

Transparency of loans to governments

The public's right to know about their debts

APRIL 2019

1. Summary

Transparency of debt information is good for everyone. It gives lenders more certainty about the basis upon which they are lending, it gives borrowers lower interest rates, and it allows citizens to subject lending and borrowing by their governments to more scrutiny, including through holding public debt audits into borrowing and lending decisions. Such scrutiny is vital to ensure loans to governments are used well so that the Sustainable Development Goals can be met. Transparency is primarily the responsibility of borrowing governments, and lenders should only be willing to give loans to governments that are willing to disclose that the loans exist.

Private companies, governments and multilateral institutions are all significant lenders to governments, and so all need to take action to make lending more transparent. In this briefing we argue that information on loans to governments, or with any form of government guarantee, should be disclosed via a global publicly-accessible registry within 30 days of contract signature, and should include: the value of the loan, fees, charges and interest, the law the debt is owed under, any available information on the use of proceeds and the payment schedule.

To help make this happen, we recommend that:

- G20 governments ensure that a publicly accessible registry of loan and debt data is created and housed in a permanent institution, with the required ongoing funding. Civil society, parliaments and media should be consulted on its construction so that the data is open, standardised and structured, and therefore readily usable. Information should be made available in English and the main language of the borrowing country concerned.
- All governments and multilateral institutions commit to disclosing the loans they give in this registry, including the information outlined above.
- The Institute for International Finance agree principles on disclosing in this registry, including the information outlined above. The Extractive Industries Transparency Initiative should require resource companies and governments to also disclose resource-backed loans to governments.
- All relevant legislatures, especially the UK and New York, introduce a requirement that for a loan to a government, or with any form of government guarantee, to be enforceable, it must have been publicly disclosed on the registry mentioned above, within 30 days of contract signature, and providing the information outlined above.

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CORRUPTION WATCH



2. The importance of transparency

“We want to ensure the UK is the safest and most transparent financial centre in the world.”

BRIAN WIGLEY, CHAIRMAN OF INDUSTRY GROUP UK FINANCE, JANUARY 2019¹

Transparency over debts owed by governments, and guarantees given by them, is good for citizens, lenders, buyers of debt and borrowing governments.

Good for citizens: Transparency is a key step towards loans being used responsibly, and to prevent public resources being wasted, diverted or stolen. Without transparency, it is not possible for civil society, media and parliaments to hold governments to account on how much is being borrowed, the terms of contracts, what loans are being spent on, how they will be repaid and on what timeframe. The people of a country have the right to know about debt being taken on by governments in their name.

Good for lenders: Lenders need to know what debts a government has, and what guarantees it has given, in order to assess the likelihood of a loan they are giving being repaid. Similarly, buyers of debt can make better decisions if they know the true debt situation of the country whose debt they are buying. The more transparency there is over government debts, the better decisions lenders and investors can make.

Good for borrowing governments: Transparency ensures all stakeholders have a clear idea of a country's debt burden, which decreases the risk attached to lending and could therefore in turn enable governments to secure lower interest rates.

Action in this area is a key part of the international community's commitments under the Addis Ababa Action Agenda for Financing for Development to meet the Sustainable Development Goals, which says:

“We recall the need to strengthen information sharing and transparency to make sure that debt sustainability assessments are based on comprehensive, objective and reliable data. We will work towards a global consensus on guidelines for debtor and creditor responsibilities in borrowing by and lending to sovereigns, building on existing initiatives.”²

3. Examples of secret loans

In recent years there have been several examples of loans that were hidden from the public when they were given.

In 2013 and 2014 two London-based banks lent \$2 billion to three state-owned companies in Mozambique, owed under English law. These loans were given a guarantee by the Mozambique Finance Minister, but this was not agreed by the Mozambique parliament, despite a requirement under the Mozambican Constitution, and the loans only became public knowledge in 2016 after investigations by international journalists. The loans have triggered an economic and political crisis in Mozambique and could lead to the people of Mozambique paying well over \$2 billion in loan and interest payments on a debt they had no knowledge of, no say over and no benefit from.³

In October 2017 the IMF learnt of loans from commodity trading companies, including Anglo-Swiss company Glencore, to the Republic of Congo, which the government had not previously disclosed.⁴ The loans have contributed to a debt crisis, with Congo now rated by the IMF as in debt distress. In the 1MDB scandal in Malaysia, some of the government guarantees given to loans borrowed by 1MDB under English law were kept secret.

Even when loans are included in the total debt figures reported by the government concerned, and by multilateral bodies such as the IMF and World Bank, details of individual loans are rarely disclosed on a disaggregated basis. If, for example, \$1 billion is said to be owed to ‘private companies’, then parliaments, media and civil society cannot find out how many individual loans this consists of, who the debts are owed to, what the interest rates are and when payments on the debts are due.

4. The responsibility of borrowing governments

Governments have a primary responsibility to be transparent about their borrowing. This should be part of an accountable debt contracting process, where national parliaments approve borrowing plans. Such plans should be agreed through an open process before contracts are signed so that civil society and the media can scrutinise them and the decision-making process. The African Forum and Network on Debt and Development (Afrodad) have set out in detail how such a process should work.⁵

5. The responsibility of lenders

Although governments have primary responsibility for disclosure, lenders also have a responsibility to ensure that funds are lent and contracted responsibly, and transparency is a key aspect of this. A government's willingness to disclose the loans it contracts should be a key factor in the lender's due diligence and risk assessment process. Unwillingness

to do so should be a clear warning sign that the loans are unlikely to benefit the people of the country concerned, and the loan should therefore not be given.

International lenders to governments tend to be categorised in three groups:

- 1. Multilateral institutions:** The IMF and World Bank, among others, including regional development banks such as the African Development Bank, or banks set up by groups of lending governments, such as the Arab Fund for Economic and Social Development.
- 2. Other governments:** Traditionally Western governments have given loans in two forms, either classified as Official Development Assistance or through export credit agencies. New lenders such as China are now also responsible for significant amounts of loans.
- 3. The private sector:** This includes loans by banks and commodity trading companies. Often loans by private companies will be sold on to other private companies, including hedge funds and vulture funds.

Of international debt owed by low- and lower-middle income governments, 39% is owed to the private sector, 33% to multilateral institutions and 28% to other governments.⁶

6. What lenders should disclose and where

“There’s no point in aid and good lending if that is dwarfed by what leaves in illicit money flows and getting nations into debt. We need complete transparency on that front.”⁹

PENNY MORDAUNT, UK SECRETARY OF STATE FOR INTERNATIONAL DEVELOPMENT, MARCH 2019

Ideally, lenders should only lend if a transparent and accountable government debt contracting process is in place, including scrutiny of all government borrowing plans before contracts are signed. As a minimum, lenders should only lend if they can and will disclose the existence of a loan within 30 days of contract signature, do so on a globally accessible registry, and include key information about that loan. This minimum disclosure should be standard across all lending to governments, as a baseline of responsible lending practice.

The G20 group of governments have held discussions on debt transparency in recent years. Most recently, at the G20 summit in Argentina in December 2018 they called on the IMF and World Bank “to work with borrowers and creditors to improve the recording, monitoring and transparent reporting of public and private debt obligations”.⁷ G20 governments themselves are major lenders, so they should begin by committing to publicly disclose information on loans that they give.

International banks through the Institute of International Finance have been discussing adopting guidelines on transparent lending, which would commit banks that comply to publish key information on loans after contracts have been signed. The Extractive Industries Transparency Initiative is in the process of revising its requirement on transparency in commodity trading, part of which includes guidance on the granularity of disclosures around any resource-backed loans or commodity pre-finance agreements contracted between companies and countries.

Voluntary commitment by lenders to disclose loan information will be a welcome step forward. Key criteria for loan information to be usable by parliaments, media and civil society includes:

- Disclosed in one publicly accessible registry.
- Searchable by lender and borrowing government concerned.
- Disclosed within 30 days of contract signature.
- Value of the loan, fees, charges and interest, the law the debt is owed under, any available information on use of proceeds and the payment schedule.
- Covers any loan to a government, with a government guarantee, or to a state-owned enterprise.
- Information on whether there is any security or collateral attached to the loan, and if so on what terms.
- The data is disclosed in a machine-readable format.

Recommendation 1 – G20 governments ensure that a publicly accessible registry of loan and debt data is created and housed in a permanent institution, with the required ongoing funding. Civil society, parliaments and media should be consulted on its construction so that the data is open, standardised and structured, in a way that is readily usable. Information should be made available in English and the main language of the borrowing country concerned.

Recommendation 2 – All governments and multilateral institutions commit to disclosing the loans they give in this registry, including the information outlined above.

Recommendation 3 – The Institute for International Finance agree principles on disclosing in this registry, including the information outlined above. The Extractive Industries Transparency Initiative should require resource-backed loans to governments.

7. Incentivising lenders to disclose

“I reject the idea that laxer regulation makes a jurisdiction more attractive.”⁸

PHILIP HAMMOND, UK CHANCELLOR OF THE EXCHEQUER, DECEMBER 2018

All action to improve the transparency of loans to governments is welcome. However, there is a danger that voluntary initiatives, for example by the private sector, are complied with by more responsible companies but ignored by the worst offenders. Therefore, an incentive is needed to provide a level-playing field so that transparency is increased across all lenders.

In the case of the Mozambique loans (see section 3), there is currently doubt as to whether these are enforceable under English law, partly because they were not publicly disclosed or agreed by the Mozambique parliament. A way to incentivise disclosure, which would also give lenders and buyers of debt more certainty, would be to bring in a requirement that, for a loan to be enforceable, it would have to be disclosed in the registry above within 30 days of contracts being signed.

Such a requirement would create a powerful incentive for loans to be disclosed. If a loan had not been publicly disclosed on the registry, a potential buyer of the debt would see it had not been disclosed, and was not enforceable, and so would be less likely to buy it.

This requirement would only necessitate a one-off legislative change, rather than requiring ongoing regulation. It would also apply to all lenders who use English law for enforcement of loans, which currently includes governments such as Russia and China, as well as private companies.

Currently, 48% of international government bonds are issued under English law and 52% under New York law, with less than 1% under any other jurisdiction.¹⁰ Of bonds owed by sub-Saharan African governments, 90% are owed under English law.¹¹ Ideally, the requirement for loans to be disclosed to be enforceable would be passed in both the UK and New York, followed by other G20 and important jurisdictions.

It would be possible for lenders and borrowers to use a different jurisdiction for enforcement in order to dodge the disclosure requirement. However, a very strong incentive exists for lenders to issue contracts under English or New York law, because the case law exists, meaning they are confident in the protections these jurisdictions provide. Moving to other jurisdictions would pose a very similar risk of not being able to enforce a contract in English or New York courts, increasing the appeal of transparency and disclosure.

Recommendation 4 – All relevant legislatures, especially the UK and New York, introduce a requirement that for a loan to a government, or with any form of government guarantee, to be enforceable, it must have been publicly disclosed on the registry mentioned above, within 30 days of contract signature, and providing the information outlined above.

The logos on the front of this briefing are a selection of the regional networks and organisations which have endorsed it. The full list of organisations is at jubileedebt.org.uk/transparency

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