



AFRICAN FORUM AND NETWORK  
ON DEBT AND DEVELOPMENT

Africa Rule Maker



# THE LEGAL AND INSTITUTIONAL FRAMEWORKS GOVERNING SOVEREIGN DEBT CONTRACTION AND MANAGEMENT IN AFRICAN COUNTRIES

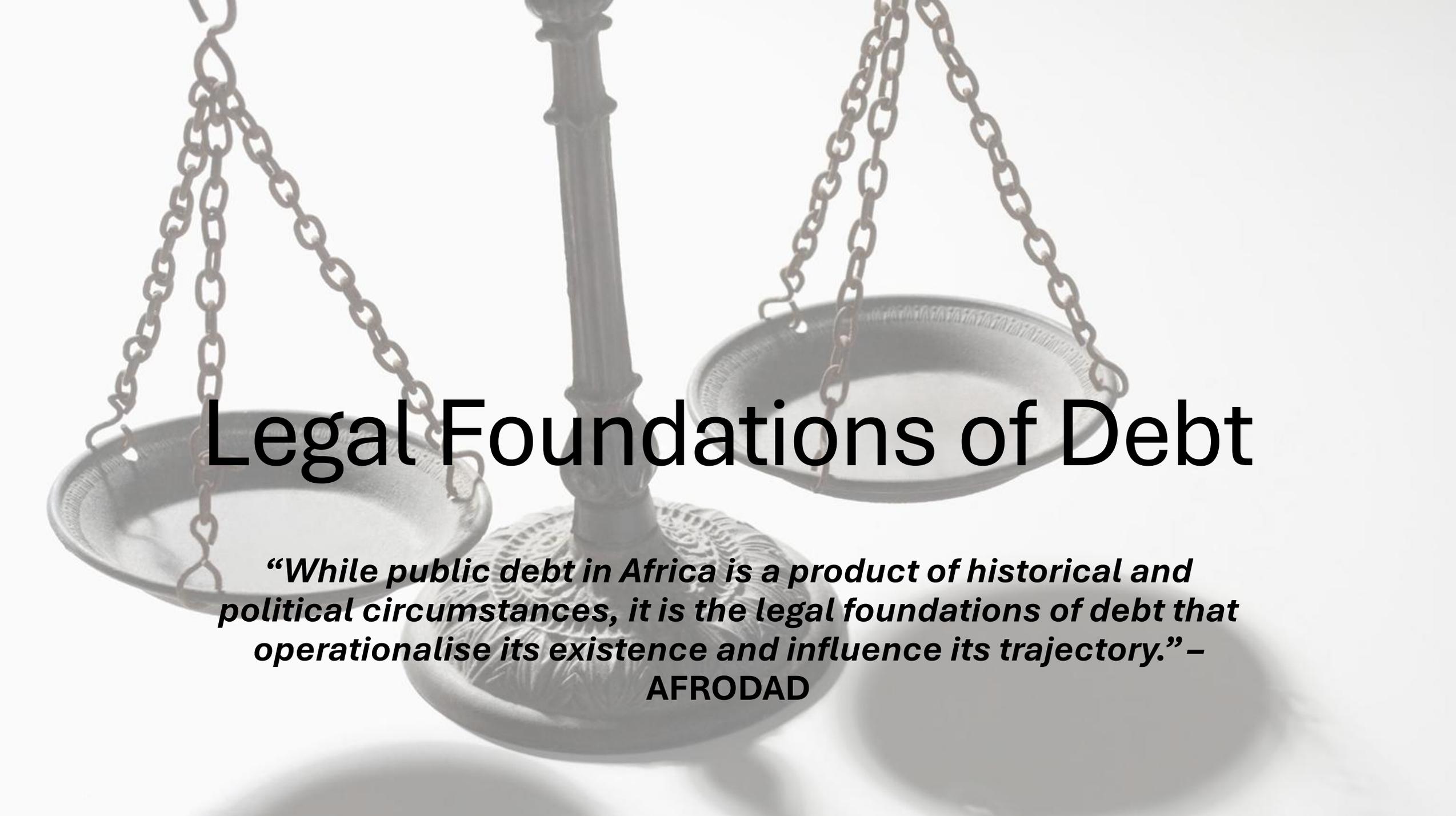
*CASE STUDIES: ETHIOPIA, GHANA,  
MALAWI, CHAD*

2<sup>nd</sup> December 2025

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# Legal Foundations of Debt

***“While public debt in Africa is a product of historical and political circumstances, it is the legal foundations of debt that operationalise its existence and influence its trajectory.” –***

**AFRODAD**

# Country Public Debt-to- GDP Ratios in 2023

- These countries, while diverse in economic structure, political institutions and historical experiences, collectively represent the challenges and opportunities that define debt management on the continent. The studies also provide lessons for African countries to pick.

PUBLIC DEBT-TO-GDP RATIO	
Chad	32.7% <sup>2</sup>
Ethiopia	38.7% <sup>3</sup>
Ghana	72.3% <sup>4</sup>
Malawi	91.3% <sup>5</sup>



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# Comparative Analysis

	General Trends	Country-specific findings
<b>Authority to borrow</b>	A blend of centralisation and accountability mechanisms, each shaped by distinct historical and institutional contexts	<p><b>Chad</b></p> <ul style="list-style-type: none"> <li>There is no legally enshrined duty for Chad's parliament to approve debt issuances and contracts. Parliament's involvement is limited to voting on the annual budget. There is, however, a backdoor Parliamentary approval for certain debt issuances. This requires Parliamentary debate <u>despite the fact that</u> this approval is not technically required by law.</li> <li>Unique in its reliance on regional frameworks like CEMAC</li> <li>Delegates debt evaluation to technocratic bodies such as CONAD</li> </ul> <p><b>Ethiopia</b></p> <ul style="list-style-type: none"> <li>Allowing the Ministry of Finance significant autonomy to contract loans, contingent on alignment with predefined debt strategies</li> </ul> <p><b>Ghana</b></p> <ul style="list-style-type: none"> <li>Emphasise parliamentary oversight, requiring loan agreements to be scrutinised by their legislatures, but undermined by executive dominance</li> </ul> <p><b>Malawi</b></p> <ul style="list-style-type: none"> <li>Emphasise parliamentary oversight</li> <li>Require loan agreements to be scrutinised by their legislatures</li> <li>Balances executive power with legal checks, including consultations with the Reserve Bank and Attorney General</li> </ul>



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# Comparative Analysis

<b>State owned enterprises debt</b>	Varying degrees of state intervention and oversight	<b>Chad</b>	<ul style="list-style-type: none"> <li>Mandates CONAD’s opinion but lacks legislative scrutiny</li> </ul>
		<b>Ethiopia</b>	<ul style="list-style-type: none"> <li>Proactive strategy—the Liability and Asset Management Corporation centralises SOE debt management, reducing fiscal risk</li> </ul>
		<b>Ghana</b>	<ul style="list-style-type: none"> <li>Allows SOEs to borrow independently under ministerial oversight</li> </ul>
		<b>Malawi</b>	<ul style="list-style-type: none"> <li>Requiring only post-approval reporting to Parliament</li> </ul>
<b>Debt management strategies</b>	All four countries’ frameworks reflect the fundamental goal of balancing fiscal sustainability with manageable risk. However, the countries differ in the specifics of their frameworks and implementation processes.	<b>Chad</b>	<ul style="list-style-type: none"> <li>Links its MTDS and ABP but introduces legislative oversight to reinforce consistency and transparency in debt management.</li> </ul>
		<b>Ethiopia</b>	<ul style="list-style-type: none"> <li>Incorporates a comprehensive DSA alongside its MTDS, emphasising the alignment of sovereign debt with repayment capacity</li> </ul>
		<b>Ghana</b>	<ul style="list-style-type: none"> <li>Stands out with the creation of the PDMO, a dedicated entity overseeing risk assessments and ensuring all borrowing aligns with government-approved strategies</li> </ul>
		<b>Malawi</b>	<ul style="list-style-type: none"> <li>Well-defined MTDS and an Annual Borrowing Plan (ABP) designed to manage borrowing costs and repayment needs</li> </ul>



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ON DEBT AND DEVELOPMENT



# Comparative Analysis

<b>Transparency</b>	While all four countries make strides toward transparency, the effectiveness of their efforts is contingent upon the interplay between legal mandates, institutional capacity, and public engagement.	<b>Chad</b>	<ul style="list-style-type: none"> <li>Theoretically robust but highlights the critical importance of practical implementation in ensuring that transparency translates into accountability</li> </ul>
		<b>Ethiopia</b>	<ul style="list-style-type: none"> <li>More structured approaches</li> <li>Demonstrates a commitment to providing regular, detailed debt data, which could foster investor confidence if coupled with active stakeholder involvement</li> </ul>
		<b>Ghana</b>	<ul style="list-style-type: none"> <li>More structured approaches</li> <li>Demonstrates a commitment to providing regular, detailed debt data, which could foster investor confidence if coupled with active stakeholder involvement</li> </ul>
		<b>Malawi</b>	<ul style="list-style-type: none"> <li>Theoretically robust but highlights the critical importance of practical implementation in ensuring that transparency translates into accountability</li> </ul>



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ON DEBT AND DEVELOPMENT



## Trends and Recommendations

	General Trends	Recommendations
<b>Statutory limits on amount of debt and terms</b>	In Malawi, Ethiopia, and Ghana, there are no clear statutory limits on the amount of debt that can be contracted.	<ul style="list-style-type: none"> <li>• Explore more formalised statutory debt limits to enhance fiscal discipline and manage borrowing risks more effectively</li> <li>• Establish clear, legally binding thresholds or ratios could provide stronger safeguards against excessive debt and improve overall fiscal stability</li> <li>• Introduce statutory requirements for minimum terms and conditions in sovereign debt contracts</li> <li>• Standardise non-negotiable terms to protect national interests and prevent potentially exploitative conditions favouring lenders with reference to regional standards (e.g., the EAC debt-to-GDP ratio target at 50%)</li> <li>• Integrate comprehensive monitoring and enforcement mechanisms which could further ensure that debt management practices align with long-term economic objectives and enhance investor confidence</li> </ul>



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ON DEBT AND DEVELOPMENT



## Trends and Recommendations

<b>Accountability</b>	<ul style="list-style-type: none"> <li>• Accountability within sovereign debt management systems across the case study countries is largely underdeveloped and unused.</li> <li>• In Malawi and Chad, there are no specific penalties for not complying with the law during the contraction and management of debt.</li> <li>• Ghana and Ethiopia have sanctions but largely unapplied.</li> </ul>	<ul style="list-style-type: none"> <li>• Impose specific penalties for violation of the law during the contraction and management of debt</li> <li>• Remove impunity for officials' violation of related debt contraction and management laws</li> </ul>
<b>Transparency</b>	<p>All four countries reflect lack of transparency in both debt incurrence processes and the disclosure of outstanding liabilities.</p>	<ul style="list-style-type: none"> <li>• Establish public disclosure standards on debt contraction and management trends and decisions</li> <li>• Develop reporting templates</li> <li>• Publication of debt contracts for public scrutiny and comments</li> </ul>



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ON DEBT AND DEVELOPMENT



## Trends and Recommendations

<p><b>Public Participation and Parliamentary Oversight</b></p>	<p>Public participation in sovereign debt contracting is notably absent in Malawi, Ethiopia, Chad, and Ghana.</p> <p>Parliamentary approval is often a rubber-stamping exercise.</p>	<ul style="list-style-type: none"> <li>• Ensure that Parliament plays a significant role not only in the contracting but also in the management of sovereign debt</li> <li>• Enhance the parliamentary approval process by instituting more rigorous scrutiny and debate of debt agreements to ensure that fiscal decisions are made with due diligence.</li> <li>• Implement measures to diminish executive dominance, such as revising appointment procedures or strengthening parliamentary independence</li> <li>• Establish independent oversight bodies or enhance existing ones</li> <li>• Ghana: reforming the current arrangement to better separate executive and legislative powers could restore the effectiveness of parliamentary oversight</li> </ul>
<p><b>Legal Safeguards</b></p>	<p>There are significant enforcement gaps across the four countries.</p>	<ul style="list-style-type: none"> <li>• Implement mandatory consultations with the Reserve Bank for all public debt contracts to ensure that debt agreements are in alignment with the country's monetary policies, thereby mitigating potential risks and reinforcing financial stability</li> <li>• Chad: establish mechanisms to monitor and enforce CONAD's recommendations</li> </ul>



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ON DEBT AND DEVELOPMENT



## Trends and Recommendations

<b>Role of Auditor General</b>	Monitoring role of the Auditor General in public debt management is notably limited in all four countries.	<ul style="list-style-type: none"> <li>Expand the role of the Auditor General to include more rigorous monitoring of the use of borrowed funds</li> <li>Conduct regular audits to ensure that borrowed resources are utilised effectively and in accordance with established guidelines</li> </ul>
<b>Oversight of State-owned Enterprises Debt</b>	There exist misalignments of SOE borrowings with broader fiscal policies and sustainability objectives	<ul style="list-style-type: none"> <li>Strengthen the reporting and monitoring of SOE debt</li> <li>Conduct mandatory evaluations of SOEs' financial capacity before authorising new borrowing</li> <li>Enhance institutional oversight and foster greater accountability</li> </ul>
<b>Specialised Legal Expertise</b>	All four countries experience shortages of talents with specialised legal expertise in negotiating sovereign debt contracts and handling disputes arising out of these contracts.	<ul style="list-style-type: none"> <li>Invest in capacity-building initiatives to develop expertise in sovereign debt negotiation</li> <li>Develop a set of guidelines/principles that public debt contracts should adhere to and/or a model debt contract</li> <li>Conduct training and develop skilled personnel to ensure that the terms and conditions of debt contracts are negotiated in the best interests of the country and not unduly skewed in favour of lenders</li> </ul>



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# Other General Recommendations

- Incorporate minimum terms in loan contracts
- Develop model loan contract to guide the Minister of Finance and Parliament during the negotiation of loan contracts and safeguard against the inclusion of terms that disadvantage debtor nations
- Link debt incurred with the projects that the loans were borrowed to finance to mitigate the siphoning-off of debt to the private purses of government officials

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