of the nation.

Two years after first conceptualising the doctrine, Sack sought to expound it further to avoid its opportunistic use and to ensure fairness to both creditors and debtors.[1] He proposed that the odiousness of any sovereign debt should be adjudicated by an international tribunal before which:[2]

1. The new Government would have to prove and an [the] international tribunal would have to ascertain the following:

a) That the needs which the former Government claimed in order to contract the debt in question, were odious and clearly in contradiction to the interests of the people of the entirety of the former State or a part thereof, and

b)That the creditors, at the moment of paying out the loan, were aware of its odious purpose.

2. Upon establishment of these two points, the creditors must then prove that the funds for this loan were not utilised for odious purposes – harming the people of the entire State or part of it – but for general or specific purposes of the State which do not have the character of being odious.

Unlike the current iterations of the ODD, some which advocate for unilateral repudiation of odious debts, Sack considered the establishment of an international tribunal a critical component in the adjudication of odious debt claims. This clarification also imposed a burden on creditors to prove non-odious use where a claim of odiousness had been made. It moreover specified that creditor knowledge was at the point of payment. Subsequent literature has, however, argued that subjective knowledge need not be actual knowledge and that constructive knowledge, willful shutting of the eyes, or indifference to the other elements would suffice.[1] Khalfan, King and Thomas, for instance, detail three standards of creditor awareness as: (i) actual knowledge; (ii) willfully shutting one's eyes to the obvious; and (iii) willfully and recklessly failing to make such inquiries as an honest and reasonable man would make.[2]

Given advancements in democracy and the need to have the doctrine apply to otherwise non-despotic contexts, subsequent authors have interpreted the “despotic” element as signifying a lack of consent.[1] As a result, Sack’s definition has been presented as comprising three elements: the absence of consent by the people, the absence of benefit for the people, and creditor awareness of both.[2]

Where these three factors, which Sack considers “odious” or otherwise morally objectionable, exist, the remedy Sack prescribes is unenforceability of the sovereign debt contract in international law. Put simply, Sack’s doctrine posits that an odious sovereign debt is unenforceable in international law. What this means is that while a debtor may voluntarily opt to repay an odious sovereign debt, international law would not aid the creditor in enforcing their right to be repaid on account of the odiousness of the debt. This forms the basis for calls for repudiation and/or cancellation of odious sovereign debts.

2.4. A Case for the Reconceptualisation of the ODD

Since inception, various aspects of Sacks’ conception of the ODD have been the subject of scholarly analysis and critique. This part shall only focus on those elements intended to better align the doctrine for application in the African context. It may be important to restate here that the goal of the doctrine (or at least the present attempt at its reconceptualisation) is to prevent the imposition of unfair debt burdens by creating a legal environment, based on equitable considerations, that will facilitate responsible sovereign borrowing and lending.

First, despite the fact that the people are the intergenerational bearers of the obligation to repay, their place and primary agency is greatly understated in the literature. While some of the literature refers to the interests of the population as a basis for a declaration of odiousness, it provides no role for the population in initiating processes towards the declaration of odiousness. Although governments are the formally recognised representatives of the State in international law, bestowing on them an exclusive prerogative to initiate odious debt claims is counterintuitive. The reality is that succeeding governments may lean towards class loyalty, or may themselves be equally involved in the same cycle of odious borrowing hence would be reluctant to establish a self-defeating precedent or may even be dictatorial or undemocratic. This reality holds the potential to undermine objective considerations of odiousness and the pursuit of debt justice in the interests of the people. Allowing the people legal standing, both nationally and internationally, to initiate odious debt proceedings will better serve their interests, which are at the core of the ODD.[

1] King (n 17); Khalfan, King and Thomas (n 21).

[2] King (n 17); Ashfaq Khalfan, Jeff King and Bryan Thomas, ‘Advancing the Odious Debt Doctrine’ (2003); Sabine Michalowski and Juan Pablo Bohoslavsky, ‘Ius Cogens, Transitional Justice and Other Trends of the Debate on Odious Debts: A Response to the World Bank Discussion Paper on Odious Debts’ (2009) 48 Columbia Journal of Transnational Law; Mauro Megliani, ‘Mozambican Illegal Debts: Testing the Odious Debt Doctrine’, vol 53 (2020).

1]1] For instance, court cases have been initiated in Mozambique, Kenya and Zimbabwe, seeking the declaration of sovereign debts as being odious. See, Megliani (n 31); Kudzai Chimhangwa, ‘Zimbabwe Citizens Demand Accountability from Government over Debt in a Landmark High Court Ruling’ (openDemocracy, 2020) <https://www.opendemocracy.net/en/oureconomy/zimbabwe-citizens-demand-accountability-government-over-debt-landmark-high-court-ruling/> accessed 20 July 2025.

Second, there is a need to ensure that commercial interests that underlie sovereign debt do not narrow down Sack's broader concept of "the needs or in the interest of the State [people]" to just a consideration of "absence of benefit". This has been done by some subsequent authors who argue for "absence of benefit" as the broader and more precise categorisation.[1] Given the money fungibility problem that complicates the identification of which money undertook which project, a narrow focus on benefit may undermine the goal of preventing irresponsibility in borrowing and lending. Besides, a focus on "absence of benefit" will exclude debts that are odious by virtue of the circumstances that surrounded their contraction. These include corruption of State representatives, fraud, misrepresentation or coercion, including economic coercion. Notwithstanding, for ease of reference "absence of benefit" will be used in this paper to encompass a failure for a debt to meet the needs or be in the interest of the people.

Thirdly, literature appears to limit the time when claims of odious debt may be raised to the period following a political transition. This would be after either State or government succession. For instance, Megliani speaks of the ODD as being about the "passing of debt" or "government debt succession"[1] with others referring generally to the application of the doctrine during political transitions.[2] The challenge with this perspective is that it assumes that current regimes have no interest in initiating sovereign debt related proceedings for the declaration of odiousness. This would, for instance, apply in cases involving corruption of State representatives, fraud, misrepresentation and/or coercion. The limitation also excludes the people from initiating sovereign debt legitimacy challenges against sitting regimes, as has been done in the case of Kenya.

Fourth, literature also adopts a binary all-or-nothing approach to the consequences of an odious finding, with the options being either debt repayment or repudiation. Authors such as Nehru and Thomas in their World Bank-commissioned discussion paper formulate their enquiry as examining "whether a rule allowing the repudiation of odious debts may be said to have emerged in international law".[3] Megliani, also argues that odious debts "should not be repaid".[4] This, however, ignores the equitable foundations of the remedies being sought under the doctrine, which allow for the consideration of all circumstances surrounding the sovereign debt to design a fitting equitable remedy. This is especially the case where there is culpability on both sides and where the State has partially benefited from a particular debt, thereby justifying a partial declaration of odiousness and an order for restitution in the creditor's favour upon proof of benefit.

Fifth, whether the creditor was aware (or ought to have been) should not be a salient element in proving odiousness or illegitimacy of sovereign debt. Either absence of consent or absence of benefit (contrary to popular interest) should suffice to initiate proceedings for equitable relief. Lender awareness only becomes essential in determining the nature of equitable relief that may be granted. Where a lender was aware or should have been aware, the debt should become unenforceable against the State, with the creditor reserving restitutionary rights against the regime (individuals). Where the creditor was not aware, this alone does not justify the imposition of unjust and illegitimate debt repayment obligations. It may only shift the burden of proof to the creditor to show the conferment of benefit for purposes of pursuing restitutionary rights against the State (as opposed to individuals in the offending regime). While this may impose a significant responsibility on the creditor to verify consent and ensure that loans are for the benefit or in the interest of the people, it is key to tackling the "States don't go bankrupt" thinking among creditors that motivates irresponsible and predatory lending. It also leverages the substantially unequal bargaining power that the lender holds.

[1] Mauro Megliani, 'The Odious Debt Doctrine: The Equitable Rule' (2024) 25 German Law Journal.
[2] King (n 17); Khalfan, King and Thomas (n 21); Howse (n 16).
[3] Vikram Nehru and Mark Thomas, 'The Concept of Odious Debt: Some Considerations' (2008).
[4] Megliani (n 31).

Sixth, and importantly, it is not settled in literature whether Sack's three elements must all be present for a declaration of odiousness or whether the existence of any one suffices. Generally, it would appear that subsequent discussions on the doctrine require all elements to be present. For instance, Feilchenfeld is stated to be categorical that a finding of odiousness requires that there be the absence of both consent and benefit.38 This might be partly attributed to the all-or-nothing approach in the same literature as discussed above. This view adopts a strictly legalistic approach, which, under contract law, allows even agreements that may harm a party's interests to be enforced, provided the relevant party consented to them. It closes its mind to the fact that what the ODD seeks to do is to provide an equitable remedy for instances of moral illegitimacy. A more equitable approach is necessary to allow for invocation of the ODD even in situations where only one element is present. For instance, it is possible for debt to be consented to but confer no benefit. It is equally possible for a debt to not be consented to but end up conferring a benefit or being used in the interest of the people. An equitable approach is best suited to ensure a just resolution with attention to the specific circumstances of each case.

An African reconceptualisation of the ODD should, therefore:

- Require only two components for proof of odiousness: the lack of consent and the failure of the debt to meet the needs or be in the interest of the people.
- Appreciate creditor awareness (the commercial focus) but consider it an equitable mitigating or aggravating factor whose value lies in dictating the fashioning of equitable remedies rather than in being a determinant of sovereign debt legitimacy.
- Put the people at the centre of the doctrine by allowing them the prerogative to initiate claims of odious debt before both domestic and international courts or sovereign debt adjudication tribunals, as a check against the domestic-level political economy of sovereign debt.
- Adopt a definition of consent that links it to compliance with the debtor country's internal laws regarding authority to contract sovereign debt.
- Emphasise the overall "needs or interests of the population" aspect of the definition besides the commercial consideration of benefits.
- Remove the apparent temporal limitation to the doctrine's applicability to allow claims to be brought at any time and not only after political transitions.
- Be flexible beyond the dichotomy of "repayment or repudiation", to emphasise that the goal is the equitable adjustment or severance of rights and/or obligations of parties, taking into account all relevant facts and circumstances; and
- Adopt a disjunctive approach to the three (now two) Sackian elements of the doctrine with an emphasis on the equitable implications of the presence or absence of any of the elements.

3. AN AFRICAN DEFINITION OF ODIOUS DEBT?

This part responds to the question of what is "African" about sovereign debt acquisition and repayment that holds potential to impact Africa's approach and response to odious sovereign debt. The goal is to utilise selected case studies to highlight unique historical, social, political, and economic contexts shared across various African countries. These contexts then form the basis for reimagining the ODD as a means to either redress or prevent Africa's odious debts.

These features are shared across most countries in the Global South. However, they are particularly prevalent among countries in Sub-Saharan Africa, in a manner that speaks to a commonality of challenges that have given and continue to give rise to odious debts. They cover historical as well as contemporary issues, including: the legacy of colonialism; the legacy of IMF conditionalities and fiscal fundamentalism; the enduring problem of despotism; persistent neopatrimonialism as well as systemic corruption and pervasive IFFs. These particularly underlie the odiousness of most of Africa's debt and are discussed separately below.

The Legacy of Colonialism

Save for Ethiopia and Liberia, the entire Sub-Saharan Africa shares a colonial history. Besides passing odious sovereign debts to African countries at independence, colonising countries also left behind economies conditioned for commodity export at the expense of internal development. This macroeconomic conditioning survived long after independence, fostering underdevelopment and extraction.

Some authors such as Toussaint, take the view that most of the debt claimed from African countries is odious.[39] Colonial and neocolonial systems' adjustment to continue meeting underdevelopment and resource extraction objectives may substantially explain this. Colonial systems began the cycle of odious debt, with neocolonial systems picking this up and driving African countries even deeper into unsustainable debt and underdevelopment. Most of the colonial debts, which successor African States maintained, were odious as they were contracted without the consent of the African people and not for their benefit, but to fund colonial interests, key among them subjugation and resource extraction. Evidence exists across various African countries that some of the infrastructure built using these loans, such as railways, was strategically targeted at opening up Africa to extraction, and a substantial amount of it fell into disuse soon after the independence of African States.[40] As such, it is more than morally repugnant to continue to burden the African people with repaying these loans.

While this may explain the origins of most Sub-Saharan African odious debt burdens, there is at least consensus that South Africa's apartheid era debts provide the clearest example of adopted odious debts.[41] This refers to loans provided to the apartheid regime by both private lenders and by multilateral financial institutions such as the IMF loan of 1976.[42] Regarding these, Michalowski and Bohoslavsky argue that, besides the doctrine of odious debt, these debts ought to have been declared invalid and unenforceable based on apartheid being a violation of a peremptory norm of general international law (*jus cogens)* under Article 53 of the VCLT.

However, notwithstanding jus cogens and the ODD providing bases upon which South Africa ought to have repudiated apartheid era debts, South Africa's independence government, under President Nelson Mandela, voluntarily assumed the debts.44 In fact, beyond assuming the debts, the South African government has since distanced itself from any calls for the repudiation of this debt. This includes during the 2009 court challenges privately lodged in American courts.45 The Plaintiffs unsuccessfully sought to sue two banks, Barclays Bank and the Union Bank of Switzerland (UBS), under the Alien Tort Claims Act (ATCA) for their role in financing the apartheid regime. The holding of the Court rejecting liability for corporate complicity has, however, been argued to have been issued per incuriam, given that it ignored all developments in international law with regard to accomplice liability of corporations, including for financing jus cogens violations.46 It was also argued to have ignored binding judicial precedent on the matter.47

South Africa's position, though indicated as voluntary, was wholly strategic and illustrated the political economy risks associated with sovereign debt repudiation. King argues that the nation had more to risk than to gain from invoking its right to repudiate the debts.48

Unfortunately, these odious debt obligations, assumed for political and strategic reasons, plunged Africa into the cycle of debt the repayment of which increasingly became unsustainable.

The Legacy of IMF Conditionalities and Fiscal Fundamentalism

One of the most prevalent features of Africa's debt has been the conditionalities that have characterised the IMF's structural adjustment programs and calls for austerity and fiscal consolidation as a precondition for IMF credit. The conditionalities have become the most criticised for, among other things, being neocolonial tools for continued extortion and subordination, social and political control, the reversal of social rights and the permanent embedding of poverty.49 These conditions have been argued to prize the economic interests of creditors at the expense of responsibility in ensuring that the proceeds of loans are actually used for and in the interests of the people.50 The IMF has been accused of using the conditionalities to open up business opportunities for creditor-country corporations by demanding trade and financial liberalisation, market deregulation and the privatisation of state-owned enterprises or natural resources.51

Empirical analyses have shown that IMF conditionalities have introduced regressive public policies with adverse impacts on social outcomes.52 In the case of Greece, for instance, lender conditionality is reported to have "caused poverty and social exclusion to explode devastating the human condition of many in Greece and triggering an exodus that has been referred to as the 'world's biggest brain drain'".53 Salomon writes that it is well known that the "Troika lenders would place hundreds and hundreds of pages of reforms before the Greek Parliament giving it 24 hours to pass the bills."54 In the emergency scenario that ensues, she argues, critique becomes treasonous, space for opposition is closed down, justifying militarised responses to protest.55 This sounds familiar to what transpired in Kenya in after June 2024 following the passing of the controversial IMF-backed Finance Bill, 2024.56

Writing in 2023, ActionAid argues that for forty years the World Bank and the IMF have imposed neoliberal economic policies that have undermined development.57 These are imposed on African countries in debt distress or at the risk of debt distress, hence having little scope to resist the conditions despite their immense negative impact on human life and welfare.58 In the end, the IMF takes over the economic policy autonomy of these countries.

A 2021 report by ActionAid revealed how:59

> "IMF austerity cuts in just 15 countries blocked the recruitment of over three million nurses, teachers and other essential public sector workers, undermining progress on health, education and gender equality while blocking climate action in some of the world's poorest countries."

This is despite various resolutions adopted at the UN level against conditionalities and policy dictatorship as preconditions for sovereign credit. These include the UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing and the UN Guiding Principles on Foreign Debt and Human Rights. This also, arguably, informed the contents of the July 2025 Consensus by Heads of State and Government and High Representatives in Sevilla. Under the Consensus, States recognised that each country has primary responsibility for its own economic and social development and committed to align international support with national strategies, plans and frameworks, and to respect each country's policy space.60 The need to address this issue arose from decades of IMF conditionalities in Africa that have left the continent increasingly unequal and underdeveloped. These conditionalities: consistently focused austerity measures on social welfare expenditure that is critical to poverty alleviation and socio-economic development in Africa. They killed local industry, opened local markets to domination and extraction by foreign multinational corporations, mostly from creditor countries, and supressed labour rights.61

Notwithstanding the international disapproval of this mode of operation by the IMF, and multiple civic actions across the world protesting the conditionalities, some of which have resulted in massive fatalities, violence and democratic recession,62 the IMF presses on with them, unmoved. This may be explained largely by the fact of its ownership by the major credit countries and its voting structure where Africa barely has any voice.63 For comparative perspective, while the US, for instance, effectively holds veto power with its 16.5% share, the entire African continent's voting rights only account for only about 6.5% of the total votes. Essentially, therefore, Africa with its 54 countries and 18% of the World's population only has a cumulative voting power almost equivalent to, but slightly above, that of a country, Japan.64

Article 51 of the VCLT renders invalid any consent to an international agreement that is procured by States through the coercion of other State representatives. Although this is pegged on acts or threats directed at the State representatives, Lord Carnworth of the UK Supreme Court entertained Ukraine's argument of economic duress as a basis for invalidating sovereign debt commitments.65 The case sought to compel Ukraine's repayment of a sovereign debt it owed Russia. There is, therefore, scope for developing this - beyond just using it to obtain equitable remedies - to compel the IMF to cancel its debts on account of their odiousness.

The odiousness of the IMF loans lies in the conditionalities which have increasingly proven to be against the interests of the people of the debtor States. The fact that these are imposed beforehand and their consequences have been apparent over the years not only makes the IMF and the World Bank not only complicit but also malicious in their complicity.

Persistent Neopatrimonialism

For some African countries, despite having formal institutions and structures of democracy as well as laws and policies, they are characterised by actual democracy and rule of law deficits. Power, in these countries, is concentrated in individuals and governments are run based on clientelism and patronage with blurred lines between personal and state resources. State policies are often driven by personal interests and personal enrichment from State resources is rampant. As a result of this, laws and modalities for borrowing are often ignored, and institutions are weakened and are unable to provide effective oversight. Examples of countries in Africa that fall in this category include Kenya and Zimbabwe.

In the past five years, the World Justice Project's rule of law index has ranked Kenya at numbers 102/128, 106/139, 104/140, 101/142 and 102/142 for 2020, 2021, 2022, 2023 and 2024, respectively. Kenya's debt, as of March 2025, stood at 11.36 trillion Kenyan Shillings. This is equivalent to 63% of the country's GDP, thereby exceeding the legal threshold of 55% of GDP.79 Kenya's dire debt situation is not the result of a lack of a legal or constitutional framework, but of a failure by the government to uphold fiscal discipline. The Constitution of Kenya provides a strong foundation for governing public borrowing and expenditure.80 Public finance management is guided by constitutional national values and principles of governance, including transparency, openness, public participation, responsible use of public resources, and clear financial reporting.81

The Constitution mandates Parliament to exercise oversight over public debt, including by legislating the terms under which the national government may borrow and imposing reporting requirements.82 Specifically, the Cabinet Secretary for Finance is required to submit regular updates to the relevant parliamentary committee with details of loans or guarantees, the total debt, the use made or intended to be made for the proceeds of the loan, arrangements for servicing or repayment of the loan and progress made towards repayment.83 Additionally, the national government is required to publish an annual report, at the end of each financial year, detailing all guarantees issued during that period.

The Auditor-General also has a constitutional oversight function on public debt by auditing and reporting on the public debt at the end of every financial year. The audits are meant to ascertain whether or not public money has been utilised lawfully and effectively.84 The Controller of Budget is an important player in debt management, having the authority to authorise any withdrawals from the Consolidated Fund and other public funds,85 upon being satisfied that such withdrawals are authorised by law.86

The Public Finance Management Act (section 50(3)) requires the national government to only borrow according to the budget approved by Parliament and to utilise long-term borrowing only for development spending.

However, the legitimacy of Kenya's debt has recently been more widely questioned in the public domain, domestically. This emerges in a context where the government claims to have inherited a budget deficit of 925 billion Kenyan Shillings, approximately seven per cent of the budget.87 Civil society organisations, oversight bodies and the public have questioned the government's disregard for the law on borrowing and spending, decisions around debt management, non-commitment to fiscal discipline and failure to deal effectively with corruption.

Financing agreements related to the construction of the Standard Gauge Railway (SGR) remain shrouded in secrecy, despite a court order directing the government to disclose them.88 Following his appointment under the Ruto administration, the Cabinet Secretary for transport undertook to publish full details of the SGR contract, but only released excerpts online, which omitted critical details such as the loan collateral.89 In December 2024, the Kenyan High Court ordered the government to publicly disclose information on Kenya's bilateral loans agreements and details on sovereign bonds, including an account on how the money raised over a decade was spent.90

Currently, before Kenyan courts is a case that expressly addresses the question of odious debts in Kenya. In the case, Okiya Omtatah Okoiti & 8 Others v Uhuru Kenyatta & 22 Others,91 the petitioners argue that the debt amounting to Kshs. 13.1 trillion (USD 100.48 billion) was unlawfully acquired during the regimes of Presidents Uhuru Kenyatta (former) and William Ruto (current), therefore, should not be binding on Kenya. The debts in question include USD 7.1 billion in Eurobond debt borrowed between 2014 and 2021 and other concealed borrowings of Kshs. 6,950,163,132,328 procured between 2014 and 2024. The outcome of this case holds potential to significantly shift how Kenya's neopatrimonial structures have operated to channel sovereign debts to personal use.

Systemic Corruption and Pervasive Illicit Financial Flows (IFFs)

Seavey argues that State representatives are political self-interested actors.92 Perhaps, based on this reality, customary international law, as embodied in Article 50 of the VCLT, renders invalid any consent procured by another State through the direct or indirect corruption of State representatives. While this applies to agreements between States, it forms part of general international law as well thereby binding other creditors as well. A study conducted across 15 different jurisdictions across the world covering both common law and civil law jurisdictions found that all the jurisdictions criminalise corruption and bribery of officials.93 The study also found that all had ratified at least one international or regional convention against corruption. The study, therefore, concluded that Principle 1 and 8 of the UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing which prohibit self-interest (duty to act in the public interest) and the corruption of State agents, have the status of general principles of law under international law.94

Based on this understanding, the Heads of State and Government and High Representatives meeting in Sevilla in July 2025 committed to curb corrupt borrowing and lending practices.95 Towards this end, they agreed to enhance domestic legal frameworks to among other things clarify the issue of authority to borrow (that feeds into the consent component of odious debt). They also agreed to explore options of making such contracts unenforceable (the legal consequence proposed under the ODD), utilising the UN Convention against Corruption and its Conference of State Parties.

Ndikumana and Boyce argue that the fact that creditors continue to pour loans into the hands of corrupt regimes, notwithstanding evidence that resources are not being utilised for the benefit or in the interest of the state, is evidence of creditor complicity and bad faith.96 An example of the Mobutu regime is given where lending continued against all evidence for political and strategic reasons.97

Highly corrupt regimes that use their State positions to enrich themselves often engage in IFFs to hide the proceeds of corruption. As such, countries characterised by high levels of systemic corruption often also have high levels of capital flight. A government with a record of high levels of corruption and IFFs is one which any creditor ought to know would embezzle and use the debts without benefiting the population of that State. Based on this understanding, Ndikumana and Boyce98 made a case under the ODD for voiding debt found to have eventually financed capital flight.
A case in point where external debt has been procured through corruption of officials and the proceeds channelled out of the country is that of Mozambique's Tuna Bonds.99 Mozambique is ranked among the most corrupt countries in Sub-Saharan Africa, even more corrupt than Kenya. Transparency International's annual Corruption Perception Indexes have ranked Mozambique at positions 149, 147, 142, 145 and 146 globally in their surveys of 2020, 2021, 2022, 2023 and 2024, respectively. Mozambique has also scored dismally in the World Justice Project's annual Rule of Law rankings having taken positions 113/128, 123/139, 122/140, 128/142 and 125/142 in 2020, 2021, 2022, 2023 and 2024, respectively. With such consistently poor rankings in open global surveys, it would be difficult to disclaim lender complicity, hence odiousness, where proceeds of loans are corruptly looted and stashed abroad, as happened in the Tuna Bonds Scandal.

The Tuna Bonds Scandal involved a series of loans from Credit Suisse and VTB Bank between 2013 and 2016, of over USD 2 billion, that were ostensibly to develop a state tuna fishing company, Empresa Moçambicana de Atum (EMATUM), as well as financing maritime security projects.100 All of the loans were obtained without parliamentary approval or public notification. Thus, the loans could not be properly reported in the budget or through the government's fiscal reporting, which is against Mozambican law and international conventions on responsible lending. The majority of the money was simply stolen, with more than 700 million sourced from kickbacks, and delivered to offshore accounts controlled by high-ranking officials, military officials, and bankers.101 The 'tuna scam' set off substantial financial crises, forced Mozambique to enter into default on its debts, and diminished confidence in Mozambique's financial institutions, both inside and outside the country. The scandal led to a declaration by Mozambique's Constitutional Council that the two loans were unconstitutional. This set off prosecutions of various complicit officials in the United States for conspiracy to defraud.102 It also led to Court proceedings in the United Kingdom by Mozambique against the banks with Mozambique being able to settle some of the claims out of Court and obtain the cancellation of some of the loans.103

The Mozambican case is hailed as a successful case of invocation of the ODD to render sovereign debt unenforceable and obtain debt cancellation by an African country. Worth noting is the fact that domestic challenges on the constitutionality of the loans were initiated not by the successor government but by a local civil society organisation, Forum de Monitoria do Orçamento (Budget Monitoring Forum) hence the argument made herein for the expansion of the ODD to allow the people to initiate claim of odious debt.104

The Creditors incurred heavy regulatory fines both in the United States and in Europe for their role in the Tuna Bonds Scandal, which they quickly settled.105 Unfortunately, however, none such fines were imposed by Mozambican regulatory agencies despite the fact that the people of Mozambique would have borne the intergenerational consequences of the fraudulent odious debts. Equally, no African Union agency has the power to impose any such fines nor ban these creditors from engaging in any future involvement in sovereign lending. Domestically, it is not clear whether any charges were brought against the State officials involved despite being indicted in the United States106 hence reflecting failure of domestic institutions to act on sovereign debt related corruption and IFFs.

4. A MODEL TAXONOMY OF ODIOUS DEBT

Having explored Africa's unique historical, social, political and economic contexts that speak to Africa's experience with odious and/or potentially odious sovereign debt, this part draws from that discussion to model a taxonomy of what debts may be considered odious under the doctrine. This will provide an easy guide to which class of debts and/or circumstances relating to sovereign debt acquisition would necessitate the equitable modification of the rights of sovereign creditors and debtors on grounds of odiousness. This part first looks at taxonomies as they currently exist in literature before proposing a model taxonomy for African States.

Existing Taxonomies

Howse details three classes of debts under what he refers to as the “Sackian Taxonomy”. These are: war debts, subjugation or imposed debts and regime debts.107 War debts refer to those contracted by the State to fund a war which it loses and which debts the winning side cannot be compelled to repay.

The class of subjugation or imposed debts has also been labelled by O’Connell as “hostile debts” in reference to those debts contracted for the repression or conquering of a people or for the suppression of an insurrectionary or secession movement or war of liberation in a territory. King adds a further category (to war debts and hostile debts), which he refers to as “developing world debts not spent in the interests of the population”.108 He defines these as those “contracted by the dictatorial leaders of developing nations, the proceeds of which are subsequently squandered in a way that provides no benefit to the population.109 While this classification may fall under what Howse refers to as “regime debts” under the Sackian Taxonomy, it is not clear whether this is a phenomenon restricted to developing countries, so as to justify King’s naming of the category.

Megliani discusses odious debt under the broader category of illegitimate debt.110 Under this category are “debts against national law”, “debts against public policy” and “unfair or objectionable debt”. Megliani narrows these further to specific types of loans including:111

> *… loans to oppressive regimes (Argentina and South Africa), loans bearing usurious interest (Latin American countries), loans for bad projects (Tanzania, Nigeria, and Indonesia), loans for self-enriching regimes (The Philippines), and loans to unreliable governments (Zaire).*

All these categories may in one way or another fit into the African context discussed above. These include: war debts, subjugation or hostile debts, regime debts as well as Megliani’s debts against national law (elsewhere referred to as debts lacking in internal validity).112

A Model Taxonomy of African Odious Debts

The objective here is to identify those categories of sovereign debts which would ordinarily be considered objectionable or morally repugnant or illegitimate such as to justify resort to an equitable remedy under the law. This is done having the unique historical, political, social and economic circumstances of Africa in mind. The goal for such consideration of odiousness is to prevent unfair intergenerational sovereign debt burdens, financial predation and bad faith in sovereign debt transactions, structural or systemic economic injustice, and unjust enrichment. These categories of loans would, therefore, qualify as odious, thereby rendering the rights and/or obligations of the parties to the transactions open to equitable adjustment, including through debt repudiation and/or cancellation.

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This paper proposes the following categories to constitute a model taxonomy for Africa based on the analysis of Africa's realities above:

1. Colonial debts – Those inherited by African countries at independence.
2. Regressive debts – Those contracted on condition of implementation of regressive policies.
3. Despotic regime debts – Those extended to dictatorial and oppressive regimes.
4. Neopatrimonial regime debts – Those extended to regimes characterised by patronage, clientelism and the lack of separation of State from personal resources.
5. Internally invalid debts - Those procured in violation of national law regulating authority to consent or the nature and conditions for borrowing.
6. Loans procured through corruption – Those whose contraction involved bribery of State representatives by creditors or their agents.
7. Loans extended under fraud or misrepresentation by the creditor – Those extended to States under fraudulent or misrepresented valuations or viability/feasibility assessments by the creditor.
8. Predatory lending - Those acquired at the instance of the lender with indifference as to the macroeconomic and sustainability impact of the loan on the State and its people

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Table 1: A Sackian Analysis of the Model Taxonomy of African Odious Debts

No.	Category	Odious Elements	Equitable Remedies
1	**Colonial Debts**	• Absence of consent • Absence of benefit • (Creditor knew)	• Repudiation • Cancellation
2	**Regressive Debts**	• Coerced consent • Against popular interests • (Creditor knew)	• Cancellation
3	**Despotic Regime Debts**	• Potential absence of consent • Potential absence of benefit • (Creditor knew)	• Repudiation • Cancellation • Partial restitution on proof of benefit
4	**Neopatrimonial Regime Debts**	• Potential absence of benefit • (Creditor should have known)	• Cancellation • Partial restitution on proof of benefit
5	**Internally Invalid Debts**	• Absence of consent • Potential absence of benefit • (Creditor should have known)	• Cancellation • Partial restitution on proof of benefit
6	**Loans Procured Through Corruption**	• Potential absence of benefit • (Creditor knew)	• Repudiation • Cancellation
7	**Loans Extended Under Fraud or Misrepresentation by Creditor**	• Absence of consent • Potential absence of benefit • (Creditor knew)	• Repudiation • Cancellation
8	**Predatory Lending**	• Potential absence of benefit • (Creditor knew)	• Cancellation • Partial restitution on proof of benefit

**** The third element is bracketed in line with this paper's view that it is inapplicable as a defining component of the ODD***

Tt is important to state that the taxonomy does not in any way seek to wholly shift the duty of ensuring that sovereign debt is not odious to the lender. On the contrary, it emphasises the agency of the State but also acknowledges the balance of power in sovereign debt contracting that places the creditor on a pedestal and a stronger position to be able to influence not only the terms of the contract but also borrower's behaviour subsequent to debt acquisition. It is this position that the paper argues the lender should leverage to foster both responsible lending and borrowing.

5. ODIOUS DEBT AND ILLICIT FINANCIAL FLOWS (IFFs)

IFFs are closely intertwined with odious sovereign debt. IFFs constitute the lifeline for all odious sovereign debt incurred for the personal enrichment of African leaders and their elite co-conspirators. This part investigates and provides data on the relationship between these two concepts. The goal is to establish the nature and extent of influence each has on the other and ways through which the resolution of issues relating to odious sovereign debt may provide an avenue for addressing Africa's IFFs problem.

Odious debts and IFFs are linked by what Ndikumana and Boyce refer to as the revolving door, of which odious debt sits on one side and IFFs on the other.113 Odious debt, especially that related to personal enrichment (as opposed to war or hostile debts), can only happen where capital flight is guaranteed. What links the two further is that both thrive in the context of a failure of the rule of law, and both are facilitated by the same transnational network of banks, lawyers, accountants and consulting firms.114 Where wealth is acquired illegally, there is every reason to want it shielded from legal scrutiny and potential prosecution.115 IFFs provide a solution for this on the other side of the revolving door.

Instead of financing productive projects, borrowed funds are captured by African political elites and transferred abroad, thereby converting public external debts into private external assets.116

To better demonstrate the link between the two, statistical evidence gathered over the period between 1970-1996 revealed external borrowing as the single most important determinant of not only the timing but also the magnitude of capital flight from Sub-Saharan Africa.117 In that study, Ndikumana and Boyce estimated that for every dollar borrowed by Sub-Saharan African countries, about 80 cents flowed back out as capital flight in that same year.118 It is estimated that the total stock of capital flight for the period was about USD 274 billion, equivalent to 145% of the total debt owed by the same countries studied over that period.119 A subsequent study covering the period between 1970 – 2004 found average capital flight from loans to have gone down to about 60 cents for every dollar borrowed.120

This has led Ndikumana and Boyce to argue that when one compares the amount of external assets held by Africa to the external debts, the assets surpass the debts thereby making Africa a net creditor.121 This is despite the fact that the external assets are in private hands while the external debts are in the public's.

Mobutu, the former president of the DRC, for instance, is reported to have accumulated massive wealth during his 32-year long reign, estimated at about USD 5 billion,122 while at the same time DRC's external sovereign debt burden worsened.123

Recent African examples illustrate the link between odious debt and IFFs. In the case of Mozambique's *"tuna bonds"* scandal, most of the borrowed funds were moved through shell companies and intermediaries overseas to enrich Mozambican State officials as well as other individuals from creditors and intermediaries abroad.124

The period between 2016 and 2021 saw the leakage of massive confidential data related to the use of secretive offshore financial systems by African politically exposed persons (PEPs), their families and close business associates to hide assets, evade taxes and move money illicitly.125 These include the Panama Papers (2016), Paradise Papers 92017) and the Pandora Papers (2021).126 While none of the data leaks directly linked any specific sovereign loan to an offshore account, they revealed networks operating at the intersection of sovereign-debt-financing and private offshore enrichment. An indirect link could, for instance, be drawn between public debt being used to finance sectors such as infrastructure and energy and these sectors accounting for significant IFFs. This could be explained as either the proceeds of debt directly being redirected offshore or freeing up resources that are then redirected offshore. Equally, an indirect link can be drawn between the undervaluation of natural resources in countries engaged in resource-backed loans and the personal enrichment of PEPs through offshore payments.

The haemorrhage of proceeds of external borrowing through IFFs is stated as not being a product of the few corrupt officials and the complicit bankers but a “product of systemic flaws in international financial arrangements that govern borrowing and lending”.127 As a result, an approach that addresses the framework of incentives and opportunities in the global financial architecture rather than individuals is argued as best placed to address the problem. Development of the ODD and supportive policies and institutions is therefore proposed as having the best chance at addressing this.128

6. TOWARDS INTERNATIONAL NORMATIVE PRESCRIPTION OF THE ODIOUS DEBT DOCTRINE

The Hybrid Legal Character of Sovereign Debt Contracts and Obligations

Sovereign debt occupies a unique position at the intersection of public and private international law. Most sovereign debt instruments, such as syndicated loans and Eurobonds, are structured as contracts between states (or state entities) and private or institutional creditors, governed by private international law (conflict of law) principles. Typically, these contracts stipulate the domestic law of a major financial centre, most commonly English or New York law, as the applicable law and specify the forum for dispute resolution. However, given that the debtor in this otherwise commercial arrangement is a sovereign State, issues such as state immunity, state (and government) continuity, sovereign equality, non-intervention and state responsibility, including the odiousness of sovereign debt, emerge, thereby requiring the application of public international law principles. This dual character gives sovereign debt contracting a hybrid legal identity – private in its form yet simultaneously public in its implications.

Therefore, to invoke the ODD as a basis for the equitable adjustment of the rights and obligations of parties to a sovereign debt contract, it is imperative first to establish if the ODD is recognised as a normatively binding doctrine under public international law.

Equity as an International Law Basis for Sovereign Debt Adjustment

It may be useful to clarify which specific rule we are seeking to determine whether it has attained international normative status. Most analyses have sought to find out if the "odious debt doctrine", in those very words (and with the three restricted Sackian equitable considerations), has established itself as an international normative rule. However, the better approach would be to establish whether international law acknowledges that there are equitable circumstances under which the rights and obligations of parties to a sovereign debt contract may be legally adjusted or severed (repudiation and cancellation are political remedies that may trigger the legal process). In the alternative, the enquiry should be whether there is established in international law an absolute, sacred and inflexible rule of sovereign debt repayment. Put simply, the question really is whether equity may adjust or sever the rights and obligations of parties to a sovereign debt contract as a matter of law (as opposed to it being discretionary (Article 38(2), ICJ Statute)). Once this is established, then various equitable considerations may be utilised as a basis for the adjustment of the rights and obligations of the parties to a sovereign debt contract. These considerations include those detailed under Sack's ODD, which are by no means exhaustive.

Assessing the Normative Status of the ODD

ources of international law are detailed under Article 38 of the Statute of the International Court of Justice (ICJ). Article 38(1) lists international conventions, international custom and general principles of law recognised by civilised nations as the primary sources. It also cites judicial decisions and teachings of the most highly qualified publicists of the various nations as subsidiary sources. While these are listed as sources of rules of law, Article 38(2) allows the Court to make determinations based on principles of fairness and justice (ex aequo et bono) if parties agree to it. Each of these shall be discussed below to assess if the ODD can be argued as qualifying to fit under any one of them.

In addition to these, the paper will first examine whether the ODD has the status of jus cogens, which sits above the sources cited above.

a) Jus Cogens

Jus cogens refers to peremptory norms of general international law. Article 53 of the VCLT defines a peremptory norm as one that is "accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

Given the legal uncertainty around the ODD, it cannot be argued to have achieved the status of a jus cogens norm.129

However, the VCLT renders void any treaty that conflicts with jus cogens. The peremptory nature of jus cogens binds not only States but also private parties and corporations.130 It follows, therefore, that any agreements, including sovereign debt agreements, whose conclusion or purpose conflicts with jus cogens norms are void and incapable of enforcement.131 Norms that may be regarded as constituting jus cogens include the prohibition of slavery, apartheid, crimes against humanity, the use of force and the protection of the right to self-determination.132 Though still shrouded in controversy, increasingly, a case is made for the inclusion of the protection of all fundamental human rights as part of jus cogens.133 Therefore, any debt agreements that can be linked (even foreseeably) to the violation of any of these norms may be argued as being void. Colonial debts constitute a primary candidate for violation of jus cogens. A case may also be made to extend this to regressive debts especially on matters economic self-determination and impact on human rights.

Therefore, although the ODD does not establish a jus cogens norm, violation of peremptory norms constitutes a ground for the declaration of offending sovereign debt as being odious.

b) Treaties and Conventions

Presently, no international convention or treaty regulates sovereign lending and borrowing or the duties and obligations of States or lenders. Early efforts to come up with a treaty to regulate the passing of debt obligations, including odious debts, between States received no international support.134 This was sought to be done through the Vienna Convention on Succession of States in respect of Treaties (1978) and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts (1983). Both these treaties, although adopted by resolutions of the United Nations General Assembly, thereby having standing as an expression of international soft law, have never received the requisite number of ratifications to come into effect.135 Among what they sought to codify is the Clean Slate principle, which prevented the automatic maintenance of debt obligations by successor States, and the requirement for the passing of property, rights or interests as a precondition for the passing of a sovereign debt to a successor State.136 While it is to be expected that the colonial and creditor status of the UK and the US, respectively, may have informed their voting against the adoption of the 1983 convention,137 it is unclear why even successor States such as African countries did not and have not ratified the treaties.

Further international sources of soft law touching on the ODD also exist in the form the UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing and the UN Guiding Principles on foreign debt and human rights, both of which were adopted at the UNGA level.

Attempts to push for an international legal framework to regulate sovereign debt have recently been renewed. Under the 2025 Lomé Declaration, African finance ministers and other regional leaders called for a UN Framework Convention on Sovereign Debt Restructuring.138 Additionally, Heads of State and Government and High Representatives meeting at the 2025 International Conference on Financing for Development committed to initiate a UN-level intergovernmental process targeted at closing gaps in the debt architecture.139 While this would be critical in plugging this gap and potentially providing binding rules, it remains to be seen whether the fate of such a framework would be any different from that of the 1978 and 1983 Vienna Conventions.

c) Customary International Law

Customary international is established where there is consistent state practice that is accompanied by a belief by the States undertaking practice that their actions are out of legal obligation (*opinio juris)* rather than any other considerations.

There exists a record of various States historically repudiating or having their debts cancelled on odious-debt-related grounds. These include the repudiation of debts by Southern US states in early 1877 on grounds they had been contracted by corrupt politicians, Costa Rica's repudiation of debt from the Royal Bank of Canada (1919), Algeria's repudiation of colonial debts (1962), Iran's repudiation of Shah's illegitimate debts in 1979, the cancellation of 80% of Iraq's debt for odiousness in 2004 and Paraguay's repudiation of its debts to

Swiss banks in 2005.140 These cases are, however, not sufficient to illustrate the existence of consistent State practice in favour of the ODD.141 This fact does not change even if one adopts the broader equitable approach that the paper proposes to include other cases, mostly in cases of State succession, where debts have been repudiated by successor States on equitable grounds.142

It is also argued that much as there is evidence of the existence of some state practice in favour of the ODD, there is equally even more evidence of State practice demonstrating either maintenance or the commitment to repay sovereign debts even in instances of patent odiousness.143 The South African assumption of odious apartheid debts is given as an example. However, King argues in rejoinder that this does not demonstrate the existence of a customary law rule of repayment since the instances of voluntary assumption of debt lacked the second element, opinio juris.144 In this regard, he argues that the assumption of debt, even in the South African case, was done mainly for political expediency rather than out of a genuine belief of its being required as a matter of legal obligation.145

A case may, however, be made for the existence of opinio juris with respect to specific elements of the ODD even though this has not been accompanied by State practice. In 1983, the UN adopted the Vienna Convention on the Succession of States in Respect of State Property, Archives and Debts. This global adoption may be argued as having been evidence of the existence of opinio juris that there exist circumstances under which State obligations with respect to sovereign debt may be extinguished or varied. Article 38 of the 1983 convention requires a link between the activity for which a debt was taken and the property, rights and interests that are acquired by a successor State as a precondition for a sovereign debt to pass. This is essentially an embodiment of the benefit requirement of the ODD. However, the failure of States to ratify the Convention has hindered States from actualizing this in practice.

On the above basis, most academics conclude that current customary international law does not recognise the doctrine.146

However, this paper argues that customary international law rules permit the adjustment or severance of the rights and obligations of parties to an international agreement based on equitable considerations (refer to the broader approach to the ODD under section 6.2 above). There is general consensus that the VCLT codifies rules of customary international law. As such, provisions of the VCLT permitting the invalidation of international agreements may be used to lend support to the essence of the doctrine. For instance, Article 48 invalidates agreements entered into on basis of erroneously assumed facts or situations; Article 49 invalidates agreements entered into under fraud or misrepresentation; Article 50 invalidates agreements entered into through the corruption of State representatives; and Article 52 invalidates agreements entered into through coercion. While these apply to any agreement between States, they support the validity of an ODD where the agreements relate to bilateral sovereign debt agreements. This is because the existence of any of these factors negates State consent and may have implications for the interests of and benefit to the populations of the affected States. This meets the Sackian criteria, as modified in this paper to exclude lender complicity as a salient primary component. Given the hybrid nature of sovereign debt contracting, the application of these rules may as well extend beyond bilateral sovereign debt agreements.

Therefore, the ODD (in those very words) cannot be said to have attained the status of customary international law. However, rules of customary international law provide support to and make a case for the existence of an ODD (that the legal consequence of the existence of the relevant vitiating factors in any sovereign debt agreement is its invalidity hence unenforceability).

d) General Principles of Law Recognised by Civilised Nations

Where no rule exists, either in convention or custom, general principles of law are usually resorted to to fill the gap. These principles are adopted if there is proof that they are commonly applied across various jurisdictions of civilised nations.

There is at least some consensus in literature that some principles commonly applied in domestic jurisdictions might apply to odious debt scenarios.147 These include principles such as equity, agency, the rule against unjust enrichment, conscionability as well as abuse of rights.

A study conducted by Goldmann across 15 different jurisdictions globally to assess the normative standing of the UNCTAD Principles on Responsible Sovereign Lending and Borrowing revealed that some of the principles have the status of general principles of international law.148 For instance, the Principle of Agency under UNCTAD Principles 1 and 8 was found to have the status of a general principle of law. The principle requires government agents to act in the public interest with civil law jurisdictions prescribing disciplinary and even criminal sanctions where a failure to do so results in fraud or bribery.149 Dimitriu also argues in favour of the normative standing of the ODD on the grounds of the rules of agency law which cover the elements of consent and benefit.150

Besides equity also having the status a general principle of law in both common law and civil law jurisdictions across the world,151 it also fits under the principle of ex aequo et bono recognised under Article 38(2) of the ICJ Statute. However, this principle that allows the Court to make decisions on the basis of what is fair and just is only applicable where both parties to a dispute agree to its application in the determination of the dispute.

The various elements of the ODD including those under the taxonomy proposed under this paper are capable of invocation on grounds of equity for the legal adjustment of the rights and obligations of parties to a sovereign debt contract.

e) Judicial Decisions and Teachings of Publicists

Article 38(1) of the ICJ Statute also recognises judicial decisions and writings of the most highly qualified publicists as subsidiary sources of international law. However, it is worth pointing out that while ICJ decisions may develop rules that might be applicable in subsequent disputes, these decisions are only binding as between the parties to the dispute and the rules developed are not binding on the Court itself.

There are few judicial decisions that have made direct pronouncements on the ODD as a doctrine. The most direct one is the case of United States of America v Islamic Republic of Iran in which Iran contested its obligation to repay a debt owed to the US for supply of military and other equipment under a 1948 contract. The Tribunal explicitly indicated it would take no stand on the doctrine and that in any event if there exists a "doctrine of odious debts in international law" it would only be applicable in the case of State and not government succession.152

The discussion around the judicial application of the ODD has often made reference to the 1923 Tinoco Arbitration (Great Britain v Costa Rica) arbitral decision. However, while the case considered some of the Sackian elements of the ODD including consent (ostensible or de facto authority) and conferment of benefit and found in favour of Costa Rica on grounds of lack of benefit, the decision did not make any direct references to the ODD. Equally, while the Constitutional Court of Mozambique made determinations that consider the individual elements of the ODD, no direct references were made to the doctrine.

In some cases, such as In re South African Apartheid Litigation 617 F. Supp. 2d 228 (S.D.N.Y. 2009) filed in the United States, the Court declined to find creditors complicit despite existing international jurisprudence to the contrary.[153] This, besides the administrative issues involved in the determination of the cases, may also point to potential protectionism in judicial proceedings filed against creditors in their own countries.

With respect to the teachings/writings of publicists, it suffices to say that while Sack's writings are credited for first formally propounding the doctrine and may be referred to, the debate on the nature and scope of the doctrine remains unsettled.

f) ***Conclusion on the Normative Status of the ODD***

On the whole, the doctrine as formulated by Sack, may only be said to be in statu nascendi (emerging). However, the doctrine as a broader rule for the equitable adjustment or severance of sovereign debt rights and obligations may still be applied on the basis of jus cogens norms, rules of customary international law, as embodied in the VCLT, and general principles of international law.

Potential Barriers to Normativity

As highlighted in the introductory part of this paper, international norm-making is not an arena devoid of political and strategic interests and contestation. Norms, by their very nature, seek to alter the status quo, a status quo full of entrenched interests. Therefore, it is to be anticipated that the owners of these interests will fight back by erecting every barrier possible in the emerging norm's path towards prescriptive international normative status. Besides, norm-making has always been geopolitically inspired along the Global North-South (leave alone, African) dynamic, with the North often seeing itself as norm-makers and the South being subjects of normative proselytism and non-discretionary co-option.

El Hadji Guisse, in his report to the UN Commission on Human Rights (as it then was) in his capacity as the UN Special Rapporteur on the Impact of Debt on the Enjoyment and Exercise of Human Rights, wrote as follows:[154]

> *Debt has thus become not only a means of pushing these countries into extreme poverty, but also a tool for domination and exploitation, phenomena that one might have supposed to have disappeared along with colonialism. Worse still, it has facilitated a transition from public to private colonisation, virtually a return to slavery as we knew it in the nineteenth century.*

This statement reveals the interests behind the international sovereign debt architecture. Efforts towards the conferment of normative status to the redefined conception of the ODD must therefore be fully aware of these interests and barriers and come up with strategic ways of addressing them.

While the above may appear to paint a one-sided picture implying that the interests and barriers are only external, this is far from the reality. African leaders and elites are the primary beneficiaries of odious debt and, its accomplice, IFFs. Yet these are the very leaders, as the representatives of States and actors under international law, who will be required to believe in the overall utility of an ODD enough to resist any international interests or hostility towards its normativity.

However, pushing for the reform of the international sovereign debt architecture does not require consensus. The starting point would be to find a critical mass of African States that would not only support the doctrine but would also be willing to commit themselves at the international level to advocating for its normativity. Given the history of Africa's fragmented approach on matters sovereign debt, it is left to be seen whether the African Union will manage to coalesce African States around the redefined doctrine and the interests it seeks to protect so as to aid its normative development.

7. STRATEGIC USE OF THE DOCTRINE BY AFRICAN STATES

It is unfortunate that the same concerns that underlay the official push for economic decolonisation at the UN level in 1974 still prevail today.[1] Little to no progress has been registered over the years towards a more just and equitable international economic system and the establishment of the envisioned New International Economic Order (NIEO). 51 years later, this is the same unequal environment and global power dynamic within which the African conceptualisation of the ODD seeks to be adopted and applied. Prospects of success, therefore, appear dim unless accompanied by clear compelling collective leverage as well as robust and resilient alternatives to the current global financial architecture.

Nonetheless, the reconceptualised version and taxonomy of the ODD may still be utilised by African countries to secure the modification or severance of the rights and obligations of parties to sovereign debt contracts and to address debt-related IFFs. The doctrine may be used to legally obtain declarations of invalidity or illegitimacy of sovereign debt and the payment of compensation and/or fines to debtor countries by complicit creditors and their accomplices. Effective implementation of the ODD may also mean the payment of restitution to creditors, by either States (upon proof of benefit) or individual former State officials (upon proof of odiousness) to avoid cases of unjust enrichment. Repudiation may also be used strategically in clear cases of odiousness as a mechanism for compelling sovereign debt cancellation and/or restructuring. The ODD may also be used as a medium-to-long-term tool for promoting and securing responsible sovereign debt borrowing and lending practices in Africa, the curbing of IFFs and the eventual reclamation of Africa's economic and financial sovereignty.

[1] UNGA Resolution 3201 (S-VI), Declaration on the Establishment of a New International Economic Order, adopted 1 May 1974, U.N. Doc. A/RES/3201(S-VI); UNGA Resolution 3202 (S-VI), Programme of Action on the Establishment of a New International Economic Order, adopted 1 May 1974, U.N. Doc. A/RES/3202(S-VI); Charter of Economic Rights and Duties of States, Res. 3281 (XXIX), adopted 12 December 1974, UN Doc. A/RES/3281(XXIX).

Findings and Declarations of Odiousness by Impartial Mechanisms

For good order, and in line with Sack's proposition, any use of the ODD may necessarily require that it be preceded by a declaration or a finding of odiousness of the debt by an impartial tribunal or body constituted for that purpose. This means that African States will need to initiate claims and/or audits seeking determinations on whether any of their debts meet the criteria for odiousness. This may also include such determinations in disputes brought against them by creditors pursuant to dispute resolution clauses in sovereign debt contracts.

To avoid geopolitical, neocolonial and other current global financial architecture political economy influences, action by African States should not be limited to the mechanisms stipulated under individual debt contracts. African States should be free to, individually or collectively, utilise any other international, regional and even national mechanisms to obtain declarations or findings of odiousness of sovereign debt. Such determinations would effectively terminate and/or modify the rights and/or obligations of the States vis a vis their creditors.

At the domestic level, African States may approach relevant courts or tribunals and may also constitute independent mechanisms with the mandate to audit public debt for odiousness. They may opt to focus on violation of domestic laws in the acquisition of sovereign debt (internally invalid debts) or they may also focus on any of the other taxonomies. However, the challenge with resort to or utilisation of domestic mechanisms is that creditors are more likely to overlook the decisions of such mechanisms and treat any failure by States to repay as repudiation. Nonetheless, having an impartial judicial or administrative basis for non-repayment presents a strong defense in any claims that may be brought by creditors and may also trigger negotiations for debt restructuring.

Generally, findings and/or declarations of odiousness by any of these fora would be significant in:

1. Rendering creditor claims for the recovery of debt against the relevant States unenforceable (internationally or domestically, depending on the forum)
2. Compelling cancellation of the affected debts by creditors; or
3. Compelling restructuring negotiations, depending on the nature of the declaration or findings.

International Law Basis for Findings or Declarations of Odiousness

As already established, the ODD presently lacks normative force under international law. Therefore, the doctrine's use, in the short-term, would primarily rely on already established norms and principles of international law that are embodied or apply to specific ODD taxonomies. These include jus cogens norms, customary international law principles contained in the VCLT, as well as general principles of law such as agency, the rule against unjust enrichment, conscionability, abuse of rights as well as equity. The table below details the international law bases upon which African States may challenge the various taxonomies of odious debt.

Table 2: Analysis of the Current International Law Basis for Challenging Odious Debt

No.	Taxonomy	Legal Issues	International Law Basis
a.	Colonial debts	Slavery; apartheid; crimes against humanity; the use of force; violation of the right to self-determination; and equity	- *Jus cogens* (Art 53 & 71, VCLT) - General principles of law
b.	Regressive debts	Violation of the right to economic self-determination; violation of fundamental human rights; and economic coercion	- *Jus cogens* (Art 53 & 71, VCLT) - Customary international law (Art 52, VCLT)
c.	Despotic regime debts	Conscionability; abuse of rights; and equity	- General principles of law
d.	Neo-patrimonial regime debts	Conscionability; and equity	- General principles of law
e.	Internally invalid debts	Conscionability; agency; and equity	- General principles of law - (Domestic laws)
f.	Loans procured through corruption	Rule against the corruption of state representatives; conscionability; and equity	- Customary international law (Art 50, VCLT) - General principles of law
g.	Loans extended under fraud or misrepresentation by creditors	Rule against inducement through fraudulent conduct; conscionability; and equity	- Customary international law (Art 49, VCLT) - General principles of law
h.	Predatory lending	Error; abuse of rights; conscionability; and equity	- Customary international law (Art 48, VCLT) - General principles of law

The Practice

As already established under section 6.3 above, no State has so far been able to obtain declarations and/or findings of odiousness from impartial mechanisms, both internationally and domestically. At least not utilising the doctrine by name. The repudiation of odious debt has so far been undertaken politically. For instance, in 2008, Ecuador suspended repayment of part of its debt that had been found to be odious after a national audit which then enabled it to repurchase 91% of the affected securities at 30% of their value.[1]

The failure to do this through judicial or arbitral mechanisms is largely attributed to the ODD's lack of normative standing as well as the absence of specialised guiding legal and institutional frameworks. Fear of the economic as well as political consequences of any such attempt, also plays a role.

Recently, however, Ukraine is on record having invoked coercion (economic) before English Courts in a case seeking to compel it to repay its sovereign debt owed to Russia.[2] Additionally, in 2006, Norway canceled USD 80million-worth of debts owed by Egypt, Ecuador, Peru, Jamaica and Sierra Leone arising from its 1970s shipping export credit campaign.[3] In acknowledging the illegitimacy of this debt, Norway is reported to have admitted that this campaign was driven by domestic interests rather than the development needs of the affected countries.[4] While being one of its kind, this decision is often cited as an example of a country taking responsibility for its role in creating unjust or illegitimate debts.[5] Although unlikely, more creditors ought to follow the Norwegian example.

Findings and Declarations of Odiousness by Impartial Mechanisms

Repudiation presents the riskiest of all the ways through which African States may seek to address sovereign debts they consider odious. States, including those with very clear and undeniable cases of odious debts such as South Africa, have shied away from repudiating such debt but instead insisted on assuming its repayment. This is largely due to a calculation of the risks inherent in repudiation that outweigh its justification. Repudiation is not a legal remedy but a political one. Legally, repudiation is treated as a breach of a contract which attracts legal remedies regulated by the law selected to apply to the individual debt contracts. The international nature of sovereign debt lending and borrowing may also mean that repudiation could have political and diplomatic consequences as well. Additionally, the nature of the current global sovereign debt architecture is such that a repudiation would be met by the downgrading of the debtor country's credit rating. This would effectively block access to external credit or significantly increase the cost of acquiring credit due to elevated perceptions of risk. Also, based on cross-default clauses in debt restructuring agreements, which most African countries have been party to, default (through repudiation) to one lender may be treated as a default to all the debtor country's creditors. This has the potential to financially cripple a country's development spending and potentially lead to currency collapse and investor flight. In the case of bilateral loans, creditor states may also resort to attaching diplomatic property of the debtor state as well as engaging in trade retaliation. Given the position taken by the UK Supreme Court; that trade sanctions, embargoes and protectionism are normal aspects of statecraft,161 any repudiation would be too costly for African countries.

[1] Toussaint (n 13).

[2] The Law Debenture Trust Corporation plc (Respondent) v Ukraine (represented by the Minister of Finance of Ukraine acting upon the instructions of the Cabinet of Ministers of Ukraine) (Appellant) The Law Debenture Trust Corporation plc (Appellant) v Ukraine (represented by the Minister of Finance of Ukraine acting upon the instructions of the Cabinet of Ministers of Ukraine) (Respondent) [2023] UKSC 11.

[3] Michalowski and Pablo Bohoslavsky (n 31); Human Rights House Oslo, 'Norway Moving towards Debt Justice' (1 November 2012) <https://humanrightshouse.org/articles/norway-moving-towards-debt-justice/> accessed 3 October 2025.

[4] Michalowski and Pablo Bohoslavsky (n 31).

[5] ibid.

For African countries to effectively use repudiation as a remedy for odious debts, the AU should work to establish an enabling legal and political environment. The goal should be threefold. One is to provide a clear regional legal framework to acknowledge the ODD and guide the determination of which loans qualify as odious. Two would be to establish a political environment that would encourage and collectively support a country's political decision to repudiate odious debt.

The existence of these two would then lead to the third goal, which is to facilitate the creation of sufficient state practice and opinios juris that would be necessary to establish a regional rule of custom (customary international law). The rule would affirm the right of States to seek the equitable adjustment or severance of debt obligations based on a finding of odiousness.

In this regard, the AU needs to reduce its common position on sovereign debt and African economic sovereignty into a treaty or a protocol for ratification. It may also develop a model national law for adaptation by member countries. A crucial part of the treaty instrument and model law would be to recognise and define odious debt, set out its essential elements, set up mechanisms charged with assessments, audits and adjudication of sovereign debt for odiousness and stipulate consequences of an odious finding. Ratification of this regional instrument would then bind African countries to take measures to prevent and eliminate odious debt. It will also create an enabling environment for CSOs and citizens to litigate odious debt-related issues both at the national, sub-regional and regional level. This would lead to the development of judicial precedents and State practice on the treatment of odious debt. The AU could also utilise jurisprudence on odious debt emerging from its member countries, such as Mozambique's Constitutional Council's decision in the Tuna Bonds case, to request an advisory opinion from the African Commission on its impact on the sovereign debt contracts of African countries. Such judicial decisions and State practice would serve as sources of international law or components establishing regional customary international law on the treatment of odious debt.

Committing to the Development and Independent Financing of Alternatives

In addition to the above, the AU should fully implement and independently finance its resolutions targeted at facilitating Africa's economic sovereignty and self-sufficiency in sovereign lending and borrowing. This would entail having fully functioning Africa-focused financial institutions such as the African Financing Stability Mechanism (AFSM) alongside the Africa Credit Rating Agency (AfCRA).162 This will also extend to establishing those institutions envisioned under the 1991 Abuja Treaty: The African Monetary Fund, the African Investment Banks and the African Central Bank. Besides just establishing them, African countries must commit to independently and consistently finance these institutions to guarantee their institutional, operational and policy independence. This will avoid falling into the typical paradoxical and counterintuitive cycle of relying on neocolonial establishments and interests to finance Africa's anti-neocolonialism initiatives.

When this is achieved, repudiation undertaken pursuant to resolutions and/or decisions of the AU, subregional or national mechanisms (drawing from and backed by AU frameworks) is less likely to have the extreme consequences highlighted above. Where any countermeasures are taken by creditor countries, the effects would be less severe for the repudiating countries, as there would be viable and sustainable financing and financial support alternatives within the auspices of the AU.

Actualising the ODD will therefore require significant political mobilisation and unified and consistent diplomatic manoeuvring alongside efforts to build consensus around the reconceptualised iteration of the ODD and its elements.

8. CONCLUSION AND RECOMMENDATIONS

Conclusion

The current global financial architecture is not broken; it was never intended to function in the way Africa's activism continues to hope it would. In fact, a preponderance of empirical evidence in literature supports the fact that the status quo is exactly as it was intended. Africa, therefore, needs to adopt an alternative approach to addressing their economic, financial and development challenges. A first step in this direction lies in rallying behind a version of the ODD that reflects the unique realities of African countries. The adoption and consistent application of the doctrine both at the continental and domestic levels will give it the momentum it needs towards eventually attaining normative prescription in international law, even if it first takes shape and settles as a regional rule of custom. After all, such norms as the Calvo and Drago doctrines emerged as regional rules of custom yet still managed to redefine the contours of sovereign debt lending and borrowing. The evolution of the reconceptualised ODD into a regional norm would, therefore, mark an important strategic win for Africa.

Achieving this goal requires more than academic discourse and activist campaigns. It demands decisive action from Africa's policymakers and institutions. They must confront domestic governance shortcomings and expose the hypocrisy that sustains an unequal global economic order. If Africa fails to act with courage and unity, it will remain trapped in a vicious cycle of borrowing, debt crises, restructuring, and repayment – an arrangement that enriches neocolonial interests while depriving the continent of genuine development while hindering the fulfilment of its people's fundamental rights.
This paper has established the need to reconceptualise the ODD in a manner that accounts for Africa's unique experiences with colonisation, debilitating IMF conditionalities and fiscal fundamentalism, enduring despotism, persistent neopatrimonialism, as well as systemic corruption and pervasive IFFs. The redefinition should centre the doctrine around the broader goal of creating a mandatory rule of international law under which the rights and/or obligations of parties to a sovereign debt contract may be adjusted or severed on the basis of equitable considerations impacting the legitimacy of such debt. This will allow the use of the doctrine to address Africa's struggle with odious debts and the intertwining problem of IFFs. In the interim, however, African States may still leverage the rationale behind the ODD to repudiate and/or seek the cancellation of their odious debts utilising norms and principles already existing in international law as well as utilising their domestic laws.

The reconceptualised ODD places equity at its core. The goal is to fairly distribute the burden of compliance. However, the subsisting imbalance in the global financial architecture, which tilts in favour of commercial interests, may lead creditors to view this paper's proposals as being overly favorable to debtor states. Consequently, resistance to its proposals from creditors, and by extension the global financial architecture, is therefore inevitable. While this may make the legal and political feasibility of the redefined ODD appear uncertain, it also presents a strategic opportunity. African States should seize the opportunity presented by the redefined ODD and boldly implement the recommendations below for a chance for them to take control of their sovereign debt, challenge odious obligations and curb IFFs. This will effectively turn the systemic injustice inherent in the current global financial architecture into a pathway for Africa's real economic sovereignty and social transformation.

Recommendations

The reconceptualised ODD seeks application to international sovereign debt contracting, use and repayment as a mandatory rule of international law. Given the doctrine's lack of normative force, its applicability, as a binding doctrine, will require it to emerge, cascade and settle as an international rule of custom. However, international rulemaking is not only a legal process. It is also inherently political, particularly in light of the geopolitical and neocolonial motivations that undergird the arena of international sovereign debt financing. Recommendations towards the attainment of this goal are, therefore, not be purely legal. They will necessarily require and pay attention to the political economy considerations of international rulemaking and their implementation.

In formulating these recommendations, the paper also acknowledges that the problem of odious debt is not only influenced by external factors but also by internal domestic factors. As such the paper combines recommendations aimed at preventing the continued uptake of odious debts with those targeted at supporting the entrenchment of the ODD and its attainment of international normative status. The former will be key in shifting the focus from reactive repudiation to proactive prevention of sovereign dealings that would otherwise render debt odious.

The recommendations are clustered to target specific stakeholders including the African Union and Africa's subregional organisations; individual African governments; individual African Parliaments; Civil Society Organisations (CSOs); Creditors (including bondholders in the secondary bond market and domestic lenders) and the international community.

Recommendations for the African Union

1. Continue advocating for the adoption of a UN Framework Convention on Sovereign Debt, in line with paragraph 44 of its Lomé Declaration, as a framework, for among other goals, addressing illegitimate debt.
2. Formally endorse the reconceptualised ODD and its taxonomies through either an AU-level declaration or framework agreement. For a start, the African Union Commission could consider including the doctrine and its taxonomies in the guiding principles embodying an "African Common Position on debt" which it was mandated to develop under the Lomé Declaration.
3. Adopt a binding framework charter or protocol on sovereign debt in Africa for ratification. This should codify Africa's common position on debt as envisioned in the Lomé Declaration.

It should also: define what constitutes odious debt; set out an assessment criterion for debt legitimacy; mandate and detail principles of responsible sovereign lending and borrowing; and establish an institutional framework charged with supporting and overseeing the implementation of the Charter.

4. Establish a standing technical committee, under the Charter, with the mandate to provide technical support to African countries in sovereign debt contracting, negotiation, renegotiation as well as in odious debt auditing and reporting. This could be done in partnership with the African Capacity Building Foundation. The technical committee would also be charged with treaty monitoring and reporting, developing model laws and regulations on sovereign debt acquisition and recommending sanctions to the dispute resolution mechanism for violations of the Charter.
5. Establish a regional sovereign debt adjudication mechanism or tribunal, as part of the Charter's institutional framework, to assess debt legitimacy/odiousness and provide an accessible and Africa-focused forum for sovereign debt-related dispute resolution.

6. Explicitly recognise in the regional framework the jurisdictional competence of relevant domestic courts or tribunals as well as the validity of their decisions adjudging sovereign debt as odious.

7. Stipulate in the proposed regional framework and enforce financial penalties and/or suspensions for both creditors and individual actors for any dealings relating to sovereign debt adjudged odious.

8. Develop and maintain a blacklist of creditors whose debts have been adjudged by competent regional or national mechanisms as odious or having odious elements. Enforce a requirement, under the Charter, for African States to not deal with this list of creditors.

9. Invest in proactive legal preparedness by establishing a dedicated unit within the Office of the Legal Counsel of the AU, staffed with specialised legal and financial expertise. The unit should be charged with identifying, analysing, and strategically litigating and/or defending against odious debt cases and adjudications on behalf of and/or alongside affected African countries. The unit should also be mandated to undertake negotiations with creditors where this is necessary in odious debt cases.

10. Establish a system of sovereign debt peer-review akin to, or under, the African Peer Review Mechanism (APRM). This will provide a platform for African States to engage, share experiences, leverage synergies while also providing a supplementary monitoring and reporting mechanism of progress made in the implementation of the Charter.

11. Facilitate the accelerated establishment of critical African financial institutions such as the AFSM, the AfCRA, and the African Monetary Fund. These will enhance Africa's financial sovereignty, reduce reliance on the global financial architecture and shield African countries, that choose to repudiate odious debt, from retaliation and exclusion from access to sovereign credit.

12. Develop model laws on sovereign debt acquisition, use and repayment that embrace the key principles contained in the reconceptualised ODD to enable Member States to gradually work towards establishing borrowing, use and repayment practices supportive of the ODD.

13. Develop unified negotiation strategies and a common front when engaging with the Paris and/or London Clubs on identified odious debts. This will leverage collective bargaining power to achieve more favourable outcomes and prevent individualised retaliatory targeting of African States.

Recommendations for Individual African Governments

1. Advocate for and fully support the adoption of a UN Framework Convention on Sovereign Debt in line with their commitment under the Lomé Declaration.
2. Advocate for, adopt and ratify an AU-level framework charter or protocol on sovereign debt which acknowledges the reconceptualised ODD and its taxonomies.
3. Domesticate the proposed AU Framework Charter on Sovereign Debt through the provided model laws or by effecting amendments to their national legislation regulating sovereign borrowing. This should be followed by full operationalisation of the laws as well as faithful and consistent compliance and enforcement.
4. Engage in strategic advocacy and diplomacy with international financial institutions, creditor states and multilateral forums to gain recognition and support for the African conceptualisation of the ODD.
5. Commission independent, comprehensive, transparent and participatory initial and subsequent periodic audits of their sovereign debt portfolios to establish whether any of the contracted debts fall within the African definition of odious debt. This will provide an objective evidentiary basis for repudiation, restructuring, cancellation and/or court/tribunal actions.
6. Adopt and implement stringent transparency, accountability and other internal sovereign debt governance measures. These include mandatory parliamentary pre-approval and oversight; mandatory requirement for all medium-to-long term sovereign debt to be linked to specific capital projects; mandatory requirements for sovereign debt to be procured on concessional terms only; mandatory public disclosure of loan terms and intended use prior to and after procurement; and strong sanctions for any public official and entities circumventing sovereign debt regulations.
7. Build technical capacity within national ministries of finance, central banks, public debt management offices, offices of principal government legal advisors as well as adjudication mechanisms. The goal is to capacitate them to effectively analyse sovereign debt contracts, negotiate with creditors, manage debt in line with applicable legal frameworks and, where necessary, mount and/or defend against legal challenges relating to odious debt.
8. Strengthen judicial independence and remove any barriers to individuals' and CSOs' access to domestic courts to challenge the acquisition, use, and repayment of sovereign debt.
9. Fully leverage the principles of sovereign debt acquisition contained in the proposed Charter in all their sovereign debt negotiations. These include the principle prohibiting regressive economic policy preconditions for debt.
10. Explicitly incorporate odious debt clauses in sovereign debt contracts. These should detail the obligations of parties in preventing and avoiding odiousness. They should also recognise the jurisdiction of borrower States’ domestic courts or regional sovereign debt resolution mechanisms to determine any claims of odiousness of sovereign debt. Additionally, the clauses should expressly waive the immunity of multilateral international financial institutions to enable suits to be brought against them in domestic and regional courts or tribunals on account of odiousness of their loans. They should also recognize the right of the lender to recover against complicit individuals, with the support of the State, where a debt is declared odious and benefit cannot be demonstrated.
11. Fully implement resolutions, recommendations and decisions of the proposed AU Charter’s treaty bodies including those sanctioning or suspending creditors and agents complicit in odious debt contracting.
12. Suspend the repayment of adjudicated odious debts or parts of them to compel renegotiation and/or cancellation.

13. Commit to leveraging collective action under the auspices of the AU in all international sovereign debt related fora and initiatives. This is intended to put an end to the hitherto self-defeating fragmented approaches that have characterised the engagement of African States with the global sovereign debt architecture. This will also allow African States to pool resources and technical expertise, refine and align strategy and speak and act collectively.
14. In line with the Lomé Declaration, commit to "enhancing Domestic Revenue Mobilisation through the adaptation of appropriate policies and measures. These include the improvement of the efficiency of existing tax systems, the optimisation of tax incentives, the rationalisation of tax exemptions, the expansion of the tax base, the implementation of specialised taxes, the establishment of solid domestic institutions and policy frameworks, as well as fighting the illicit financial flows".

Recommendations for Individual African Parliaments

1. Enact national laws domesticating the proposed AU Charter on sovereign debt. In the intervening period, enact national legislation recognising illegitimate debt and integrating ODD principles within national legal systems. These laws should provide a legal basis for comprehensive periodic public debt audits to ensure sovereign debt is shielded from odiousness. Such audits should be transparent and allow for citizen participation. A clear criteria should be laid out in the law for identifying and classifying debt as odious. Where odiousness is established, the law should provide clear legal processes for arriving at a finding and declaration of odiousness. The laws should also outline the legal consequences of such a declaration and task a specific national entity with enforcing the finding. The body should be empowered to suspend repayment, renegotiate terms and recommend repudiation of the subject loans.
2. Review national legal and policy frameworks on sovereign debt to strengthen provision for transparency and accountability in the acquisition, expenditure and repayment of sovereign debt. Mandatory pre-conditions should be stipulated in domestic laws, including: parliamentary pre-approval and oversight; a requirement for all medium-to-long term sovereign debt to be linked to specific capital projects; a requirement for sovereign debt to be procured on concessional terms only and a requirement for the public disclosure of loan terms and intended use prior to and after procurement. Legislation should also spell out strong sanctions for any public official and entities circumventing domestic sovereign debt regulations.
3. Build the technical capacity of their members to meaningfully engage with debt-related data and analysis and make informed decisions. This will aid in ensuring informed pre-approval of sovereign borrowing and in offering effective oversight of its expenditure.

4. Allow individuals and civil society organisations the legal standing to approach national, sub-regional and regional courts and tribunals on matters touching on sovereign debt and/or its odiousness. This would require a review of relevant existing treaty instruments, national laws, regulations and guidelines.
5. Adopt national laws requiring periodic disclosure and publication of the beneficial ownership of all domestic institutional creditors. These include commercial banks, insurance companies and pension funds.

Recommendations for Creditors

1. Undertake policy and operational adjustments to mandate the conduct of thorough due diligence on the individual prospective debtor States. This should cover the legal frameworks for sovereign debt acquisition (and prerequisites), the purpose of proposed sovereign loan as well as the governance practices of the borrowing state. The due diligence standard should be higher for regimes with an established record of despotism, neopatrimonialism, corruption and misappropriation of public funds as well as IFFs.
2. Impose periodic reporting obligations on debtor States with respect to the actual use of extended loan facilities. Also establish and deploy monitoring mechanisms to confirm that the use of loans aligns with the stated purpose at borrowing.
3. Refuse to extend additional loan facilities to a specified categories of debtor States and/or governments. These include States with debts which have been adjudged odious on account of violations of internal laws in the loans' procurement and those proven to have misappropriated proceeds of sovereign loans. Also included would be regimes with consistently high perceptions of corruption and high volumes of capital flight linked to sovereign debt.
4. Undertake periodic audits of their lending portfolios to establish that their lending practices do not only comply with their internal lending policies but also with the internal borrowing laws and development priorities of borrower States as well as universal human rights standards. The findings of these audits should be published and publicized.
5. Volunteer to be sued or enjoined in regional or international legal proceedings and test suits on odious debt for purposes of aiding the development of jurisprudence on the treatment of odious debts. This will avoid adverse retaliatory consequences by creditors, and by extension the international sovereign debt architecture, for lodging odious debt-related suits or claims against them.
6. Bondholders should undertake own due diligence, insist on odious debt-related clauses and take out odious debt-related insurance to ensure they are shielded from loss of their investments on account of findings of odiousness of sovereign debt.

Recommendations for the International Community

1. Establish a universally accepted, transparent and legally binding multilateral framework on sovereign debt and sovereign debt dispute resolution, under the auspices of a reformed United Nations. The adoption of the proposed UN Framework Convention on Sovereign Debt would be critical in this respect. The sovereign debt dispute resolution mechanism established under the Convention should, among other things, be inclusive in its membership and be empowered to undertake assessments of sovereign debt and make declarations of odiousness of any such debts in a fair, transparent, efficient and timely manner. This declaration should have the legal effect of rendering such debts unenforceable in any UN member jurisdiction.
2. Comply with the 2015 UN Basic Principles on Sovereign Debt Restructuring Processes to ensure that debt restructuring is timely, orderly, effective, fair and negotiated in good faith. Any debt restructuring process should also ensure that it does not result in the impairment of the ability of any African State to fulfil its human rights obligations, be in charge of and implement its own economic development priorities and provide basic public services.
3. Convene a dialogue under the auspices of the UN to bring together creditor and borrower countries as well as multilateral financial institutions to agree on binding principles of responsible sovereign debt borrowing and lending.
4. Re-engineer the international financial architecture to provide for more equitable representation of Africa in decision-making to ensure that common positions on sovereign debt such as the reconceptualised ODD are adequately spotlit and given due consideration internationally.

Recommendations for CSOs

1. Continue advocating for the adoption of a UN Framework Convention on Sovereign Debt.
2. Advocate for the global recognition of and support for the African reconceptualisation of the ODD.
3. Advocate for and support the adoption or revision of national-level legislation on sovereign debt to recognize and regulate illegitimate debt, integrating the reconceptualised ODD principles and taxonomies.
4. Undertake public awareness campaigns to sensitize and educate citizens on odious debt, its impact on development and the realisation of universal human rights. This will empower them to support odious debt-related policies and legislation. It will also capacitate them to initiate challenges either through petitions to legislative bodies or courts and tribunals for declarations of odiousness.
5. Strategically leverage national legal systems to challenge and specifically seek the declaration of sovereign debt as odious, particularly those whose acquisition and use violate national public borrowing laws.
6. Explore the possibility of sending communications to the African Commission regarding odious debts where national remedies have been exhausted.
7. Support and take part in the development of binding rules at national, sub-regional and regional levels that align with and give effect to the African conceptualisation of the ODD.
8. Commission audits of the public debts of highly indebted African States, declare as odious any that are found to fall under any of the taxonomies and advocate for their cancellation. Such a declaration aided in the cancellation of Iraq's debt with the support of the US.

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