



# **Intermediaries, Transaction Costs, and Sovereign Debt Sustainability in Africa**

DOMINIC NPOANLARI DAGBANJA

# Intermediaries, Transaction Costs, and Sovereign Debt Sustainability in Africa

Dominic Npoanlari Dagbanja\*

\* Associate Professor of Law, Curtin University Law School, Western Australia, Australia; and Research Fellow, African Procurement Law Unit, Department of Mercantile Law, Stellenbosch University, South Africa. I am very grateful to Professor Thuo Gathii for the opportunity to prepare this policy brief and for the feedback I received from him and the Afronomicslaw.org team. Thanks so much to Julianne Grant for her very helpful edits.

# Executive Summary

Sovereign borrowing and debt restructuring are very common among African countries. When African countries restructure their debts, they usually engage third parties to assist them in the process. While there are extensive studies on debt restructuring and sustainability in Africa, no attention has been paid to transaction costs associated with the use of intermediaries to assist African countries in debt restructuring and the implications associated with those costs. This gap in the literature is the subject that this policy brief addresses. Specifically, the primary question this brief seeks to answer relates to the charges, expenses, and costs incidental to debt restructuring in Africa, which arise directly from the engagement of intermediaries who often serve as legal and financial advisors.

To address this question, the brief analyzes sovereign debt sustainability in Africa generally and, more pointedly, the actors, third parties, and intermediaries who participate in sovereign debt restructuring. Sections 1–4 provide general background on sovereign debt in Africa, its costs, and the actors involved in the process. Sections 5 and 6 offer specific case studies (Ghana and Zambia) on the engagement of intermediaries and transaction costs involved in African debt restructuring.

More specifically, section 5 establishes that there are two types of costs when African countries engage intermediaries in sovereign debt restructuring. First, there are the financial costs that involve payments made to those employed to provide governments with legal and financial advice in the debt restructuring process. Second, there are regulatory compliance costs, which comprise the time and expense expended to comply with domestic legislative requirements for procuring and engaging intermediaries to provide advice. Both types of costs are hidden and can drive up costs and expenses incidental to debt restructuring and can ultimately compromise debt sustainability in Africa.

Section 6 establishes that while African countries have legal obligations under domestic legislation to openly publish accurate and timely information on debt stocks and debt service costs, they have failed to provide this information, including the exact amounts of payments made to intermediaries. The governments' unwillingness to release disaggregated figures on debt service costs has made it impossible to establish the precise amounts expended on debt restructuring intermediaries, such as financial and legal advisors. Section 6 also contains the author's policy recommendations for addressing the transactional costs associated with the engagement of intermediaries in African sovereign debt restructuring, including the need for African governments to comply with statutory requirements to provide meaningful information on these costs. The author also addresses the need to reform the African and global financial architectures that govern borrowing and debt restructuring, albeit in a manner appropriate for managing debt service costs.

# Table of Contents

## Executive Summary

## Introduction

## Sovereign Debt Unsustainability in Africa.

## Sovereign Debt Restructuring Costs in Africa: A Missing Consideration.

## The Actors in Sovereign Markets and Debt Restructuring.

- Sovereign Debtors.
- Creditors.
- Third Parties and Intermediaries.

## Intermediaries and Sovereign Debt Restructuring in Africa.

- Sovereign Debt Restructuring Intermediaries in Africa: Who They Are, Their Roles, and Their Contributions to Financial Costs Involved in Sovereign Debt Restructuring.
- The Legal Requirements for Engaging Intermediaries for Advisory Services in Sovereign Debt Restructuring: Compliance Costs.

## Concluding Remarks and Recommendations.

- Statutory Frameworks for Debt Restructuring.
- Recommendations.
- Appointment of Intermediaries.
- Access to Information on Debt Service Costs.
- Legal Assistance for Debt Restructuring.
- African Credit Rating Agency.
- Global Financial and Debt Architectures.



## 1.0 Introduction

The costs of sovereign debt are traditionally assessed by focusing only on principal and interest payments and referencing the principal actors, such as sovereign debtors and creditors. This approach ignores many other costs involved in the drawing up, negotiating, underwriting, and restructuring of sovereign debt contracts. For example, governments are empowered to employ all sorts of intermediaries to provide advisory services for restructuring sovereign debt. This policy brief is an original contribution to the literature on the costs of sovereign borrowing and debt restructuring, as it concentrates on the neglected subject of intermediaries and transaction costs associated with debt restructuring in Africa.



*Sovereign debt is an exchange of outstanding sovereign debt instruments, such as loans or bonds, for new debt instruments or cash through a formal process. Sovereign debt here refers to debt issued or guaranteed by the government of a sovereign state. One can generally distinguish two main elements in a debt restructuring: debt rescheduling, defined as a lengthening of maturities of the old debt, possibly involving lower interest rates; and debt reduction, defined as a reduction in the face (nominal) value of the old instruments. Both types of debt operations involve a “haircut,” that is, a loss in the present value of creditor claims.<sup>1</sup>*

Transaction cost theory posits that organizational structure is best or optimum when it operates to achieve economic efficiency through minimizing the costs of exchange. According to this theory, each transaction or economic activity comes with costs arising from managing, controlling, and monitoring. In the sovereign debt restructuring process, transaction costs are those beyond principal and interest; specifically, they are coterminous with the costs associated with engaging advisors such as legal and financial services advisors. Transaction costs contrast with production costs.<sup>2</sup> Oliver Williamson rightly stated that “[t]he criterion for organizing commercial transactions is assumed to be the strictly instrumental one of cost economizing. Essentially this takes two parts: economizing on production expense and economizing on transaction costs.”<sup>3</sup>

1. Udaibir S. Das, Michael G. Papaioannou & Christoph Trebesch, *Restructuring Sovereign Debt: Lessons from Recent History*, in *Financial Crises Causes, Consequences, and Policy Responses* 593, 594 (Ayhan Kose, Luc Laeven & Fabian Valencia eds., 2014); see also Isaac Ahinsah-Wobil, *Emerging Financial Markets in Ghana and Public Financial Management Crisis Uncertainties Amidst Debt Restructuring*, in *New Topics in Emerging Markets* 126 (Vito Bobek & Tatjana Horvat eds., 2024).
2. Suzanne Young, *Transaction Cost Economics*, in *Encyclopedia of Corporate Social Responsibility* (S.O. Idowu et al. eds., 2013), [https://doi.org/10.1007/978-3-642-28036-8\\_221](https://doi.org/10.1007/978-3-642-28036-8_221).
3. Oliver Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 *J. L. & Econ.* 233, 245 (1979) (emphasis added).



In Williamson's opinion,

“

*the object is to economize on the sum of production and transaction costs. To the degree production-cost economies of external procurement are small and/or the transaction costs associated with external procurement are great, alternative supply arrangements deserve serious consideration. Economizing on transaction costs essentially reduces to economizing on bounded rationality while simultaneously safeguarding the transactions in question against the hazards of opportunism.*<sup>4</sup>

When a country is unable to service or settle its debts within the required period, a restructuring of the debt following negotiations with creditors seeks to achieve the objective of “returning debt to a sustainable level at the lowest cost to both the sovereign and its creditors.”<sup>5</sup> Thus, a sovereign debt restructuring must be able to find a reasonable balance between returning the debt to a sustainable level and reducing the creditors’ losses. Debt restructuring can reduce the principal payments and interests. In an African country such as Ghana, it has been argued that “debt restructuring has been used as a means of regaining fiscal discipline and reducing fiscal deficits.”<sup>6</sup> A sovereign debt restructuring is arguably a failure when it takes too long to execute, fails to provide sufficient debt relief, and leads to excessive and confiscatory debt relief from the creditors’ perspective—that is, where the creditors see the debt relief as coercive in an unnecessary and unjustified way or where the debt restructuring ends up driving up the debt in a manner that may not be adequately captured in the debt relief process.<sup>7</sup>

The problems of sovereign debt restructuring have been studied from a variety of perspectives<sup>8</sup> but certainly not from the standpoint of how debt service-related costs, such as those associated with using intermediaries, may compound government debt. The sovereign debt literature is skewed in the sense that it focuses on the principal actors in debt restructuring—the sovereign and creditors.<sup>9</sup> As such, this policy brief fills the gap in the literature by analyzing the transaction costs (as exemplified by debt service costs) associated with drawing and restructuring sovereign debt, as well as their implications for sovereign debt sustainability in Africa. The main objective is to ascertain these costs and determine whether they increase sovereign debt rather than help reduce or effectively manage it. The brief also assesses the processes and requirements for engaging intermediaries (the procurement and financial management aspects).

4. Id. at 245–46.

5. Tapas Strickland, Sovereign Debt Restructuring: Recent Issues and Reforms, Rsr. Bank Austrl. Bull. 73 (Dec. 2014).

6. Ahinsah-Wobil, *supra* note 1.

7. Lee Buchheit et al., The Sovereign Debt Restructuring Process (DRAFT, Sept. 4, 2018), chapter-8-the-debt-restructuring-process.pdf.

8. Strickland, *supra* note 5, at 74–78.

9. See, e.g., Austin Hart, Restructuring Sovereign Debt, Part II of the African Sovereign Debt Justice Paper Series, African Sovereign Debt Justice Network 1–6, [https://www.afronomicslaw.org/sites/default/files/pdf/Restructuring%20Sovereign%20Debt%20-%20Edited%20AH%20\(times%20new%20roman\).pdf](https://www.afronomicslaw.org/sites/default/files/pdf/Restructuring%20Sovereign%20Debt%20-%20Edited%20AH%20(times%20new%20roman).pdf) (last visited Dec. 3, 2024).

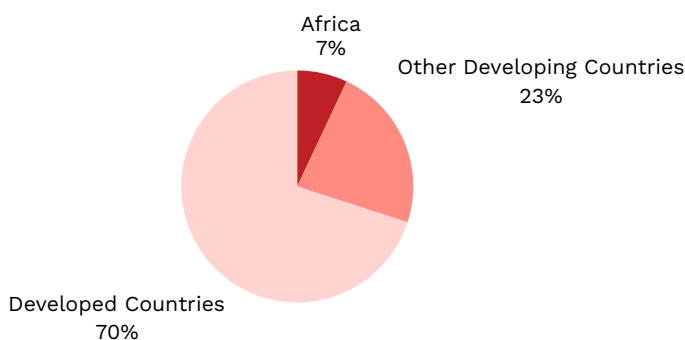
This brief is organized as follows. Sections 2–4 review and analyze the literature on sovereign debt restructuring in Africa. They cover the sustainability of sovereign debt, the costs of sovereign debt restructuring, and the primary actors in sovereign markets and sovereign debt restructuring. Sections 2–4 also establish that current studies on sovereign debt and sovereign debt restructuring in Africa have ignored the important subject of the costs associated with using intermediaries in negotiating and concluding sovereign debt restructuring agreements. Based on the foundation established in sections 2–4, section 5 examines intermediaries and the costs associated with employing them for assistance in restructuring sovereign debt in Africa. Section 5 also offers a qualitative and quantitative analysis of the research data available from government reports, using Ghana and Zambia as case studies since they recently restructured their debts. Section 5 establishes the lack of transparency of the costs, charges, and expenses that African governments incur in connection with debt restructuring. These costs are financial and regulatory and can increase or compound government debts. Section 6 contains the brief’s concluding remarks and offers the author’s policy recommendations.



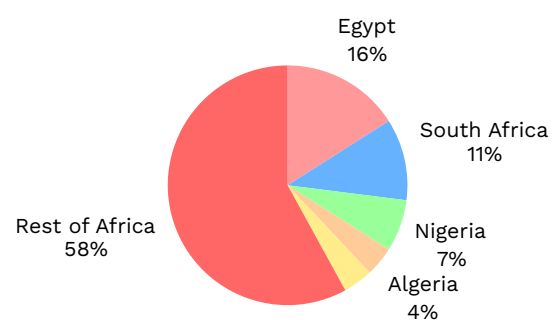
2.0

# Sovereign Debt Unsustainability in Africa

Global public debt reached US\$97 trillion in 2023, with developing countries carrying US\$29 trillion, which accounts for 30% of global debt. Africa alone accounts for 7% of the world's debt.<sup>10</sup> The United Nations Conference on Trade and Development (UNCTAD) has summarized the staggering and unsustainable level of public debt in Africa as follows: "In 2022, public debt in Africa reached USD 1.8 trillion. While this is a fraction of the overall outstanding debt of developing countries, Africa's debt has increased by 183% since 2010, a rate roughly four times higher than its growth rate of GDP in dollar terms."<sup>11</sup> Egypt holds US\$421 billion, South Africa US\$288 billion, Nigeria US\$181 billion, Algeria US\$102 billion, Morocco US\$95 billion, and the rest of Africa is US\$745 billion in debt.<sup>12</sup> In 2020, twenty-seven African countries had a debt-to-GDP ratio above 60%, "a level seen as a threshold for sustainability."<sup>13</sup>



Global Public Debt Distribution (2023)



Africa's Public Debt Distribution (2022)

Although sovereign debt is growing in all regions of the world, it is only in Africa that it is growing faster than GDP.<sup>14</sup> In 2023, nearly half of African countries allocated not less than 10% of government revenues to interest payments.<sup>15</sup> In fact, over the past decade, interest payments on sovereign debts in Africa increased by 132%, to "the detriment of spending on education, healthcare and investment."<sup>16</sup> About 751 million people in Africa (around 57% of the African population) live in countries that spend more on interest payments than on sectors such as health and education.<sup>17</sup>

10. UNCTAD, A World of Debt Report 2024: A Growing Burden to Global Prosperity 4–5, UNCTAD/OSG/TT/INF/2024/1 (2024).

11. UNCTAD, Regional Stories: Africa 2023, UN Trade & Development, <https://unctad.org/publication/world-of-debt/regional-stories#:~:text=In%202022%2C%20public%20debt%20in,of%20GDP%20in%20dollar%20terms.>

12. Id.

13. Id.

14. UNCTAD, A World of Debt Report 2024, supra note 10, at 7.

15. Id. at 16.

16. UNCTAD, Regional Stories, supra note 11.

17. Id.





The African Development Bank (AfDB) Group has estimated that the total external debt of African countries stood at US\$1.12 trillion in 2022 and rose to US\$1.152 trillion by end-2023. The AfDB Group observed that global interest rates over this period were at their highest levels in forty years, and based on these high rates, Africa collectively would pay out US\$163 billion to service debts in 2024. This is a sharp rise from US\$61 billion in 2010. These huge debt repayments could hinder the fulfillment of the United Nations Sustainable Development Goals (SDGs) in Africa in such areas as infrastructure, education, and health.<sup>18</sup>

The debt restructuring processes that African countries have experienced, such as those illustrated in section 3 below, demonstrate the unsustainability of African sovereign debt. Sovereign debt is only sustainable when the sovereign debtor can continue to service the debt. More specifically, public debt is sustainable “if the government is able to meet all its current and future payment obligations without exceptional financial assistance or going into default.”<sup>19</sup> Thus, sustainability is about solvency and liquidity. It is also about whether a state can service its debt and concurrently meet its citizens’ social and economic needs. If the state is spending more on servicing debt than it can spend to meet the educational and social needs of its citizens, then that country’s debt cannot be said to be sustainable. In that sense, most sovereign debts in Africa are not sustainable to the extent that the affected countries are unable to service their debts at all, or they are spending more on debt servicing than on social needs, such as education and health. The literature abounds on coverage of unsustainable debt in Africa.<sup>20</sup> However, this policy brief addresses what contributes to debt unsustainability in Africa and goes beyond the conventional analysis of bad governance and corruption, examining how the costs associated with intermediaries in sovereign debt restructuring contribute to debt unsustainability.

18. African Development Bank Group, Annual Meetings 2024: Old Debt Resolution for African Countries – The Cornerstone of Reforming the Global Financial Architecture (May 15, 2024), <https://www.afdb.org/en/news-and-events/annual-meetings-2024-old-debt-resolution-african-countries-cornerstone-reforming-global-financial-architecture-70791>.

19. Dalia Hakura, What is Debt Sustainability?, IMF (Sept. 2020).

20. Dilmini Hasintha Abeyrathne & Tharindu Udayanga Kamburawala, Comparative Analysis of Debt Restructuring Strategies in Developing Economies: A Case Study of Ghana, Zambia, and Sri Lanka, 4 HAPSc Pol’y Briefs Series 147 (2023); Baffour Osei, Ghana: The Burden of Debt Service Payment under Structural Adjustment (African Economic Research Consortium, AERC Research Paper 33, 1995); P. Achimugu & K. Thompson, Financial Restructuring and Ghana’s Debt Sustainability, 24 Afr. Dev. Rev. 372 (2012).

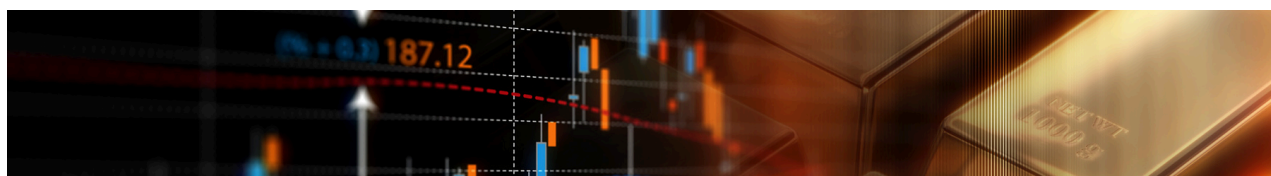
3.0

# Sovereign Debt Restructuring Costs in Africa: A Missing Consideration

The African Sovereign Debt Justice Network, convened by Afronomiclaw.org, has conducted extensive research on sovereign debt and sovereign debt restructuring in Africa.<sup>21</sup> Studies show that there have been over 317 sovereign debt restructurings in Africa since the 1980s.<sup>22</sup> African countries have, for the most part, borrowed from multilateral lenders, such as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the AfDB, and from high-income countries that are members of the Paris and London Clubs. In recent times, the scope of bilateral lending to African countries has expanded. China, for example, has become a significant lender to African countries.<sup>23</sup>

African debt restructuring has traditionally been performed through the Paris Club. Prolonged and unpredictable processes involved in restructuring sovereign debt have been identified in the literature as some of the factors that increase sovereign debt beyond sustainable levels and lead to damaging both the creditors and indebted countries. Thus, the following has been argued:

The absence of a predictable, orderly, and rapid process for restructuring the debts of sovereigns that are implementing appropriate policies has a number of costs. It can lead a sovereign with unsustainable debts to delay seeking a restructuring, draining its reserves and leaving the debtor and the majority of its creditors worse off. Perhaps most crucially, the absence of a mechanism for majority voting on restructuring terms can complicate the process of working out an equitable debt restructuring that returns the country to sustainability. The risk that some creditors will be able to hold out for full payment may prolong the restructuring process, and even inhibit agreement on a needed restructuring. The absence of a predictable process creates additional uncertainty about recovery value.<sup>24</sup>



21. See Afronomicsslaw.org, African Sovereign Debt Justice Network, <https://www.afronomiclaw.org/category/afsdjn> (last visited Dec. 22, 2024); see also James Gathii, How to Reform the Global Debt and Financial Architecture (2023).

22. Skylar Brooks, Domenico Lombardi & Ezra Suruma, African Perspectives on Sovereign Debt Restructuring 1 (Centre for Int'l Governance Innovation Papers No. 43, Sept. 2014).

23. Id.

24. Anne O. Krueger, A New Approach to Sovereign Debt Restructuring, IMF, 2 (2002).



UNCTAD has also noted that the creditor base's increased complexity has resulted in even more difficult debt restructuring. The reason for this is that the new creditor base demands that the debtor country negotiate with a broader range of creditors, which have different interests and rely on different legal frameworks. According to UNCTAD, “[d]elays and uncertainties increase the cost of resolving debt crises.”<sup>25</sup> The process of debt restructuring in Africa can take up to a year or more for an agreement to be reached. For example, in January 2023, Ghana requested a debt restructuring under the G20's Common Framework for Debt Treatments.<sup>26</sup> It took eight months of negotiations for Ghana's government and the Official Creditor Committee to reach an agreement in principle on January 12, 2024, which outlined the parameters for restructuring Ghana's official bilateral debt. The Ghanaian government and the Official Creditor Committee reached an agreement on the restructuring of about US\$5.1 billion of the official bilateral debt on June 11, 2024. Ghana also concluded negotiations with its Eurobond holders, which covered US\$13.1 billion and was expected to lead to the cancellation of US\$4.7 billion in debt and debt service relief of US\$4.4 billion by 2026.<sup>27</sup> Zambia's debt restructuring faced similar delays for at least two years,<sup>28</sup> with the African Sovereign Debt Justice Network expressing concern about “both the speed and scale of Zambia's debt restructuring as the country's debt restructuring agenda has taken a rather protracted period than is necessary.”<sup>29</sup>

Delays in and associated costs of sovereign debt restructuring can be addressed through a legal mechanism that deals with the problem of holdout creditors—that is, creditors who hold the debt restructuring process at ransom by refusing to participate in a debt restructuring scheme that other participants accept. Thus, the use of vulture funds should be discouraged in African debt restructuring processes. Through vulture funds, creditors can purchase debt at a discount, refuse to participate in the restructuring, and then use litigation to pursue the full value of the debt, including interest, arrears, and penalties.<sup>30</sup>

Furthermore, when there are diverse claims and interests (because there are several creditors), it becomes difficult if not impossible to secure collective action or consensus when the borrowing nation's debt service obligations go beyond the country's capacity to repay.<sup>31</sup> Thus, to reduce the costs associated with sovereign debt restructuring for both the country and its creditors, there is a need to improve the debt restructuring process. The starting point is for the sovereign debtor country and the creditors to work together to reach an agreement on restructuring rather than resorting to a formal sovereign debt restructuring mechanism, which can result in a drawn-out process and increase the amount of debt.

25. UNCTAD, A World of Debt Report 2024, *supra* note 10.

26. Ghana's Debt Restructuring Takes Another Step Forward, Reuters (June 24, 2024), <https://www.reuters.com/markets/ghanas-debt-restructuring-takes-another-step-forward-2024-06-24/#:~:text=%20June%202023%20%2D%20Ghana%20sends%20a,over%20the%20following%20three%20years>.

27. Dr. Mohammed Amin Adam, Minister for Finance (Ghana) & MP for Karaga, 2024 Mid-Year Fiscal Policy Review, July 23, 2024, at 4, ¶¶ 63–64.

28. African Sovereign Debt Justice Network, Eighty Eighth Sovereign Debt News Update: Zambia Seals \$6.3 billion Debt Restructuring Deal that Excludes Private Creditors, Afronomicslaw.org (June 15, 2023), <https://www.afronomicslaw.org/index.php/category/african-sovereign-debt-justice-network-afsdjn/eighty-eighth-sovereign-debt-news-update>.

29. African Sovereign Debt Justice Network, One Hundred and Eleventh Sovereign Debt News Update: Zambia Signs Debt Restructuring Deal with Official Creditors China and India, Afronomicslaw.org (Mar. 6, 2024), <https://www.afronomicslaw.org/index.php/category/african-sovereign-debt-justice-network-afsdjn/one-hundred-and-eleventh-sovereign-debt-news>.

30. Brooks, Lombardi & Suruma, *supra* note 22, at 8.

31. Krueger, *supra* note 24, at 1.

The latter requires the debtor country to initiate the process of debt restructuring with the creditors as soon as it finds itself unable to meet its repayment requirements and associated financial obligations. A sovereign debt restructuring must be a secondary tool rather than a default way to address sovereign debt. The threshold for initiating a sovereign debt restructuring should be when it is undoubtedly foreseeable that the debt will be unsustainable.<sup>32</sup> In other words,

the mechanism would be invoked where there is no feasible set of sustainable macroeconomic policies that would enable the debtor to resolve the immediate crisis and restore medium-term viability unless they were accompanied by a significant reduction in the net present value of the sovereign's debt. In such cases, the country concerned would probably already have been implementing corrective policies but would have reached the point where financial viability could not be restored without a substantial adjustment in the debt burden.<sup>33</sup>

When a sovereign debt restructuring must be used, the costs of using that mechanism and its potential to worsen the country's debt situation must be considered. The mechanism must be aimed at restructuring unsustainable sovereign debt in a manner that is predictable, certain, orderly, and rapid. To be effective and lead to the desired outcome, the restructuring mechanism must place the country in a position where it can pay its debt and preserve the value of its assets. The sovereign debt restructuring must be designed to ensure that the debtor's and creditors' roles facilitate the attainment of a timely agreement by providing appropriate incentives to allow for a return to sustainability.<sup>34</sup> An appropriate balance of incentives in the design and implementation of a sovereign debt restructuring mechanism will enable debtors to address their debts at an early stage, which can help prevent or avoid the exhaustion of official reserves and economic dislocation.<sup>35</sup>

The costs of debt restructuring in Africa go beyond money. In *Emerging Financial Markets in Ghana and Public Financial Management Crisis Uncertainties Amidst Debt Restructuring*, Isaac Ahinsah-Wobil argued that debt restructuring can also become costly to the state when it limits or removes the future right of access to credit. Unfavorable terms in restructuring agreements can increase borrowing costs and thus limit government access to financing. Restructuring agreements commonly come with conditions that require reforms or impose austerity measures, which in turn can lead to public services of poor quality and an attendant impact on the entire national economy. Investors may also be less willing to lend to a state that is restructuring its debt, which can drive up the cost of borrowing.<sup>36</sup>

32. *Id.* at 4.

33. *Id.* at 4–5.

34. *Id.*

35. *Id.*

36. Ahinsah-Wobil, *supra* note 1.

The foregoing sections reflect some of the issues identified in the literature about sovereign debt restructuring generally and in Africa specifically. As aforementioned, a consideration missing from the literature in this field is the transaction costs associated with the use of intermediaries during sovereign debt restructuring processes—both within and outside of the African continent. This policy brief fills this gap in the scholarship by analyzing these intermediaries and their associated transaction costs. Before examining these intermediaries and their roles, the following section briefly describes some of the main actors involved in the sovereign debt restructuring process as a whole.



## 4.0

# The Actors in Sovereign Markets and Debt Restructuring

The actors involved in sovereign markets and sovereign debt restructuring include sovereign debtors (states and their instrumentalities), creditors, and third parties. The primary actors are the sovereign debtors and creditors. Participants other than the primary actors are third parties, which include intermediaries such as financial and legal advisors. It is only by identifying the primary actors and examining them that it becomes germane to study intermediaries as well.



## 4.1

## Sovereign Debtors

The sovereign state can be an issuer and a debtor. Finance ministries usually have the responsibility for managing and planning the government's financial and economic affairs, including generating income by taxing or borrowing.<sup>37</sup> These ministries have a central role to play in initiating, developing, and implementing measures relating to sovereign debt restructuring, alongside legal and external advisors.<sup>38</sup> The debtors may also include state-owned enterprises (SOEs) formed to undertake commercial activities. Their actions and debts could be attributable to the state. In carrying out activities of a commercial nature, they may issue a debt that the state can guarantee. An SOE default creates a state obligation to settle the debt. A state guarantee could lead to a conflict of interest between the state and SOE creditors, which can complicate and delay the restructuring process.<sup>39</sup>

In addition to a ministry of finance and SOEs, a state may have a debt management office (DMO) with a role to play in debt restructuring. These institutions usually operate independently and are responsible for debt issuance and management. Central banks in Africa such as the Bank of Ghana and Central Bank of Nigeria also have statutory and regulatory responsibilities related to borrowing and debt restructuring. Sovereign debtors have the legal responsibility to repay and take steps to restructure when they believe they are no longer able to service their debts on time. They must act proactively on matters of debt servicing and avoid resorting to debt restructuring as much as possible. Debt restructuring must be a last resort to avoid the costs associated with it.

37. Michael Waibel, The Actors in Sovereign Debt Restructurings, in *Verbindungslinien im Recht - Festschrift für Christoph G. Paulus zum 70. Geburtstag* (K. de la Durantaye et al. eds., 2022), <https://ssrn.com/abstract=4526468>.

38. Id.

39. Amrit S. Khosa, Andrew Kisnner & James A. Newton, Sovereign Debt Restructuring: Overview, Lexology, <https://www.lexology.com/library/detail.aspx?g=833f9d9f-72d4-489c-a949-2a827d19aa85> (last visited Dec. 22, 2024). Registration required.



4.2

## Creditors

Creditors comprise multilateral official creditors (MOCs), bilateral official creditors (BOCs), and private commercial creditors. MOCs include the IMF, World Bank, afDB, Asian Development Bank (ADB), and Inter-American Development Bank (IADB). These institutions are key in the debt restructuring process, as they provide debt relief, advice, and liquidity.<sup>40</sup> The IMF, for example, monitors the debt restructuring process and serves as a lender of last resort to distressed states. The World Bank furnishes loans and grants to national governments.<sup>41</sup> The BOCs consist of states, other than the borrowing states, that lend to national governments—the most well-known being the member states of the Paris Club, a group of twenty-two major lending countries.<sup>42</sup> China, although not a member of the Paris Club, is now a significant lender to developing countries in Africa. Private commercial creditors include banks, suppliers, individuals, trade creditors, and institutional investors, such as hedge and investment funds.<sup>43</sup> Central banks also play a role on the creditor side by purchasing their own states' sovereign debts.<sup>44</sup> Bondholders as financiers may form organizations to facilitate collective action.<sup>45</sup>

In Africa, multilateral creditors comprise 34% of the creditor base, while private creditors constitute 44% and bilateral creditors 23%.<sup>46</sup> These percentages show that Africa's debt is largely held by private creditors. This dependency on private creditors raises borrowing costs and has implications for debt restructuring in Africa. As UNCTAD stated,



*This raises several issues. First, a timely and orderly restructuring of Africa's debt is limited by differing interests and creditor concerns. Since private creditors may be banks or other market-based lenders, their interest in extracting more market-based returns differs from more traditional, concessional-based financing. Having a bigger share of private creditors also raises the price of African debt since many private loans are made on market terms. Second, coordination amongst creditors is limited since there is no formal creditor coordination mechanism to bring together all private actors. And third, many creditors and nations are reluctant to undergo debt-sustainability talks since the stigma associated with restructuring could limit a country's ability to find sources of future funding. In the case of banks or other private creditors, the potential of losses for interested parties also lessens the likelihood of debt restructuring agreements.<sup>47</sup>*

40. Id.

41. Id.

42. Id.

43. Id.

44. Waibel, *supra* note 37.

45. Id.

46. UNCTAD, *A World of Debt Report 2024*, *supra* note 10, at 11.

47. UNCTAD, *Regional Stories*, *supra* note 11.





4.3

## Third Parties and Intermediaries

Third parties include international financial institutions and private credit rating agencies, including the IMF, IBRD, IADB, European Bank for Reconstruction and Development (EBRD), and the AfDB. The IMF has a traditional role with respect to Paris Club debt restructuring because the Paris Club requires a debt to have a current program supported by an arrangement with the IMF.<sup>48</sup> National courts and international courts and tribunals, including the International Court of Justice (ICJ), also play a role in debt settlements and debt restructuring disputes. The Determinations Committee of the International Swaps and Derivatives Association (ISDA) makes decisions concerning credit default swaps and determines default events.<sup>49</sup> Third parties also include legal advisors. A legal review of the sovereign's outstanding debt is part of the sovereign debt restructuring process. Legal advisors include attorney-general departments and state-appointed lawyers. Moreover, once the debtor is satisfied that restructuring is necessary, the sovereign may hire legal and financial advisors who guide the restructuring process. Lawyers acting in this capacity are intermediaries.



48. Waibel, *supra* note 37.

49. *Id.*



## 5.0

# Intermediaries and Sovereign Debt Restructuring in Africa

The term “intermediaries” as used here refers to actors and participants in sovereign debt restructuring other than the debtor and lender. Intermediaries are not directly part of a restructuring but serve as part of the lender’s or borrower’s team. These individuals are brought in to contribute to the lending-borrowing and debt restructuring process based on their recognized expertise. In issuing a Eurobond, for example, it is common practice for a state to select banks and advisors to provide advisory services, including leading and managing the issuance. Various advisors, such as rating advisors, independent advisors, lead-managers, and external counsel may be involved in debt restructuring. These advisors play distinct but complementary roles in issuing and managing Eurobonds. Rating advisors assist in rating the Eurobond, as issuers generally must obtain ratings from at least one international rating agency. Independent advisors can assist an issuer in selecting lead-managers, preparing the prospectus, and negotiating the bond’s terms and conditions. Lead-managers advise, but they are also responsible for executing the bond issue. In addition, they underwrite, market, distribute, and price the bond.<sup>50</sup> An issuer may also appoint international legal counsel with relevant experience. The World Bank has noted that “[s]uch counsel can be expensive, as international bonds are mostly issued subject to English or US law.”<sup>51</sup>

On costs of advisors, the World Bank has rightly observed that a Eurobond issue comes with fees, commissions, and expenses, with the three largest components being “fees for the lead-managers, rating costs and legal expenses”<sup>52</sup> and transaction costs paid at the time of issuance. Fees for lead-managers are standardized based on maturity level, from “upfront fees of 0.05 percent up to 5 years, 0.10–0.15 percent for 7–10 years and 0.175–0.225 percent for 15–30 years.”<sup>53</sup> This means, for example, that a US\$1 billion, ten-year issue would involve 0.15% or US\$1.5 million in fees.<sup>54</sup> Rating advice can garner a fee similar to that collected by lead-managers.<sup>55</sup> The World Bank suggests US\$500,000 as an upper limit for legal fees.<sup>56</sup> There are also expenses for marketing (e.g., roadshows). Roadshow expenses include the travel costs of the team that visits investors. These expenses may be covered directly by the issuing country or by the involved banks in the form of an advance. If covered through bank advances, they will be deducted from the bond proceeds.<sup>57</sup>

50. Patrick B.G. van der Wansem, Lars Jessen & Diego Rivetti, Issuing International Bonds: A Guidance Note 14–16 (World Bank Discussion Paper No. 13, Apr. 2019).

51. *Id.* at 17.

52. *Id.* at 20.

53. *Id.* at 21.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

The engagement of intermediaries to provide advisory services, including for debt restructuring, is also a procurement and financial issue because domestic procurement and financial legislation across Africa requires adherence to procurement rules. When governments contract with intermediaries, there are questions related to compliance with this legislation, the contract terms, and the implications of those terms vis-à-vis compounding government debt. The criteria and procedures for selecting advisors will depend on the issuer's local laws and regulations. The following section assesses who these intermediaries are or have been, how they are or were selected, and the fees they have received or will receive.



5.1

## Sovereign Debt Restructuring Intermediaries in Africa

Who They Are

Their Roles, and Their Contributions to Financial  
Costs Involved in Sovereign Debt Restructuring

African governments enlist international law firms to serve as legal advisors during the processes of financing projects, issuing bonds, and restructuring sovereign debts. The IMF has noted, for example, that Ghana “hired financial and legal advisors” in connection with its debt restructurings.<sup>58</sup> White & Case LLP has also been engaged by and represented African states during bond issuances, debt restructurings, and the arrangement of infrastructural financing.<sup>59</sup> Representative transactions include advising West African sovereign states on the restructuring of an approximately US\$500 million debt and advising creditors on sovereign loans to the Côte d'Ivoire, Ghana, Mozambique, Tanzania, and Zambia.<sup>60</sup> White & Case has also represented the government of Ghana in a US\$500 million syndicated financing arrangement;<sup>61</sup> Gabon in its US\$1.5 billion bond issue, debt exchange, and tender offer; the joint lead-managers and dealer managers in Ghana's bond issue and exchange offer; and Nigeria in its US\$1 billion dual-tranche bond issue.<sup>62</sup> In 2022, White & Case advised on Ghana's US\$3.25 billion four-tranche bond.<sup>63</sup> The firm has also represented other international financial institutions in the issuing and tender offerings of notes, including Deutsche Bank, Natixis, Standard Chartered Bank, J.P. Morgan, and BNP Paribas, and White & Case served as the joint lead- and dealer managers on Côte d'Ivoire's 2024 and 2032 notes, the US\$1.25 billion repayment notes due in 2033, and the €625 million notes due in 2025.<sup>64</sup>

58. IMF, African Department, Ghana: Second Review Under the Arrangement Under the Extended Credit Facility, Request for Modification of Performance Criteria, and Financing Assurances Review—Debt Sustainability Analysis (July 11, 2024), <https://www.elibrary.imf.org/view/journals/002/2024/213/article-A002-en.xml>.

59. Agency Agreement relating to the issue of U.S.\$1,718,543,303 between The Republic of Zambia, acting through The Minister of Finance and National Planning as Issuer, Deutsche Bank Trust Company Americas as Registrar and U.S. Paying Agent and Deutsche Bank AG, London Branch as Fiscal Agent and Principal Paying Agent, June 11, 2024, <https://www.mofnp.gov.zm/?wpdmpo=fiscal-agency-agreement-new-a-notes-executed>.

60. James Hardy, White & Case, <https://www.whitecase.com/people/james-hardy?s=Ghana#experience> (last visited Dec. 22, 2024).

61. Claire Matheson, White & Case, <https://www.whitecase.com/people/claire-matheson-kirton?s=Ghana#experience> (last visited Dec. 22, 2024).

62. Claire Patrick, White & Case, <https://www.whitecase.com/people/claire-patrick?s=Ghana#experience> (last visited Dec. 22, 2024).

63. White & Case Named Africa “Capital Markets Legal Adviser of the Year,” White & Case (Feb. 11, 2022), <https://www.whitecase.com/firm/awards-rankings/award/white-case-named-africa-capital-markets-legal-adviser-year?s=Ghana>.

64. Africa, White & Case, <https://www.whitecase.com/law/regions/africa?s=sovereign%20debt#experience> (last visited Dec. 22, 2024).

Significantly, White & Case also advised Zambia on its US\$13 billion sovereign debt restructuring. The firm “advised the Zambian government on negotiations with all its non-Eurobond creditors—including official creditors like China—under the newly created Common Framework.”<sup>65</sup> Zambia reached a debt restructuring agreement with the official bilateral creditors in 2023<sup>66</sup> concerning its US\$6.5 billion debt owed to bondholders, Chinese private lenders, and Western banks. The restructuring resulted in the lenders agreeing to a rearrangement of US\$6.3 billion in loans, a three-year grace period on interest payments, and extended maturities.<sup>67</sup> In 2024, the law firm of Weil, Gotshal & Manges (London) LLP “advised the ad hoc committee of bondholders in connection with the agreement reached . . . between the steering committee of the ad hoc committee of bondholders . . . and the Government of Zambia on a restructuring of Zambia’s sovereign bonds.”<sup>68</sup> Weil, Gotshal & Manges (London) and Gotshal & Manges (London) LLP also advised the ad hoc creditor committee on the Zambian debt restructuring.<sup>69</sup> Hogan Lovells was engaged as an international legal advisor to Ghana in its domestic debt exchanges and restructuring completed in 2024.<sup>70</sup> Bentsi-Enchill, Letsa & Ankamah was the local counsel that supported Ghana in its debt treatment.<sup>71</sup>

There is a large range of other intermediaries besides law firms that act as debt restructuring advisors. For example, in the case of Zambia’s debt restructuring, the bondholders formed a steering committee that engaged with the Zambian government’s representative and the official creditors committee. The steering committee consisted of asset managers Amia Capital LLP, Amundi (UK) Limited, RBC BlueBay Asset Management, Farallon Capital Management LLC, and Greylock Capital Management LLC. The steering committee in turn received advice from Newstate Partners and Weil, Gotshal & Manges (London).<sup>72</sup> For Ghana, Lazard Frères was an international financial advisor for the exchange of the country’s US\$13.1 billion international Eurobonds, and Sodali & Co advised Ghana and Zambia when completing their debt restructurings.<sup>73</sup> Lazard and Global Sovereign Advisory advised the government of Ghana on its debt restructurings.<sup>74</sup>

65. White & Case Achieves Two Wins in FT Innovative Lawyers Europe 2024, White & Case (Sept. 16, 2024), <https://www.whitecase.com/firm/awards-rankings/award/white-case-achieves-two-wins-ft-innovative-lawyers-europe-2024>.

66. World Bank Group Statement on Debt Restructuring Agreement for Zambia (Mar. 26, 2024), <https://www.worldbank.org/en/news/statement/2024/03/26/world-bank-group-statement-on-debt-restructuring-agreement-for-afe-zambia>; David A. Grigorian & Aditya Bhayana, Zambia: A Case Study of Sovereign Debt Restructuring under the G20 Common Framework (Centre for Global Development, Working Paper 707, Oct. 2024).

67. White & Case, *supra* note 65.

68. Weil Advises Bondholders on Restructuring of Zambia’s Sovereign Bond, Weil, Gotshal & Manges (Mar. 28, 2024), <https://www.weil.com/articles/weil-advises-bondholders-on-restructuring-of-zambias-sovereign-bond>; Grigorian & Bhayana, *supra* note 66.

69. *Id.*

70. Press Release, Hogan Lovells, Hogan Lovells Guides Republic of Ghana in First-of-Its-Kind Domestic Debt Exchange (Oct. 3, 2023), <https://www.hoganlovells.com/en/news/hogan-lovells-guides-republic-of-ghana-in-first-of-its-kind-domestic-debt-exchange>; Press Release, Hogan Lovells, Hogan Lovells Cross-Border, Cross Practice Team Advises the Republic of Ghana in their Precedent Setting Sovereign Debt Restructurings (Oct. 16, 2024), <https://www.hoganlovells.com/en/news/hogan-lovells-cross-border-cross-practice-team-advises-the-republic-of-ghana-in-their-precedent-setting-sovereign-debt-restructurings>.

71. Ken Ofori-Atta, Minister for Finance (Ghana), Annual Public Debt Report for the 2022 Financial Year, Mar. 30, 2023, at 53.

72. Grigorian & Bhayana, *supra* note 66, at 9.

73. Sodali & Co. Implements US\$13bn Sovereign External Debt Restructuring for Republic of Ghana, Sodali & Co. (Oct. 17, 2024), <https://sodali.com/articles/sodali-co-implements-us13bn-sovereign-external-debt-restructuring-for-republic-of-ghana>.

74. Transactions, Lazard (Oct. 9, 2024), <https://www.lazard.com/financial-advisory/transactions/?t=2>; Jorgelina Do Rosario & Karin Strohecker, Ghana Picks Lazard, GSA, Hogan Lovells as Advisers for Debt Talks, Reuters (Nov. 15, 2022), <https://www.reuters.com/article/business/ghana-picks-lazard-gsa-hogan-lovells-as-advisers-for-debt-talks-sources-idUSKBN2S421A/>.

There were other intermediaries for Ghana's restructurings, including the Steering Committee of the Ad Hoc Creditor Committee of International Bondholders, which was advised by Rothschild & Cie and Orrick, Herrington & Sutcliffe LLP. Members of the Steering Committee of the Creditor Committee of Regional Bondholders received advice from Renaissance Capital Africa on how to treat Ghana's Eurobonds.<sup>75</sup>

Among the services the intermediaries have rendered in Ghana is monitoring the success of the bond issuance, including investor placement and ensuring the competition of legal and security documentation.<sup>76</sup> There is, however, a lack of specific data on payments made for financial and legal services in connection with Ghana's debt restructurings. In an interaction with a relevant government department regarding payments made for the engagement of local and international advisers for debt restructuring, this author's attention was drawn to confidentiality agreements that may apply in contracts between the parties unless they explicitly waive confidentiality. It also emerged that restrictions are or may be imposed by the relevant lawyers' associations and ethics committees on the use for academic purposes of information on remunerations to legal advisors. The relevant African auditor-general departments also seemingly lump foreign exchange payments for services under the general label of "technical services," without any indication of the specific services involved. This makes it impossible to state in precise terms the payments made for legal and financial advisory services in connection with sovereign debt restructuring.

With regard to Ghana's payments for financial and legal advisory services in connection with debt restructurings, the closest information found about such payments over the relevant period relates to foreign exchange payments for management and technical services. According to the auditor-general's office, foreign exchange payments made for management and technical services amounted to US\$41,583,961.96, as of December 31, 2023, while expenditures of US\$45,348,713.64 were reported for the corresponding period in 2022.<sup>77</sup> These payments may include those made for financial and legal advisory services in connection with Ghana's debt restructurings, depending on how the account-general's department defines "technical services." However, the payments would not include those for financial and legal advisory services based on the definition of "technical services," those being the performance of "a measurable physical output"<sup>78</sup> under the Public Procurement Act, 2003 (as amended).

According to Ghana's Ministry of Finance, the total external debt service payments made on the central government's debt at the end of December 2023 amounted to GH¢5.90 billion, the figure comprising "principal repayments of GH¢4.22 billion, and interest payments and other charges of GH¢1.69 billion."<sup>79</sup>

75. The Government of the Republic of Ghana and Representatives of Bondholders Reach an Agreement in Principle on the Terms of the Eurobonds Restructuring, PR Newswire (June 24, 2024), <https://www.prnewswire.com/news-releases/the-government-of-the-republic-of-ghana-and-representatives-of-bondholders-reach-an-agreement-in-principle-on-the-terms-of-the-eurobonds-restructuring-302179981.html>.

76. Ministry of Finance (Ghana), Procedures Manual for National Borrowing 31(Oct. 2021).

77. Ghana Audit Service, Report of the Auditor-General on the Consolidated Statements of Foreign Exchange Receipts and Payments of the Bank of Ghana for the Year Ended 31 December 2023 24 (2024) [https://audit.gov.gh/files/audit\\_reports/Report\\_of\\_the\\_Auditor-General\\_on\\_the\\_Consolidated\\_Statements\\_of\\_Foreign\\_Exchange\\_Receipts\\_and\\_Payments\\_of\\_the\\_Bank\\_of\\_Ghana\\_\(BOG\)\\_for\\_the\\_year\\_ended\\_31\\_December\\_2023.pdf](https://audit.gov.gh/files/audit_reports/Report_of_the_Auditor-General_on_the_Consolidated_Statements_of_Foreign_Exchange_Receipts_and_Payments_of_the_Bank_of_Ghana_(BOG)_for_the_year_ended_31_December_2023.pdf).

78. Public Procurement Act, 2003 (as amended), § 98.

79. Ministry of Finance (Ghana), Public Debt Statistical Bulletin: 2023 Financial Year 5 (Aug. 2024), <https://mofep.gov.gh/sites/default/files/basic-page/Debt-Statistics-Bulletin-2023-End-Year.pdf>.

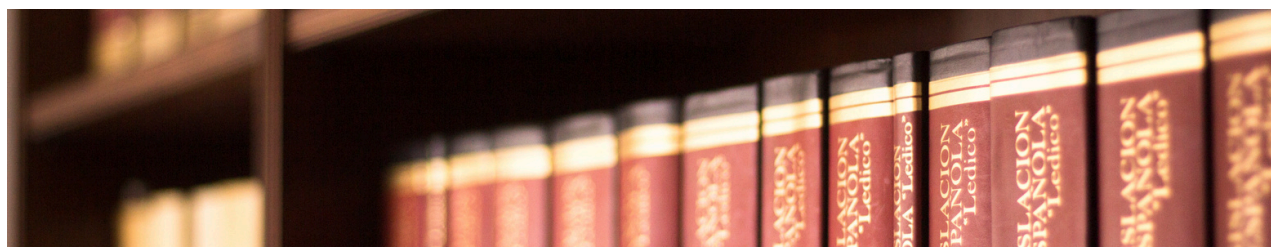
Payment for financial and advisory services rendered in connection with debt restructuring would fall within “other charges,” but exactly what figure that is cannot be determined. A review of Zambia’s Office of the Auditor General’s report does not offer any insight either, as it fails to illuminate the category under which payments for legal and financial advisory services could be placed.<sup>80</sup> The only information available on Zambia’s debt service covers payments made to creditors.<sup>81</sup> Foreign firms engaged to provide financial and legal advisory services would have been paid in US currency. Depending on how much those payments were or are, they could drive up government expenditures on debt repayments and ultimately increase government debt, which can compromise the achievement of debt sustainability.



5.2

## The Legal Requirements for Engaging Intermediaries for Advisory Services in Sovereign Debt Restructuring: Compliance Costs

The Procedures Manual for National Borrowing (2021), prepared by the Ministry of Finance and Economic Planning of Ghana, shows that the preparatory work for the issuance of securities on the international capital markets (ICM) consisted of applying “to the Public Procurement Authority (PPA) for approval to appoint advisors (including lead managers, co-managers, international and local legal counsel)”<sup>82</sup> and organizing “competitive selection invitation in accordance with [the] Public Procurement Act 2003 (as amended) to select the following advisors: a. Lead Managers; b. Co-Managers; c. International Counsel; d. Local Counsel; and e. Evaluate bids from all advisors.”<sup>83</sup> This document and the Annual Public Debt Report (2022), also prepared by the Ministry of Finance, clearly establish that Ghana engages both local and international counsel and other consultants for its borrowing and debt restructuring arrangements and that it engages them while adhering to the procurement process set forth in the Public Procurement Act, 2003 (as amended). The following paragraphs review Ghana’s procurement legislation as a case study to determine what methods are used for engaging intermediaries related to borrowing and debt restructuring. Based on this review, it is possible to say what the potential costs are for employing intermediaries and how these costs could drive up government debt and put debt sustainability at risk in Africa.



80. Office of the Auditor General (Zambia), Report of the Auditor General on the Accounts of the Republic for the Financial Year Ended 31st December 2023, [ago.gov.zm/?wpfb\\_dl=312](https://ago.gov.zm/?wpfb_dl=312) (lasted visited Dec. 22, 2024).

81. Ministry of Finance and National Planning (Zambia), Quarterly Debt Statistical Bulletin (End Quarter Three 2024), at 5–6, <https://www.mofnp.gov.zm/?wpdmpo=2024-end-september-debt-statistical-bulletin>.

82. Ministry of Finance (Ghana), *supra* note 76, at 30.

83. *Id.*



Ghana's Public Procurement Act, 2003, as amended by the Public Procurement (Amendment) Act, 2016, provides for the various methods and procedures for the engagement of consultancy services. These services are defined under the act as "the furnishing of labour, time, or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance; and includes consulting, professional and technical services."<sup>84</sup> Thus, procurement involves "services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organize specific projects, advise clients, conduct training or transfer knowledge."<sup>85</sup> Specifically, these are services of the kind provided by financial and legal firms to governments engaged in debt restructuring.

In terms of the methods and procedures for engaging individuals and firms for services, Ghana's Public Procurement Act requires a procurement entity to invite consulting services by publishing a notice in the Public Procurement Bulletin seeking expressions of interest to submit a proposal for consultancy contracts.<sup>86</sup> The Public Procurement Act allows direct invitations for consultancy services when necessary for economic and efficiency reasons. This process is allowed when the services to be procured are only available from a limited number of consultants, and invitations for expressions of interest are aimed at these consultants. A direct invitation is also allowed when the time needed to examine and evaluate many expressions of interest would be disproportionate to the value of the services to be performed. In this case, invitations may be made to specified consultants in a manner that achieves effective competition. Direct invitation is also permitted in the interest of confidentiality or national interest, and a limited number of consultants may be invited to achieve effective competition.

The use of direct invitation requires the approval of the Public Procurement Authority (PPA), which is the regulatory institution that oversees public procurement in Ghana.<sup>87</sup> With the PPA's approval, consultants may also be engaged using single-source selection whereby one consultant can be approached directly and selected. This method is appropriate if it has an obvious advantage over competitive selection, such as when tasks are related to the consultant's previous work for the procurement entity or when only one firm has the required qualifications or experience to provide the services.<sup>88</sup> Based on these criteria for direct invitation, the procurement entity may choose to invite one or more prospective consultants for consultancy services. Once proposals for consultancy services are submitted to the procurement entity, the proposals are evaluated, the winner is selected, and a contract is awarded.<sup>89</sup>

84. Public Procurement Act, *supra* note 78, § 98.

85. Public Procurement Authority of Ghana (PPA), Manuals - Public Procurement Act, 2003 (Act 663) 91, <https://ppa.gov.gh/wp-content/uploads/2019/01/FINAL-MANUAL-PPB.pdf> (last visited Dec. 22, 2024).

86. Public Procurement Act, *supra* note 78, § 66(1).

87. *Id.* § 66(3).

88. Public Procurement Authority of Ghana (PPA), *supra* note 85, at 94–95; Public Procurement Act, *supra* note 78, §§ 40(1) & 76(1).

89. Public Procurement Act, *supra* note 78, §§ 73–76. For similar methods and procedures for the procurement of services in Zambia, see the Public Procurement Act, 2020 (No. 8).



6.0

# Concluding Remarks and Recommendations



6.1

## Statutory Frameworks for Debt Restructuring

This policy brief has addressed the subject of transaction costs (payments other than principal debt payments and interest) associated with sovereign debt restructuring in Africa. As the preceding analysis has revealed, African states (exemplified by Ghana and Zambia) do not make information on costs and expenses incidental to their debt restructuring publicly available. This raises the important question of whether these governments comply with domestic financial management obligations relating to transparency and access to information on government debts, which is crucial for debt management accountability. As such, a brief review of relevant financial management legislation in Africa is appropriate here, again using Ghana and Zambia as case studies.

The objective of Ghana's Public Financial Management Act, 2016 (Act 921), is "to regulate the financial management of the public sector within a macroeconomic and fiscal framework"<sup>90</sup> and that there be "established a framework to support a sound fiscal policy and the macroeconomic management of public funds."<sup>91</sup> The Public Financial Management Act, 2016, provides for various general principles of fiscal management, which require that public funds, assets, and liabilities be managed and conducted in a prudent way to maintain fiscal sustainability.<sup>92</sup> The formulation and implementation of fiscal policy must be guided by such objectives as the "maintenance of prudent and sustainable levels of public debt"<sup>93</sup> and "achieving efficiency, effectiveness and value for money in expenditure."<sup>94</sup> Fiscal management must be carried out professionally and transparently.<sup>95</sup> More important to managing debt and minimizing government debt is the Public Financial Management Act's requirement that government borrowing costs be "as low as possible over the medium to long term, consistent with a prudent degree of risk."<sup>96</sup> To promote transparency and accountability in debt management, the Public Financial Management Act requires that the Ministry of Finance's DMO prepare and publish statistical bulletins on the government's and Ministry of Finance's official websites that provide "accurate and timely information in respect of debt stocks, debt service cost and risk measures of the debt portfolio of [the] Government."<sup>97</sup>

90. Public Financial Management Act, 2016 (Act 921), § 1(1).

91. Id. § 1(2)(a).

92. Id. § 13(1)(d).

93. Id. § 13(2)(b).

94. Id. § 13(2)(e).

95. Id. § 13(3).

96. Id. § 58(1)(b).

97. Id. §§ 71(1)(a) & (b).

Zambia's Public Finance Management Act, 2018, similarly requires the country's treasury to promote and enforce transparency and effective revenue and government expenditure management<sup>98</sup> and that the Secretary to the Treasury "ensure maintenance of a compatible, effective, efficient and transparent, financial management information systems [sic]"<sup>99</sup> in ministries, departments, and agencies.

Based on the above review of legislation, the governments of Ghana and Zambia unquestionably have statutory obligations to be transparent about their debt management practices. These obligations include providing access to information not only on the principal amounts of debts but also on the costs, charges, expenses, and expenditures incidental to debt management. The latter also includes information on the amounts of fees paid for services rendered by law firms, financial service providers, and others that serve as intermediaries in sovereign debt restructuring processes.

In summary, the transaction costs associated with sovereign debt restructuring in Africa fall into two categories: 1) financial charges, costs, and expenses that are incidental to the restructuring of sovereign debts, and 2) regulatory compliance costs, which arise from governments following domestic procurement legislation. The first category includes the engagement of legal and financial advisors (who are typically foreign) to assist them in the debt restructuring process. These incidental costs have the potential to compound or drive up government debt and make it difficult, if not impossible, to achieve debt sustainability. The second category, which involves regulatory compliance costs, arises from governments having to follow domestic procurement legislation. These costs involve the time spent developing calls for proposals for services, evaluating the proposals, awarding procurement contracts, and finally, managing those contracts. The regulatory compliance costs might also include allowances paid to committee members who review and evaluate tenders.



6.2

## Recommendations

### 6.2.1 Appointment of Intermediaries

To minimize borrowing costs, governments in Africa must avoid engaging intermediaries (as described above) when feasible. If the use of intermediaries is necessary, African governments must employ local (within the state and/or African continent) experts and avoid enlisting international financial and legal advisors, as their services are generally more costly, and they don't necessarily provide better services. If the reason for the employment of external advisors is a dearth of local expertise, African governments must train their citizens of working age and utilize them for these types of services. Domestic public financial management legislation should specify the circumstances when intermediaries may be appointed to assist in debt restructuring and should preferably direct that only local advisors be selected unless there are none available for the services needed.

98. Public Finance Management Act, 2018, § 5(1)(f).

99. Id. § 7(1)(p).

In other words, the appointment of these types of advisors must be conditioned on the absence of expertise within the respective finance ministries or the African continent. Promoting the appointment of local experts can help minimize debt service costs and, at the same time, promote transparency and accountability in the appointments of and payments for intermediaries.

In addition, some candidates for appointments as intermediaries may have reputational and/or integrity issues,<sup>100</sup> and ministries of finance must engage in prequalification checks. Only advisors who meet these criteria can be prequalified to submit proposals, which will ensure that appointed advisors prioritize public over private interests.

### 6.2.2 Access to Information on Debt Service Costs

Currently, there is little information available on debt service costs in Africa. African governments, in the interests of transparency and accountability and to be consistent with their domestic legislation, must publish all information not only on debt stocks but also on debt service costs. This public disclosure should include information on both principal repayments and payments for all other expenses, including those made to intermediaries for advisory services rendered in connection with debt restructuring. Statistics on these payments should be disaggregated so that payments can be identified and linked to the specific services for which the payments were made. Debt servicing information should be published on finance ministry and central government websites, in relevant budget statements, and in auditor-generals' reports. Published information should clearly identify the recipients of debt service payments so that the integrity of those advisors can be publicly scrutinized. Overall, transparency in terms of public access to meaningful and disaggregated information on debt service costs will promote responsibility and fiscal accountability in debt management and restructuring.<sup>101</sup>

### 6.2.3 Legal Assistance for Debt Restructuring

The AfDB's African Legal Support Facility (ALSF) should provide direct legal assistance to African countries restructuring debt by providing them with lawyers who can advise them when negotiating debt restructurings. The ALSF should also organize capacity-building training on finance and securities law, debt restructuring, and other relevant areas for lawyers and other employees in the ministries of finance debt management divisions to enhance their competence in representing African governments in debt restructuring negotiations.

### 6.2.4 African Credit Rating Agency

It is common for the African continent to be judged, and it is always judged by referencing standards set by others. This is certainly true in the context of debt sustainability, debt restructuring, and the derivation of credit ratings. The African continent itself must set standards so that African countries' creditworthiness can be determined by Africans. Indeed, Africa needs its own credit rating agency to rate African nations' ability to pay back debt.

100. See, e.g., Jery Konenberg, Lizard Capital Markets to Pay \$2.8m in Fidelity Gift Scandal, Boston Herald, Nov. 17, 2018, <https://www.bostonherald.com/2008/10/31/lazard-capital-markets-to-pay-28m-in-fidelity-gifts-scandal/>; William D. Cohan, *The Last Tycoons: The Secret History of Lazard Frères & Co.* (2007).

101. Elsie Addo Awadzi, *Designing Legal Frameworks for Public Debt Management* 49 (IMF Working Paper WP/15/147, 2015).

In this regard, the recent dialogue among various Africa-focused UN bodies held in New York on September 20, 2024, to consider the establishment of an African credit rating agency was timely and appropriate.<sup>102</sup> An African credit rating agency should be created, and when created, it must provide African states with independent and objective assessments of their risks and ratings and advise them about their ability to pay back their debts and the likelihood of default. This will ensure that African states can plan to make timely principal and interest payments and avoid defaulting on repayments. This agency should also have a mandate to periodically rate African countries' debt so that timely advice on their creditworthiness and risk of default can be provided.

## 6.2.5 Global Financial and Debt Architectures

All African countries are International Monetary Fund (IMF) members. Most African countries have been indebted and have had or have various debt obligations to the IMF, the IBRD, and the World Bank. Yet, Africa is weakly represented on the IMF Executive Board, even with the creation of a twenty-fifth chair aimed at achieving regional representation. The absence or weak representation of Africa on core governance and decision-making bodies of global financial institutions means imbalance and unfairness in decision-making on matters that affect the African continent, including debt restructuring. This dearth of representation also perpetuates Africa's dependency on and vulnerabilities to the actions of lenders and global financial institutions. Thus, there is a need for a genuine and radical reform of the global financial architecture that is all-embracing and inclusive and that effectively and equitably represents the African continent.<sup>103</sup> Relatedly, there is a need to establish a multilateral mechanism for the negotiation and conclusion of international debt restructuring agreements for those countries whose sovereign debt has become unsustainable.<sup>104</sup> Further, the IMF and World Bank must work collaboratively with UNCTAD on debt management, relief implementation, and the derivation of an international debt restructuring mechanism to assist African countries in resolving their debt crises.<sup>105</sup> Above all, restructurings involving African countries should be guided by the UN's Basic Principles on Sovereign Debt Restructuring Processes, including the sovereign state's right to retain control over its macroeconomic policies (i.e., debt restructuring) and the need to achieve transparency through the timely sharing of data on sovereign debt to enhance the accountability of the actors involved.<sup>106</sup>

In addition, inadequate, false, and questionable credit ratings and rating processes contribute to financial crises at the regional and global levels.<sup>107</sup> Yet, these ratings influence the World Bank's decisions on whether to grant or refuse loans. The World Bank must develop an independent way to assess and test the reliability of ratings derived by private-sector rating agencies or construct an objective internal rating regime.

102. These institutions included the African Peer Review Mechanism (APRM), the UN Economic Commission for Africa, and UN Development Programme Regional Bureau for Africa. Africa Credit Rating Agency on UNGA79 Agenda: Reforming the Global Financial Architecture African Peer Review Mechanism (Sept. 25, 2024), <https://aprm.au.int/en/news/press-releases/2024-09-25/africa-credit-rating-agency-unga79-agenda>.

103. Olabisi D. Akinkugbe, African Financial Architecture: Voice, Representation, Preferred Creditor States, and the Alliance of African Multilateral Financial Institutions (Dec. 2, 2024), Can. Y.B. Int'l L. (forthcoming), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5040741](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5040741).

104. Hum. Rts. Council, Rep. of the Independent Expert on the Promotion of a Democratic and Equitable International Order: Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development 39, U.N. Doc. A/HRC/36/40 (July 20, 2017), <https://documents.un.org/doc/undoc/gen/g17/218/37/pdf/g1721837.pdf>.

105. Id. at 24.

106. G.A. Res. 69/319 (Sept. 10, 2015).

107. Hum. Rts. Council, supra note 104, at 14.



Finally, institutions created to promote collaboration and coordination among the multilateral financial institutions in Africa, such as the African Export-Import Bank (Afreximbank), Trade and Development Bank (TDB), Africa Finance Corporation (AFC), African Reinsurance Corporation (Africa re), and African Trade & Investment Development Insurance (ATIDI), must work together to provide African countries with alternative forms of borrowing and debt restructuring that are responsive to the African continent's needs and that reduce Africa's dependency on the Bretton Woods institutions.<sup>108</sup>



108. Akinkugbe, *supra* note 103.