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The Legal and Institutional Framework Governing Sovereign Debt Contraction and Management in Ethiopia

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List of Acronyms

Acronym	Full Term
AfDB	African Development Bank
AfDF	African Development Fund
BADEA	Arab Bank for Economic Development in Africa
CBE	Commercial Bank of Ethiopia
DSA	Debt Sustainability Analysis
EEU	Ethiopian Electric Utility
EEP	Ethiopian Electric Power
EAL	Ethiopian Airlines
ERC	Ethiopian Railways Corporation
ESC	Ethiopian Sugar Corporation
ESL	Ethiopian Shipping Lines
ETB	Ethiopian Birr
FDRE	Federal Democratic Republic of Ethiopia
HoPR	House of Peoples' Representatives
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IMF	International Monetary Fund
LAMC	Liability and Asset Management Corporation
MEFF	Macroeconomic and Fiscal Framework
MoF	Ministry of Finance
NBE	National Bank of Ethiopia
NDF	Nordic Development Fund
OFID	OPEC Fund for International Development
PPP	Public Private Partnership
PTA	Preferential Trade Area Bank
SOE	State-Owned Enterprise

Introduction

1. Introduction

Sovereign debt is the common means of financing for states in their administration, particularly for developing countries. Ethiopia has a long history of contracting and managing sovereign debts. This study aims to provide an in-depth analysis of sovereign debt contraction and management in Ethiopia. The study employs both doctrinal and non-doctrinal research methods to gather relevant findings. The paper is organised into several sections. The second section provides a basic overview of sovereign debt in Ethiopia. The third section discusses the legal and institutional frameworks governing sovereign debt. The fourth and fifth sections highlight the procedures for contracting sovereign debt and examine the current status of sovereign debt, respectively. The sixth section analyses the management of sovereign debt, highlighting both strengths and gaps. Finally, the paper concludes with a conclusion and recommendations.

2. Sovereign Debt in Ethiopia

Under Ethiopian law, a public debt (sovereign debt hereinafter) is a borrowing of the Federal Government of Ethiopia from both internal and external lenders. This borrowing is undertaken through the issuance of direct advances and sale of securities as well as guarantees issued by the Federal Government.[1] Sovereign debt through issuance of direct advances is a borrowing made by entering into a loan agreement directly with the lender, while others are made by issuing securities,[2] and selling securities, something given or pledged to secure a financial promise or a financial obligation and includes a treasury bill, a note or a bond.[3] Sovereign debt can be obtained through a bilateral or multilateral loan agreement.[4]

Based on the source of the borrowing, sovereign debt can be classified into external and domestic sovereign debt. External sovereign debt refers to all external loans contracted between external creditors and the Ministry of Finance (MoF) or some public enterprises. Domestic debt covers the debt of the central government in the forms of government bonds, treasury bills, direct advances from the central bank, corporate bonds, and long- and short-term loans owed by state-owned enterprises (SOEs). As of May 2025, there is no cap on the domestic debt.

It is worth noting that the SOEs can make sovereign debt. For this purpose, based on the existence of the guarantee by MoF for the performance of an obligation to

1 Federal Government of Ethiopia Financial Administration (as amended) Proclamation No. 648/2009, art 2 (29) and Public Debt Management and Guarantee Issuance Directive No 46/2017, art 3 (1).

2 Proclamation No. 648/2009, art 2 (30).

3 Proclamation No. 648/2009, art 2 (20)

4 Directive No 46/2017, art 3 (1).

repay, the sovereign debt can be classified into government-guaranteed sovereign debt and non-guaranteed sovereign debt. The government-guaranteed external debt comprises loans and suppliers credits contracted by public enterprises, mainly the Ethiopian Electric Power (EEP), Ethiopian Electric Utility (EEU), Ethiopian Sugar Corporation (ESC), Ethiopian Railways Corporation (ERC), and Ethiopian Shipping Lines (ESL) and guaranteed by MoF as well as the state-owned bank- the Commercial Bank of Ethiopia (CBE). However, the MoF issues a guarantee only for the performance of the obligation to repay provided that the proceeds of the loan in respect of which the guarantee is sought are used to finance the implementation of projects to which priority is given in the development plan of the government approved by the House of Peoples Representatives (HoPR).[5] The non-guaranteed external debt, on the other hand, includes loans contracted by public enterprises, mainly Ethiopian Airlines (EAL)[6] and Ethio-Telecom (former ETC),[7] without government or government-owned bank guarantees.

The current development plan aims to bring down the ratio of total national debt to GDP from 51% in 2019/20 to 48.6% in 2029/30.[8] Further, the total government budget deficit is projected to reach birr 556.4 billion by the end of the plan period; this will be equivalent to 2.9% of GDP. [9] It is projected that the deficit will mainly be financed from domestic sources.[10] In line with this, the government will work towards establishing primary and secondary financial markets (bond and stock exchange markets) that will be guided by market principles.[11] During the plan implementation period, on average, 79% of the budget deficit will be covered by loans from domestic sources in a way that would not expose the economy to inflationary pressure whereas the remaining 21% will be covered by external loans. [12] It is also worth noting that, the country has applied for debt restructuring under the G20 Common Framework to accelerate its debt restructuring efforts.

5 Proclamation No. 648/2009, art 49 and Financial Administration Council of Ministers Regulation No 190/2010, art 45(2)

6 Ethiopian Airlines Group Establishment Council of Ministers Regulation No 406/2017, art 6 (10).

7 Ethio-Telecom Establishment Council of Ministers Regulation No 197/2010, art 5(6).

8 Ten Years Development Plan- A Pathway to Prosperity 2021-2030, p. 33.

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

3. Ethiopia's Legal and Institutional Framework on Sovereign Debt

To ensure the sound and prudential administration of sovereign debt, Ethiopia has taken m easures by establishing the legal and institutional framework governing sovereign debt. Consequently, several laws have a direct or indirect relevance for the administration of sovereign debt. The most relevant laws are:

a) The Constitution of the Federal Democratic Republic of Ethiopia (FDRE): the Constitution regulates the power of the federal government and regional government on the management and contraction of sovereign debt.
b) Financial Administration Proclamation No. 648/2009 (as amended), the Federal Government of Ethiopia Financial Administration (Amendment) Proclamation No. 970/2016, International Agreements Making and Ratification Procedure Proclamation No. 1024/2017, the Financial Administration Council of Ministers Regulation No. 190/2010, and Public Debt Management and Guarantee Issuance Directive No. 46/2017. These regulate the requirements and procedures for contracting and management of sovereign debt.
c) Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/202: It defines the power of MoF regarding sovereign debt.

Generally, Ethiopia's legal framework on sovereign debt aims to ensure that debt shall be managed in such a manner as to prevent any negative impacts on the general economy, such as creating instability in monetary policy or balance of payments (see the below discussion).

Regarding the institutional framework for the administration of sovereign debt, MoF, which is responsible for supervising the finances of the federal government, plays a crucial role in sovereign debt. House of Peoples' Representatives (HoPR), Council Ministers and the Federal Auditor General are also important in the administration of sovereign debt. The detailed explanation of the roles and mandates of these institutions are provided under Sections 4 and 6

Procedure For Contracting Sovereign Debt

4. Procedure for Contracting Sovereign Debt

As per the constitution of the FDRE, the Federal Government shall borrow money and shall determine by law, the conditions and terms under which States can borrow money from internal sources.[13] Therefore, the Regional governments may borrow only from internal sources, while the Federal Government can borrow money from domestic and external sources.[14] The Regional governments can only borrow from internal sources based on the conditions and terms determined by the MoF.[15] The following discussion is limited to the procedure of borrowing by the Federal Government.

The authority to borrow and issue guarantees on behalf of the government lies with MoF.[16] Therefore, the MoF is empowered to mobilise, negotiate and sign loans on behalf of the Government of Ethiopia.[17] The Minister of MoF may also authorise other officials of the Federal Government to sign loan agreements on behalf of the Government of Ethiopia.[18] It also issues and sells securities as is considered necessary.[19]

4.1 Procedure for Contracting Domestic Sovereign Debt

Based on the type of sovereign debt, the procedures for contracting sovereign debt vary. In domestic sovereign debt, MoF shall, before entering into any contract, ensure that any loan it contracts to finance the fiscal deficit complies with the macroeconomic and fiscal framework (MEFF) and the monetary policy in place at the time of borrowing.[20] MEFF is an annually adjustable projection of public revenue and expenditure of three years based on macro-economic assumptions, which provides the basis of the budget ceiling to be fixed in order to facilitate the management of public resources within the framework of mid-term plan and make sure that the annual appropriation is geared towards ensuring macro-economic stability and includes: "….estimates of resources available from domestic and external borrowing…"[21]

MoF may finance fiscal deficit through the sale of treasury bills or by means of direct advance.[22] A Treasury bill is a debt instrument of short-term maturity issued by the

13 FDRE Constitution, Article 51 (7)

14 FDRE Constitution, Article 77 (4)

15 Ibid.

16 Proclamation No. 648/2009, art 40 (2) and Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, art 26 (1) (g).

17 Proclamation No. 648/2009, art 40 (2) and Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, art 26 (1) (g).

18 Proclamation No. 648/2009, art 41

19 Proclamation No. 648/2009, art 40 (2).

20 Directive No 46/2017, art 7 (1) (a)

21 Regulation No 190/2010, Article 2 (5) (e).

22 Directive No 46/2017, art 7 (2)

Federal Government through the National Bank of Ethiopia (NBE) to raise funds needed to finance the fiscal deficit,[23] while direct advance is a borrowing made by entering into a loan agreement with the lender and not by issuing securities.[24] For this purpose, MoF determines the type and value of the treasury bill to be issued for sale and carries out the sale of treasury bills in collaboration with NBE.[25] Basically, in domestic sovereign debt, MoF may borrow through the sale of Treasury bills or by means of direct advance without the approval of the House of Peoples' Representatives (HoPR).[26] However, the government bonds and other special bonds may be made available to the market only with the approval of the HoPR.[27]

4.2 Procedure for Contracting External Sovereign Debt

For external sovereign debt, no money shall be borrowed or security issued by or on behalf of the Federal Government without the authorisation of HoPR.[28] Moreover, before making external sovereign debt, MoF shall prepare annual and medium-term external borrowing requirements and debt repayment plans and incorporate the same in the Medium-Term Fiscal Framework.[29]

The public bodies and public enterprises shall submit to MoF, their external borrowing needs by indicating their priority in accordance with the development policies, strategies and programs of the government.[30] The public enterprises requesting external loans shall be required to submit the feasibility study of the project and their financial statement to prove their financial capacity to repay the debt on time. [31] MoF shall evaluate the external borrowing request submitted to it and if the request is consistent with its debt management strategy, the MoF shall submit it to external lenders and coordinate and lead the negotiations of the financing agreement to obtain the required finance.[32]

During negotiations, the Minister of Finance negotiates on the issuance and maturity dates, dates of payment and rates of interest; and sells any securities as may be necessary; enters into, and renegotiates such agreements relating to the issuance and sale of advances or securities as is considered necessary; and on-lend all or a

23 Directive No 46/2017, art 3 (3)
24 Proclamation No. 648/2009, art 2 (30)
25 Directive No 46/2017, art 7 (1) (b & c)
26 Directive No 46/2017, art 7 (2)
27 Directive No 46/2017, art 7 (3)
28 Proclamation No. 648/2009, art 40 (1).
29 Directive No 46/2017, art 8 (1)
30 Directive No 46/2017, art 8 (2)
31 Directive No 46/2017, art 8 (3)
32 Directive No 46/2017, art 8 (4)

portion of a borrowing subject to terms and conditions satisfactory to the Minister.[33] The Minister of Finance is mandated to sign loan agreements but may authorise other federal government officials to sign on behalf of the Government of Ethiopia. [34] Therefore, other officials or sector ministers can't negotiate and sign the external loan agreement unless authorised by the Minister of Finance.

The government may obtain loans and credits from external lenders on concessional or commercial terms to finance its development projects. Social projects shall not be financed by commercial loans unless special authorisation is given by the Minister of Finance.[35] However, MoF may not borrow in excess of the aggregate annual borrowing limit set for all types of loans, which shall be fixed based on the debt sustainability analyses prepared by MoF.[36] As of May 2025, there is no specific legislation that provides for the limit. However, it is the decision of the macro-economic committee to provide for the debt limit and the decision of the Committee is not publicly available. Every loan contracted by the Government shall be checked against the Debt Sustainability Analysis (DSA) of MoF to ensure that it does not upset the concessional and non-concessional borrowing composition indicated in the analysis.[37] MoF shall as much as possible facilitate concessional borrowing.[38] However, in the absence of concessional borrowing, resort may be taken to non-concessional loans as long as the limit set for non-concessional borrowing is not exceeded.[39]

Once the contract is signed, MoF shall submit to the Council of Ministers a copy of the signed agreement and explanation of the provisions of the agreement prepared in Amharic,[40] and brief explanatory notes and a draft ratification proclamation.[41] After that, the Council of Ministers forwards them after approving the draft ratification proclamation to HoPR for ratification.[42] Then the HoPR shall promulgate a ratification proclamation for a loan agreement it ratifies.[43] However, the HoPR does not conduct a thorough examination prior to the signing of the external loan agreement and also lacks the capacity for this. There are also exceptions in which MoF can contract sovereign debt without the authorisation of HoPR. The first case is borrowing for repayment, conversion, redemption and consolidation of loans.[44] The second one is in the case of

33 Proclamation No. 648/2009, art 40 (2).
34 Proclamation No. 648/2009, art 41
35 Directive No 46/2017, art 8 (5)
36 Directive No 46/2017, art 8 (6)
37 Directive No 46/2017, art 8 (7)
38 Directive No 46/2017, art 8 (8)
39 Directive No 46/2017, art 8 (8)
40 Amharic is the working language of the Federal government.
41 International Agreements Making and Ratification Procedure Proclamation No.1024/2017, Art 10 (1).
42 Proclamation No.1024/2017, Art 10 (3)
43 Proclamation No.1024/2017, Art 11 (1)
44 Proclamation No. 648/2009, art 43 (1).

a loan for the management of the consolidated funds.[45]

Generally, these are the procedures in sovereign debt (both in domestic and external sovereign debt). To the best of our knowledge, these procedures are being followed in sovereign debt. In other words, we do not have any information regarding sovereign debt made corruptly or in violation of the requirements provided under these domestic laws. Therefore, there is no practical case study which we would discuss for this purpose.

45 Proclamation No. 648/2009, art 44.

Current Status Of Sovereign Debt In Ethiopia

5. Current status of Sovereign Debt in Ethiopia.

As of December 31, 2023, Ethiopia's total public sector debt (domestic and external) rose by 1.63% to USD 64,361.37 million (approx. ETB 3,604,236.72 million), from USD 63,329.33 (approx. ETB 3,546,442.48 million) on June 30, 2023.[46] This is because public sector external debt increased by 1.02% and public sector domestic debt increased by 2.12%.[47] Public sector debt (domestic and external) was approximately 39.4% of nominal GDP as of December 31, 2023, with external debt accounting for nearly 17.5% of that percentage. [48] As of December 31, 2023, domestic debt accounted for 55.66% of total public sector debt, while external debt accounted for 44.34%. [49] The total external debt of the public sector was USD 28,537.56 million (approx. ETB 1,601,692.02 million) as of December 31, 2023, and the total domestic debt as of December 31, 2023, was USD 35,823.81 million (approx. ETB 2,006,383.93 million).[50] Out of the external debt, the Central Government share is USD 20,130.48 million (approx. ETB 1,130,836.32 million) that of Government Guaranteed is USD 5,756.18 million (approx. ETB 322,386.20 million) while that of Non-Government Guaranteed is USD 2,650.91 million (approx. ETB 148,469.50 million).[51]

The source of external debt is: from Official Creditors USD 23,319.89 million (approx. ETB1,305,913.84 million, from Multilaterals USD 15,564.64 million (approx. ETB 871,619.84 million), from AfDB USD 92.27 million (approx. ETB 5,167.12 million), from AfDF USD 2,114.00 million (approx. ETB 118384 million), from BADEA USD 90.55 million (approx. ETB 5,070.8 million), from EIB USD 186.11 million (approx. ETB 10,422.16 million), from IDA USD 11,961.20 million (approx. 669,827.2 ETB million) from IFAD USD 427.35 million (approx. ETB 23,931.6 million), from IMF USD 601.93 million (approx. ETB 33,708.08 million), from NDF USD 20.52 million (approx. ETB 1,149.12 million), from OFID USD 60.66 million (approx. ETB 3,396.96 million) from PTA USD 10.05 million (approx. ETB 562.8 million), from Bilaterals USD 7,755.25 million (approx. ETB 434,294 ETB), from Paris Club USD 972.10 million (approx. ETB 54,437.60 million), from Non-Paris Club USD 6,783.15 million (approx. ETB 379,856.40 million) and from Private Creditors USD 5,217.67 million (approx. ETB 292,189.52 million). The loans from the Private Creditors are from Commercial banks USD 3,257.16 million (approx. ETB 182,400.96 million), suppliers USD 960.51 million (approx. ETB 53,788.56 million) and Bond and Notes Holders (approx. EUROBOND) USD 1,000.00 million (approx. ETB 56,000.00 million). [52] The source of domestic

46 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.12.
47 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.12.
48 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.12.
49 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.12.
50 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.13 and 14.
51 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.17.
52 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.18

external debt is mainly from Central Government USD 200,172.86 million (approx. ETB 1,228,685.01 million), banks USD 15,573.05 million (approx. ETB 873,569.35 million), non-banks USD 6,330.62 million (approx. ETB 355,115.66 million), and from bonds and loan USD 13,863.97 million (approx. ETB777,698.92 million).[53]

Ethiopia is facing huge challenges in repayment of its sovereign debt and opting for restructuring under the G20 Common Framework. The main reason for this problem is Covid 19, civil war, low export, slow foreign direct investment, devaluation of the Ethiopian Birr and inflation. As a result, Ethiopia is facing a serious problem of dwindling foreign exchange reserves. This means that Ethiopia's foreign currency shortage is increasing. This is despite the ban on the use of foreign currency in local transactions while reducing the number of days that a returning resident can keep foreign cash from ninety to thirty days and the relaxation of restrictions on how much foreign currency can be brought into the country. The shortage of foreign currency is the main problem for paying back external sovereign debt since all the sovereign debt is required to be paid in foreign currency. Recently, Ethiopia became Africa's third defaulting country in December 2023 after it failed to make a USD 33 million coupon payment on its only international government bond.[54] The view of the government is that civil war delayed progress, but in November, facing depleted foreign exchange reserves and surging inflation, Ethiopia's official sector government creditors, including China, agreed to a debt service suspension deal.[55] Ethiopia's Ministry of Finance explained its decision to withhold the December coupon payment on its Eurobond.[56] However, Ethiopia had secured over $1.5bn in temporary debt under the G20's Common Framework to avoid defaulting on its liabilities.[57] There is also a growing sense in Ethiopia that the country will soon need a bailout from the International Monetary Fund (IMF).[58] This has no good impact on the future sovereign debt of Ethiopia since lenders might be unwilling to extend loans to Ethiopia.

53 Public Sector Debt – Statistical Bulletin –No. 48– 2019/20 - 2022/23 and 31/12/2023, p.38

54 https://www.reuters.com/world/africa/ethiopia-becomes-africas-latest-sovereign-default-2023-12-26/. Accessed December 29, 2023.

55 https://www.africanews.com/2023/12/27/ethiopia-defaults-on-33-million-bond-payment//

56 https://birrmetrics.com/ethiopia-default-33m/

57 https://african.business/2023/11/trade-investment/ethiopia-secures-1-5bn-in-temporary-debt-relief

58 https://www.africa.com/there-is-now-a-significant-risk-that-ethiopia-will-default-on-its-sovereign-debt/ accessed December 25, 2023.

6. FDRE Government Sovereign Debt Management

Sovereign debt management is the process of establishing and executing a strategy for managing government debt to raise the required amount of funding at the lowest possible cost over the medium to long term, consistent with a prudent degree of risk.[59] MoF is the primary agent of the Government of Ethiopia responsible for managing and conducting various cost-risk analyses of the country's sovereign debt portfolios. The main department that is responsible for the management of sovereign debt is the Debt Management Directorate of MoF.

This Directorate is not an independent organ responsible for debt management, but rather a department within the MoF. This Directorate is mandated to prepare and coordinate the formulation and implementation of the Medium Term Debt Strategy that enables the achievement of the desired level of sovereign debt composition; undertakes annual DSA in order to check whether the magnitude of the sovereign debt is within the repayment and solvency capacity of the country, which is released on the website of the MoF annually and serves as source of information; it also makes a regular portfolio and risk analysis to analyse the existing debt and the impact of new borrowing on the existing debt portfolio; comment on loan terms and participate in new loan negotiations; initiate and renegotiate debt rescheduling and debt relief with potential creditors; to timely effect Federal Government debt service for both the external and domestic debt, to manage on-lent loans and follow up the collection of on-lent loans proceeds; monitor disbursements; and maintain a comprehensive, timely and accurate total sovereign debt data of the country which includes both external and domestic debt of Federal Government guaranteed and non-government guaranteed debt.[60]

The Debt Management Strategy, which is a document setting out the debt management strategy of the government. It is prepared every five years and reviewed annually based on the data derived from the MEFF.[61] It is therefore the main tool in the management of sovereign debt. It shall be developed by the Minister based on the overall objective of borrowing appropriate amounts at appropriate times and in a way that balances the minimisation of cost with stability and takes into consideration the level of debt and the ability to repay.[62] It aims to guide the government to borrow the appropriate amount at the right time. Ultimately, the Debt Management Strategy aims to limit the negative impact of unsustainable debt on the economy.

59 https://www.mofed.gov.et/ministry-en/directorates/debt-management-directorate/ Accessed August 17, 2023.

60 ibid.

61 Directive, Art. 2(5).

62 Federal Government of Ethiopia Financial Administration (Amendment) Proclamation No.970/2016, art 41.

The first Strategy was formulated in 2012 covering the period FY 2012/13-2016/17.[63] That Strategy helped the country to maximise external concessional loans from multilateral and bilateral sources and use domestic financing to cover residual financing needs.[64] After the end of the first Strategy, MoF produced the second Strategy for the period 2015/16-2019/20. The objectives of this Strategy were the efficient management of the country's public debt in terms of a well-diversified and sustainable debt portfolio supportive of government needs; meeting the Government's financing needs at minimal cost and with a prudent degree of risk over the medium- to long-term; and, ensuring the growth and development of the country's domestic and external borrowing.[65] However, after the end of the second Strategy, MoF was unable to formulate the third Strategy due to COVID-19 and the third Strategy is still on board. This third Strategy is being developed in collaboration with the IMF and World Bank.

The other mechanism used in the management of sovereign debt is the Debt Sustainability Analysis (DSA), which is an analysis carried out to measure the liquidity and solvency of the country based on the magnitude and volume of the public debt incurred to finance the implementation of various development plans, to identify the positive and negative impacts of public debt on the macro economy of the country from the standpoint of the underlying debt burden and repayment capacity of the country to guide future borrowing decisions.[66] MoF is obliged to prepare annually a DSA based on the current Balance of Payment and the country's Monetary Policy, taking into consideration the repayment capacity of the country to enable planned borrowing.[67]

There is also the Federal Democratic Republic of Ethiopia (Federal Government) Public Financial Management Reform Strategy (2023-2028), which sets out the Federal Government of Ethiopia's strategic plan to tackle challenges presented by public financial management (PFM) systems at the Federal level.[68]

Moreover, to reduce the sovereign debt of state-owned entities, the Liability and Asset Management Corporation (LAMC) was founded by Minister of Council Regulation No. 483/2021 to take over the liabilities of public enterprises as per the list it receives from MoF and service such debt using capital to be allocated from the Industrial Development Fund, revenue generated from its business activities and other resources that may become available to it and to invest the capital injected by the Government

63 ETHIOPIA'S MEDIUM TERM DEBT MANAGEMENT STRATEGY (2016-2020), Debt Management Directorate of Ministry of Finance, January 2019, p. 11. Available at: https://www.mofed.gov.et/media/filer_public/da/95/da95d15b-fca3-4ca8-a4be-7f3c22022d26/ethiopias_final__mtds__2016-2020_for_mof_website_january_2019.pdf

64 Ibid.

65 Ibid at 25 & 26,

66 Ibid, art.

67 Directive, Art 13.

68 Federal Democratic Republic of Ethiopia (Federal Government) Public Financial Management Reform Strategy (2023-2028), available at: https://www.mofed.gov.et/media/filer_public/2d/27/2d27b5bd-0071-4c40-b674-7661d5375d11/new_ethiopia_pfm_reform_strategy_1.pdf

for debt service payment of public enterprises and other resources until it is used for repayment of such loan. However, lenders challenge the transfer of debt of public enterprises to LAMC. This is because such a transfer constitutes a debt restructuring which requires the consent of both parties. However, the language of law implies that the consent of lenders is not required. To sum up, LAMC plays a role in the management of sovereign debt, specifically debt taken by public enterprises by transferring such debt to LAMC.

Relatedly, to minimise exposure and risks associated with SOE debt accumulation the Government has embraced innovations in financing infrastructure development off the balance sheet without impacting heavily on the debt portfolio. Towards this end, Ethiopia has introduced the framework for raising private financing for public investments through the Public Private Partnership (PPP) initiatives.[69] PPP is a long-term agreement between a Contracting Authority and a Private Party under which a Private Party: a) undertakes to perform a Public Service Activity that would otherwise be carried out by the Contracting Authority; b) receives a benefit by way of : (1) compensation by or on behalf of the Contracting Authority; (2) tariffs or fees collected by the Private Party from users or consumers of a service; and (3) a combination of such compensation and such charges or fees. c) is generally liable for risks arising from the performance of the activity or use of the state property by the terms of the Project Agreements.[70] Generally, the MoF leads the management of sovereign debt in Ethiopia but more specifically the Debt Management Directorate deals with this issue.

6.1 Transparency in Contracting and Management of Sovereign Debt

To ensure transparency and accountability in sovereign debt, the law requires MoF to maintain a comprehensive record showing all domestic and foreign borrowings by the issuance of direct advances and sale of securities; containing a description of all money so borrowed; showing all amounts paid in respect of the principal of and interest on all money so borrowed; showing all amounts paid to registers, fiscal agents and others for administrative services relating to the issuances, management and redemption of direct advances, and securities, and for administrative services relating to the issuance, management and payment of guarantees; and containing authorisations, descriptions, amounts paid, and all administrative expenses relating to guarantees.[71] Further, MoF publishes Public Sector Debt Statistical Bulletin, which provides information on public debt including (i) the central government external debt, (ii) the government-guaranteed

69 Public Private Partnership Proclamation No 1076/201 8

70 Public Private Partnership Proclamation No 1076/201 8, Article 2 (12).

71 Proclamation No.970/2016, art 52.

external debt, (iii) the non-guaranteed external debt, (iv) the central government domestic debt, and (v) the government-guaranteed domestic debt.[72] Therefore, transparency on debt in the country is improving through the debt statistical bulletin.

The role of the Federal Auditor General is also paramount in ensuring transparency in sovereign debt, as the office is responsible for auditing the consolidated accounts of MoF,[73] which is the Federal Government treasury account through which public money is received and disbursements and expenditures are made.[74] Civil society organisations have an objective to ensure transparency in all government activities including sovereign debt, but practically their role and work regarding sovereign debt is almost non-existent. This is because in the procedure for contracting sovereign debt, there are no public participation requirements at all. Therefore, even though there is a need for civil society to participate in this and make citizens aware, the civil society organisations have no opportunity to participate in the approval of sovereign debt contraction. In the management of foreign debt also there are no opportunities for civil society to take part in. Finally, but not least, having a regularly reviewed strategy also raises the profile of debt management activities and objectives and requiring ratification of sovereign debt (though not all) prevents ad hoc and frequent changes and strengthens transparency.

6.2 Accountability in Contracting and Management of Sovereign Debt

The law provides several procedural safeguards to ensure sound and lawful contracting and management of sovereign debt. However, these procedural safeguards are not sufficient unless they are followed and implemented accordingly. This means that persons mandated to contract the sovereign debt shall be accountable for their actions undertaken in violation of the law. The law does not provide specific penalties for persons violating the law when contracting sovereign debt.

However, the general penalty provided in the management of public money applies in the contracting of sovereign debt because public money includes any money received by the Federal Government or any public body as loans or as assistance under bilateral or multilateral agreements or from other sources. Accordingly, every person appointed to or employed by a public body to collect, manage or disburse public money who: receives any payment for the performance of his official duty, except as prescribed by law; conspires or colludes with any person to defraud the Federal Government, or

72 See Public Sector Debt Statistical Bulletin, BULLETIN No. 46 (2018/19 - 2022/23) prepared by Debt Management Directorate Ministry of Finance Federal Democratic Republic of Ethiopia. Available at: https://www.mofed.gov.et/media/filer_public/3e/be/3ebe0ba1-0ecf-4ec7-87a7-7f0090be5646/final_public_sector_debt_statistical_bulletin_no_46_1.pdf

73 Proclamation 648/2010, Art 63.

74 Ibid 2(20).

provides an opportunity for any person to defraud the government; and intentionally permits any contravention of the law by any person is liable on conviction to a fine not less than birr 25,000 and not more than birr 35,000 and rigorous imprisonment for a term of not less than 10 years and not more than 15 years.[75] Every person appointed to or employed by a public body to collect, manage or disburse public money who demands or accepts or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of any change or complaint for any contravention is liable on conviction to a fine not less than birr 25,000 and not more than birr 35,000 and to rigorous imprisonment for a term of not less than 15 years and not more than 25 years.[76] Every person appointed to or employed by a public body to collect, manage or disburse public money who has knowledge or information of the contravention or fraud committed by any person against this Proclamation or the regulations issued according to this Proclamation, fails to report the same to a superior is liable on conviction to a fine not more than birr 10,000 and rigorous imprisonment for a term of not more than 5 years.[77] Therefore, any person who contracts and receives sovereign debt in any of the above ways is criminally and administratively liable as provided above.

6.3. Gaps and Challenges in the Legislative and Institutional Frameworks Governing Sovereign Debt

The legislative and institutional safeguards provided for contracting and management of sovereign debt in Ethiopia are sufficient. The principles of transparency, accountability, and good governance provided in the law are not well developed. First, the legislative framework fails to regulate several issues that need to be regulated by law. For instance, in the procedure for contracting sovereign debt, there is no requirement for public participation. Negotiations take place between MoF and the potential lender. Therefore, there are no minimum terms and conditions which are non-negotiable. Besides this, Ethiopia lacks sufficient expertise on the negotiation of sovereign debt hence most of the terms and conditions of the contract will be in favour of the lender. For instance, the law does not provide a mandatory dispute settlement mechanism in sovereign debt and, from legal professionals' practical experience, almost all the contracts on sovereign debt with external lenders were agreed to be settled by arbitration outside of Ethiopia. The risks here were that Ethiopia lacks sufficient expertise in arbitration and the arbitration abroad is expensive.

75 Proclamation 648/2010, Art. 70 (1)

76 Ibid 70 (2)

77 Ibid 70 (3)

Additionally, there is no effective budget expenditure system. Due to this, the debts obtained are usually not utilised properly. Further, the law does not provide safeguards for debt contraction in the context of shocks e.g., pandemics, war, and climate change; as such, issues during the shock times are to be settled by parties. Issues of debt restructuring are also left to be decided by parties, except transferring liabilities of public enterprise to LAMC without consent of creditors, which is being challenged by creditors.

Due to these reasons, the concern of Ethiopia on sovereign debt is largely on the availability of lenders, interest, maturity, restructuring and repayment of debt and dispute settlement. However, since Ethiopia seeks to borrow but lacks the required expertise in negotiation and dispute settlement, most of the country's concerns are not operating as smoothly as expected.

7. Conclusion and Recommendations

Ethiopia makes several borrowings on its behalf from external and domestic lenders to overcome its budget deficit from time to time. However, these borrowings are not made randomly. This is because the law has provided the organ mandated to contract sovereign debt and the procedures to be followed in contracting the sovereign debt. In these, MoF is the primary organ that is responsible for mobilising, negotiating and signing loans, and following up on the implementation of the same. Procedurally, the MoF can undertake domestic borrowing without approval of the HoPR, but the government bond and other special bonds may be made available to the market only with the approval of the HoPR. On the other hand, in external sovereign debt, the borrowing can be made by the MoF except in a few cases. The MoF is responsible for the management of the sovereign debt and the Debt Management Directorate is the main department of the MoF responsible for it. Generally, Ethiopia has legal and institutional frameworks for the contraction and management of sovereign debt. However, these frameworks are insufficient in the regulation of the matter. The legislative framework on sovereign debt is not comprehensive since most of the issues of sovereign debt are left to be regulated by the debt contract. Based on this, we provide the following recommendations:

- check-circle A comprehensive and separate law on the management and contracting of sovereign debt should be enacted;
- check-circle There should be public participation, including civil social organisations in the contraction and management of sovereign debt;
- check-circle The minimum terms and conditions of the debt contract should be determined by law;
- check-circle The issues of force majeure or shock or other issues of worries in sovereign debt should be regulated in detail;
- check-circle Public participation requirements should be provided for approval of the sovereign debt. This should allow for civil society participation;
- check-circle The specific and detailed penalty provisions on the violation of law in sovereign debt should be provided;
- check-circle Provisions on dispute settlement should be clarified;
- check-circle Enacting the standalone public debt proclamation that should include the terms and conditions for external borrowing and providing a model loan contract;
- check-circle Providing a budget tracking system to demonstrate how debt has been used;
- check-circle Providing capacity building to cover negotiation techniques and

thresholds;

- Undertaking effective monitoring of the ability of public enterprises to pay and prior evaluation of their ability to pay before their borrowing; and
- Providing expressly the aggregate annual borrowing limit.

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