



## Rethinking debt contractualization in Tunisia from an African perspective of debt governance

Tunisian debt crisis and the urgency for sovereign debt management

Tunisia's escalating public debt, reaching 80% of its GDP since 2021, poses a significant threat to its fiscal sustainability, social stability, and economic autonomy. This high level of indebtedness underscores the urgent need to address the country's debt management practices, which, like those of many African nations, are significantly influenced by the prevailing global financial architecture and the policies of international financial institutions (IFIs).

In this context, [the Tunisian Observatory of the Economy](#), in collaboration with the [African Forum and Network for Debt and Development \(AFRODAD\)](#), organized the [National Day of Debt](#) on July 9, 2024. The event consisted of a [roundtable discussion](#) on rethinking Tunisia debt management followed by a workshop on the legal foundations and contractual terms of public debt to examine the governance of debt, its historical roots, and its legal and contractual challenges.

The workshop, facilitated by Dr. Lyla Latif, a Kenyan lawyer and legislative draftsman specializing in financial and legal matters, and Afshin Nazir, an



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Beyond Borrowing: Rethinking Tunisia's Debt Management

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advocate of the high court of Kenya and legal analysis and advocacy policy officer at AFRODAD, provided a forum for approximately 30 participants, including researchers, legal experts, and civil society representatives, to critically examine the governance of debt, its historical antecedents, and the attendant legal and contractual challenges.

The workshop provided an opportunity to dissect debt not just as an economic burden but as a political and legal issue, rooted in colonial legacies and reinforced by the current global financial architecture. The central question of the workshop was: How can African nations, including Tunisia, regain control over their debt governance and shift from dependence to financial sovereignty? To answer this question, the workshop tackled a series of sub-questions: Does the citizen, who endure the costs of debt repayment and its repercussions on daily life, have access to the details of debt contracts? To what extent are citizens included in the decision-making processes regarding national debt? Are elected representatives and

parliamentary deputies held accountable for their roles in these decisions? The opacity of debt contracts often benefits creditors and weakens the negotiating power of African states. What strategies exist to address these disparities? How can nations strengthen their debt management frameworks? Furthermore, in what ways can civil society, journalists, and researchers advocate for increased transparency in debt management?

### **Colonial roots of Africa debt dependency**

The first part of the workshop was animated by Afshin Nazir who started her presentation by placing Africa's debt crisis within its historical context, stressing that IFIs' dominance today must be understood through the lens of colonial debt history.

During the colonial era, European powers financed their control and extraction of African resources through loans, making borrowing central to the continent's economic framework. When African nations fought for and won independence, they were forced to inherit colonial debts. These odious debts, as Nazir pointed out, were a means of economic subjugation, ensuring that newly independent African states remained financially tied to their former colonizers.

However, the economic structures left by the colonial rule meant that these nations were not financially self-sufficient. Their

economies were designed for resource extraction and cash crop production rather than self-sustaining industrial development. To maintain production, countries like Uganda and Egypt had to continue borrowing to sustain industries such as cotton farming and infrastructure development.

Postcolonial monetary and fiscal policies further entrenched this dependency. Combined with the emergence of structural adjustment programs imposed by the IMF and World Bank, these mechanisms pushed African nations into vicious cycles of indebtedness. "Independent nations were forced by IFIs to implement austerity measures under the guise of structural adjustments," Nazir noted, underscoring that these policies did not alleviate debt but instead reinforced economic dependency.

Crucially, the IMF governance structure itself is built to maintain this dependency. Nazir emphasized that

"The U.S. is the only country within the IMF that holds veto power, and credit rating agencies continue to dictate borrowing conditions for African nations."

The result is an unequal system where African economies remain vulnerable to external financial decision-making. The accumulation of debt under IFIs created vicious circle of indebtedment, maintaining a cycle of economic dependency for African nations dominated by external actors.

## Debt as a contractual issue: legal pitfalls and power asymmetries

Shifting from a historical to a legal perspective, Dr. Lyla Latif presented a legal analysis of debt contracts, highlighting how policy discussions on debt management must go beyond economic theories to focus on the legal frameworks that govern borrowing.

“Understanding debt requires analyzing contractual law” she asserted.

### The problems with contract Law

The problem with contract law can be boiled down to three key issues.

The first problem lies within the the principle of freedom of contract. This principle allows parties to structure their contracts however they wish, offering flexibility, but also enabling the creation of exploitative agreements. For example, lenders may demand ownership of state-owned enterprises or control over key infrastructure, such as airports, as collateral, or guarantee for the loans.

The lack of a duty to negotiate in good faith is the second critical aspect of contract law that poses problem, particularly in English contract law, which many African countries follow due to colonial influence. Without a legal obligation for creditors to act in good faith, lenders can knowingly offer loans to countries unlikely to repay, intending to profit by imposing harsh repayment terms or seizing assets later. This lack of good faith provides

commercial creditors, like vulture funds, the opportunity to exploit vulnerable countries.

As a third problematic aspect, Dr. Latif pointed the principle of privacy in contract law, noting that many debt contracts remain secretive, leaving little to no room for public oversight.

“Because of privacy in contract law, there is often no aspect of accountability, transparency, or public participation in debt contracts,” she stated.

The privity of contract and the lack of transparency in debt agreements further complicate the situation. Contracts are typically binding only between the parties involved, meaning outsiders, including the public or other stakeholders, have no access to say in the agreement. The phrase “This contract is confidential,” further shields loan terms from scrutiny, thereby undermining democratic governance and human rights by preventing citizens, civil society, and even parliamentarians from accessing the vital information there stated.

### The role of national legal frameworks in government debt negotiations

Dr. Latif also highlighted the critical legal shortcomings in government debt negotiations, emphasizing how weak legal frameworks contribute to unsustainable debt burdens. She underscored the importance of establishing a clear legal basis for governments to engage in debt

negotiations, noting that national laws and constitutional provisions should determine whether parliamentary approval is required before securing loans from international lenders such as the World Bank, the EU, or bilateral creditors. Using Chad as a case study, she illustrated the risks posed by opaque borrowing, where the absence of a constitutional mandate for parliamentary oversight has enabled the government to accumulate significant debt from multiple bilateral creditors without disclosure. This lack of transparency caused institutions like the IMF and the World Bank to remain unaware of Chad's total debt exposure, increasing the likelihood of default, as creditors may unknowingly finance an already over-indebted country. To address this issue, Dr. Latif stressed the need for constitutional provisions that mandate parliamentary approval for government loans, ensuring greater accountability and transparency in financial decision-making. In the absence of such legal safeguards, she advocated for reforms to introduce stricter borrowing control mechanisms and public disclosure requirements. Ultimately, Prof. Latif warned that without stronger legal oversight, countries risk accumulating hidden debts that could lead to economic instability, making it essential to implement robust transparency measures and enforce legal frameworks that protect national financial health.

### **Strengthening sovereign borrowing: The role international and continental debt legal frameworks**

Dr. Latif emphasized the importance of international and continental legal frameworks in guiding sovereign borrowing and lending, ensuring that governments negotiate debt agreements with greater awareness and protection. She highlighted the [UNCTAD principles of sovereign borrowing and lending](#), which serve as an international regulatory framework to help governments navigate loan negotiations effectively. Additionally, for state-owned enterprises borrowing on behalf of the public sector, [International Public Sector Accounting Standards](#) (IPSAS) provide guidelines on contracting bilateral loans, further strengthening the regulatory landscape.

Latif also underscored that, countries can resort to institutions within the African regional mechanisms, particularly the [Africa Legal Support Facility \(ALSF\)](#), hosted by the African Development Bank, which can provide expert advice to governments on how to best lead debt negotiations and safeguard national interests. This facility helps identify problematic clauses in loan contracts that may lead to revenue losses, fiscal consolidation, or austerity measures in the long run, ensuring that governments enter agreements with full awareness of potential risks.

She further stressed the need for Tunisia, like the rest of Africa, to embrace a Pan-African identity in financial negotiations, leveraging the continent's collective legal and regulatory frameworks to enhance its bargaining power

“Tunisia also must join in to be able to have that African identity going forward because we are part of the continent.”

Finally, she acknowledges Tunisia’s firm stance against IMF loan conditionalities, recognizing the government's refusal to accept terms that may not align with its national interests. Latif’s discussion recommends a high strategic legal preparedness, a fundamental condition for efficiently engaging in debt negotiations, ensuring highlighting that nations must utilize existing legal mechanisms to protect their financial sovereignty and prevent exploitative agreements.

After Dr. Lyla’s presentation, participants engaged in a group exercise to review a loan agreement between Italy and Kenya, aimed at enhancing their ability to identify risks in financial agreements.



### Key legal risks in debt contracts: What red flags should countries pay attention to when negotiating a new debt contract?

Dr.Latif outlined the most dangerous clauses that African governments must scrutinize before signing debt agreements:

**Maturity dates:** Borrowing countries must ensure that multiple contracts do not have overlapping maturity dates, which can trigger repayment crises.

**Debt resale to third parties:** Many contracts allow creditors to sell debt to private hedge funds, which then refuse to renegotiate terms and take governments to court or into cases of arbitration. She cited Zimbabwe’s case, where a \$50 million debt escalated to over \$150 million due to legal action from vulture funds.

**Debt default processes:** Some contracts include "sweeteners"—additional financial penalties in case of default. Others contain "warrants," which allow creditors to demand control over national assets (such as oil reserves).

**Collective action clauses:** Some contracts link debt restructuring to multiple agreements, meaning that renegotiating one loan automatically triggers restructuring obligations for others potentially worsening debt distress.



**Non-Disclosure and confidentiality clauses:** these clauses prevent citizens from accessing information about national debt obligations, making it impossible for civil society to hold governments accountable.

**Jurisdiction of contracts:** most contracts are not tied to national courts but to international arbitration. "Having debt contracts under international jurisprudence creates power asymmetries, as African governments are unfamiliar with the legal systems they are bound to," Dr. Latif warned.

**Contractual amendments without clear processes:** some contracts allow modifications through simple verbal agreements, meaning entire loan conditions can change without any formal renegotiation process.

Drawing on the example of a debt contract between Italy and Kenya, Dr. Latif presented other key points as how debt contract's reference to another commercial contract can imply that a monopoly of companies entering the local market was given to the creditor country. She put forward tricky provisions, for instance the fact that two restructurings can cancel a previous 'haircut' which is the percentage difference between an asset's market value and the amount that can be used as collateral for a loan



Another danger is that some contracts can be amended often on a simple verbal note, and this represents a risk as there are often no preexisting resolution mechanisms in case of dispute between creditors and borrowers in such cases.

After the exercise there was a discussion to give feedback on debt contract.

The discussion focused on the difference between visibility and transparency in the context of debt contracts and democratic principles, and how the ideas of protecting the right to information and accountability are crucial. Visibility doesn't necessarily mean that the information is understandable, but that it is there to be seen. It's about exposure. Transparency refers to how clearly and honestly information is communicated, making it easier to understand and scrutinize. It goes beyond just making information available; it ensures that it's presented in a straightforward and honest way. In debt contracts, transparency means that not only are the terms of the contract visible, but they are clear, comprehensive, and free from hidden clauses or misleading language. It provides the full picture, allowing

the borrower (or anyone reviewing the contract) to fully understand the implications. Transparency involves removing any ambiguity, making the information not only visible but also easy to interpret and evaluate.

This insightful workshop and the following discussions revealed the critical need for a paradigm shift in how African nations approach debt contractualization. It's no longer sufficient to view debt solely as an economic challenge; the workshop convincingly demonstrated its deeply embedded legal and political dimensions.

The path forward requires a multi-pronged approach.

First, strengthening national legal frameworks is paramount, ensuring parliamentary oversight and transparency in borrowing processes.

Second, a renewed focus on the legal intricacies of debt contracts, as highlighted by Dr. Latif, is essential to identify and mitigate exploitative clauses.

Third, embracing a Pan-African identity in financial negotiations, leveraging continental legal support structures and fostering solidarity, can mobilize support for African nations, and amplify Africa's voice in the global financial arena.

Achieving true financial sovereignty ultimately requires a move beyond simply managing debt to actively shaping the rules of the game. This requires empowering citizens with access to information, demanding accountability from both lenders and borrowers, and fostering a new generation of legal expertise dedicated to navigating the complexities of sovereign debt. Only then can Tunisia, and the broader African continent, break free from the shackles of debt dependency and chart a course towards sustainable and equitable development.



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