PUBLIC DEBT CONFIDENTIALITY

Separating fact from fiction

Open Government Partnership

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Acknowledgements

The National Democratic Institute, Transparency International and the Open Government Partnership thank Richard Christel, who coordinated the initial development of this research, as well as Corina Rebegea, Erin Houlihan, Daniela Patiño Piñeros, Kush Amin, Adam Foldes and Joseph Foti for their substantive contributions.

INTRODUCTION

Citizens have a right to know about their country's debt because public debt is *the public's* debt. When governments go into debt, they are putting their citizens' futures up as collateral. The benefits of debt transparency – reduced borrowing costs (interest rates) and improved efficiency of public spending – are well-documented.[1] Debt relief processes aimed at restoring sustainability for debt-distressed countries also rely on comprehensive debt data by debtors and creditors.[2]

Yet in many countries, public debt remains hidden from public view. While most constitutions in the world recognize people's right to access public information and more than two-thirds of countries have adopted right to information (RTI) laws,[3] transparency around public debt remains hobbled by a combination of interconnected challenges:

- Weaknesses in RTI laws, such as exemptions for sweeping categories of information (like data related to "national security") that may be broadly interpreted by government actors to avoid disclosing public debt data, and an emphasis on reactive disclosure in response to direct and specific requests rather than proactive information sharing;
- Deficiencies in national legal frameworks on debt acquisition, management and other controls, such as too-narrow definitions of public debt and inadequate requirements for the proactive disclosure of all types of debt (especially regarding the inclusion of non-centralized and collateral debt), at all levels of government and from both domestic and foreign sources;
- Ineffective oversight by legislatures and independent oversight and regulatory institutions of public debt matters, paired with inadequate control mechanisms; and
- Increasingly, the rise of confidentiality clauses in debt agreement instruments.[4]

This brief examines the problem of debt confidentiality clauses in public debt instruments. It debunks the six most common fictions used by lenders and borrowers to justify hiding information about a loan transaction from public scrutiny and, in the worst cases, to conceal the existence of the debt itself. These include:

Fiction #1: Some lenders and borrowers claim that confidentiality is necessary to protect national security

Fiction #2: Some lenders suggest that confidentiality is needed to protect sensitive commercial and price information

Fiction #3: Some borrowers argue that they will get better loan terms if their full debt burden is not known to creditors

Fiction #4: If disclosure is not required by law, some borrowers and lenders claim they are not allowed to disclose

Fiction #5: Some borrowers claim that they would like to disclose, but the lender won't let them

Fiction #6: Some lenders claim that they would like to disclose, but the borrower won't let them

What is a confidentiality clause?

A confidentiality clause is language inserted into a loan contract that stipulates secrecy about the loan. Concerningly, **there is a growing practice among some creditors** – such as Chinese state-owned entities and the Islamic Development Bank[5] – **to impose sweeping confidentiality clauses that require nondisclosure on the part of the sovereign borrower.** In the worst cases, the confidentiality clauses prohibit disclosure of the existence of the loan itself. In a majority of cases, these clauses limit disclosure of all terms of the deal and collateral to the public, other lenders and, often, domestic oversight and regulatory bodies.[6] Even where strict confidentiality clauses do not exist, loans are routinely kept secret. For example, in 2019 global private banks committed to disclosing details of their loans to governments. Yet between 2019 and 2023 just $2.9 billion of loans were disclosed by just two banks, with Debt Justice estimating $37 billion of loans remained hidden.[7] The rise in confidentiality clauses therefore does not necessarily alter the typical disclosure practices of the lender or the sovereign borrower, but provides the veneer of contractual obligation to which both lenders and borrowers can point to hide public debt from the public.

There are no justifiable reasons for keeping public debt agreements confidential.

Confidentiality, and the use of confidentiality clauses in debt contracts, contribute to misuse, bad faith and corruption. When citizens are not aware of the debt – including its objectives, collateral, amounts and terms – they cannot hold their government to account for its management or even for any misconduct. Confidentiality clauses have been used to "hide" sovereign debt guarantees and to limit oversight on the implementation and quality of debt-financed projects. Such clauses have also enabled collusion between lenders' contractors and host country officials, including the use of kickbacks and hidden ownership shares.[8]

Even when corruption is not a key driver, hidden debt contributes to borrowers getting a bad deal. Absent a clear picture of their debt burden, a borrower country's debt risk may be over- or under-estimated by lenders, leading to higher interest rates and limited access to credit, ultimately reducing fiscal space and development opportunities. Lenders lose out as well. When debt is hidden, lenders can't accurately assess a country's ability to repay and may underestimate the country's risk. Recent research also suggests that the more "new" debt discovered during debt restructurings, the more losses lenders endure.[9]

The highest price of all, however, is paid by the public in borrower countries who suffer higher taxes and fewer public services as their country's limited financial resources are redirected to cover the costs of the loans rather than maintaining education, health care or other core services.[10]

Experts discuss financial integrity reforms at the 2025 OGP Africa Regional Meeting, hosted by the Government of Kenya. Photo credit: OGP.

> **Even when corruption is not a key driver, hidden debt contributes to borrowers getting a bad deal.**

Who uses confidentiality clauses?

Confidentiality clauses in loan agreements are most commonly used by **bilateral** (from one country's government to another) or **private sector lenders** (commercial banks) and, more exceptionally, by multilateral lenders (such as regional development banks). A 2021 AidData report found that, of a benchmark sample of foreign debt contracts consisting of 142 loans from 28 commercial, bilateral, and multilateral creditors: "39 percent of contracts by multilateral creditors, one third of contracts by bilateral creditors and one third of commercial bank contracts include confidentiality undertakings."[11]

The scope of confidentiality provisions varies depending on the lender and nature of the loan agreement.[12] Sovereign bonds, for example, are debt securities issued by a national government. As such, they must meet certain transparency requirements in order to be listed on bond exchanges. When **private creditors** are involved in **bonds**, the terms tend to be more transparent, although access to the information may still be limited since it may only be available through expensive, paid-for services; there is no free platform to find all details on all bonds, which limits accountability by oversight institutions and civil society on the ground.

Some **bilateral creditors** also use confidentiality clauses. **In particular, Chinese policy banks** like the Export-Import Bank of China (EIBC) and China Development Bank (CDB) **tend to impose confidentiality obligations on sovereign borrowers**, which makes it difficult for taxpayers and civil society to understand the debts their government has leveraged in

their name. The 2021 AidData study noted above found that, while the contracts in their benchmark sample tended to impose confidentiality clauses on the *lenders*, "contracts in our Chinese sample [of 100 contracts in 24 countries] impose them on the *borrowers*. Confidentiality clauses in Chinese lenders' contracts are also far broader in scope than those in the benchmark set, covering all the terms, and even the existence of the debt itself."[13] In 2025, the researchers expanded coverage to 371 debt contracts entered into by 20 Chinese state-owned creditors and 155 borrowing entities in 60 countries over a 36-year period (1990-2025). The updated analysis found an uptick in the use of sweeping confidentiality clauses after 2014 in EIBC contracts, rising from around 2 percent prior to 2014 to 82 percent between 2015 and 2015.[14] Most of these prohibit *the borrower* from disclosing the loans "...*unless required by law"* [emphasis added].[15]

> **A fuller understanding of the scale of the use of confidentiality clauses by bilateral creditors is limited because these agreements, by their very nature, are difficult to access.**

For example, a 2017 EIBC loan agreement with Serbia states the Serbian government cannot release information about the loan *unless receiving written permission from the lender* or as "required by applicable law" (page 11, clause 8.7).[16] Similar language was used in an EIBC loan to Cabo Verde in the same year (page 8, clause 8.7).[17] Research also indicates that lending by Gulf states has tended to be opaque.[18]

A fuller understanding of the scale of the use of confidentiality clauses by bilateral creditors is limited because these agreements, by their very nature, are difficult to access. This illustrates the wider point that even when confidentiality clauses are not in contracts, it does not mean that the existence, and details of, loans are disclosed.

Why aren't laws and norms on the right to information enough?

Often, confidentiality clauses provide an exception to secrecy where the primary laws of debtor and/or lender countries require the (proactive or reactive) disclosure of data on public debt. In principle, this exception would apply to debt disclosure legislation or RTI laws.[19] In many jurisdictions, however, laws guiding disclosure are weak, inadequate or absent, making the applicability of the exemption at best unclear. According to a recent IMF study of comparative legal frameworks in 60 jurisdictions, legal requirements for the proactive disclosure of public debt are inconsistent and relatively uncommon.[20] Only a handful of countries require the *proactive* disclosure of comprehensive data on public debt and contingent liabilities, including policies, strategies and operations on public debt management (as compared to countries with legal requirements for fiscal reporting with debt data more generally). Even then, many laws that contain some form of proactive disclosure requirements suffer from critical weaknesses, such as limited coverage of the range of public debt types that must be disclosed, lack of clarity on the type of information that must be disclosed, and inadequate monitoring structures to ensure disclosure, among others.[21]

Many laws that contain some form of proactive disclosure requirements suffer from critical weaknesses.

Reactive disclosure, on the other hand, is typically facilitated through direct requests for specific information about the debt under a country's RTI law(s). This should, by default, make public debt information accessible. In practice, however, the process is often cumbersome; some countries charge fees for processing requests under RTI laws, require complex paperwork, enable long processing times, or provide only partial information. Further, many RTI laws include exceptions (such as for "national security reasons"), which may be interpreted in such a way as to bar meaningful disclosure of loan information. Typically, debt contracts do not treat a debtor country's RTI laws as overriding mandatory provisions in debt contracts. This means that the governing law of the contract (typically English or New York law), rather than the debtor's national law, guides key public disclosure obligations, including the interpretation of exemptions under confidentiality clauses.

Following the 2008 financial crisis, the imperative of responsible and transparent public debt practices prompted the United Nations Conference on Trade and Development (UNCTAD) to develop a set of normative principles rooted in global best practices.[22] The principles reflect a growing global consensus and are referenced in a number of soft law instruments and multilateral agreements to encourage compliance.[23] However, nonbinding multilateral efforts to increase debt transparency have so far failed to change the status quo. For example, the public debt registry hosted by the Organization for Economic Cooperation and Development (OECD) was established to enable commercial lenders to voluntarily disclose their lending to governments. Four years after its creation, however, only *two* banks had disclosed a total of *six* loans.[24] Even then, the disclosures were incomplete, limited to ranges of interest rates (i.e., a loan's interest rate is somewhere between 1 and 3 percent, a range with vast implications).[25]

Despite these persistent challenges, international efforts to strengthen debt transparency practices and repel the growing use of confidentiality clauses are gaining traction. This momentum reflects the importance of debt transparency for lenders, sovereign borrowers, the global economic system and the citizens of countries around the world. A key recent development is the formal adoption, at the Fourth International Conference on Financing for Development (FfD) in 2025, of a commitment to establish a single global sovereign debt registry housed at the World Bank. The FfD 2025 outcome document, known as the Sevilla Commitment, declares that the registry will serve "to harmonize and strengthen debt data reporting, enhance debt transparency and reduce reporting burdens, while respecting privacy and data protection."[26] The same commitment also calls for the establishment of a working group to study and build upon the UNCTAD principles, signaling a renewed approach to bridging transparency principles and disclosure practices.

Panelists discuss fiscal openness reforms at the 2025 OGP Global Summit, hosted by the Government of Spain. Photo credit: OGP.

Overview of key recommendations

To put an end to confidentiality clauses and debt opacity, the following actions are recommended (see the section of this brief for details and explanations):

1. **Borrower countries should enact legislation mandating full-debt transparency and requiring the proactive public disclosure of complete, transaction-level information related to public debt.**

2. **Regulations in borrower countries should establish provisions for the disclosure by default of transaction-level financial and non-financial debt information.**

3. **Access to confidential debt information should be expressly granted to borrower country oversight institutions, including the legislature (parliament) and supreme audit institutions and to the public; no limitation on disclosure should be permitted through contract provisions.**

4. **Creditor countries should enact and enforce legislation mandating transparency through the disclosure of transaction-level financial and non-financial information to publicly accessible debt databases.**

5. **A single global debt registry should be established, to which both borrowers and lenders disclose loan details.**

GETTING THE FACTS STRAIGHT: THE 6 FICTIONS OF DEBT CONFIDENTIALITY

#1: Is confidentiality needed to protect national security?

The fiction: *Confidentiality of loan information is necessary to defend the country's national security interests. In some cases, "national security" is used as a pretext to withhold information regarding debt and/or to disregard established loan approval procedures (see Ecuador, 2010,[27] Mozambique, 2016).[28]*

THE FACTS

These "national security" concerns are often un- or ill-defined and may simply be a convenient way to hide inconvenient truths or unpopular decisions for both lenders and borrowers – as was the case with Mozambique's illegal acquisition of tuna bonds.[29] By claiming the tuna bonds were a national security matter, the loans were acquired without the parliamentary approval procedures required by Mozambique law.

Such claims run contrary to standards established under a number of soft law instruments that guide how states may safeguard genuine national security information while protecting the right to information.[30] For example, **General Comment No. 34 of the UN Human Rights Committee**, in addressing the topic of national security information, notes, "Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress."[31]

Further, the **Tshwane Principles** on National Security and the Right to Information provide guidance to those engaged in developing and implementing laws relating to a state's authority to withhold information on national security grounds.[32] These principles have been adopted or endorsed by the Special Rapporteurs on Freedom of Opinion and Expression of the United Nations, the African Commission on Human and Peoples' Rights, and the Organization of American States, among others, and are reflected in a number of other international and regional soft law instruments.[33]

Sometimes, national security concerns are cited in hypothetical arguments when debt is being used to purchase military or intelligence equipment. But western government transparency to support Ukraine's self-defense against Russia's illegal invasion defeats this argument. If donors felt

there was an acute national security risk to publicizing aid given to Ukraine, information on aid delivery would be confidential. Just the opposite has happened, as many governments have specified the exact weapons systems and, at times, their quantities that were provided to Ukraine.[34]

Indeed, from a **lender government perspective, citing national security** as a reason to hide information on your lending or aid to borrower governments could be a **result of domestic politics:** some lender government constituents might be unhappy to hear of aid going to another country when they also have pressing, day-to-day domestic concerns. The opposite may be true as well, where some legislators would happily announce their support toward similar lending/aid initiatives.

Thus, there is not a justifiable national security concern to cite when acquiring public debt. Consequently, concerns of protests being sparked by public debt information or government fiscal performance are **not** national security concerns, but rather the result of weak governance and political climate. If governments want to mitigate backlash for borrowing decisions or spending cuts, improving debt and fiscal transparency through strong legislation are good places to start.

#2: Is confidentiality required to protect sensitive commercial and price information?

The fiction: *Lenders need confidentiality clauses to safeguard their "intellectual property" (such as financial calculations or formulas) or price-sensitive or commercially sensitive information (such as interest rates or fee information) in order to protect their competitive advantage when aiming to contract a loan among a pool of other prospective lenders.*

THE FACTS

While proprietary or technical information on the part of the lender (i.e. financial calculations or formulas) may not be unreasonable subjects of confidentiality provisions *during negotiations* per se, other information, particularly interest rates, fees and other data that impact the overall cost of the loan, should always be disclosed.

Such information is fundamental to the financial and legal terms and conditions of a public debt agreement. Moreover, the **commercial sensitivity is extremely narrow to begin with,** as a loan is priced based on a variety of factors, including global market risk, base interest rate in the borrower country at that time, credit ratings and the specific terms agreed to in the loan**.**

Additionally, all such information should be subject to disclosure under a country's RTI law – whether such disclosure must be proactively provided by the government or reactively shared upon request. Due diligence requires lenders, and anyone doing business with a government or government institution, to be aware of all applicable laws of that state and to presume that all details of a loan agreement are disclosable. **From the perspective of the borrower, the only reasons not to disclose such core information are highly suspect,** ranging from domestic political considerations (like public pressure against growing and/or unsustainable debt, or an upcoming election), to corruption, to obscuring the true state of public finances to mislead the public, lenders or watchdog groups.

#3: Do borrowers get better loan terms if their full debt burden isn't known to creditors?

The fiction: *Borrowers will receive better terms and interest rates on debt if lenders are not fully aware of their other outstanding obligations. For instance, if lenders think Country A has $10 billion in debt, they will give Country A a better interest rate and terms than if they knew Country A actually had $20 billion in debt.*

THE FACTS

In the short term, the impact of secrecy on interest rates is, at best, unclear. Most likely, it has little to no influence since, as noted above, loans are priced based on a variety of complex and intersecting factors related to both country-specific and global data. In the long term, however, the consequences of hiding debt information far outweigh any benefit initially gained.

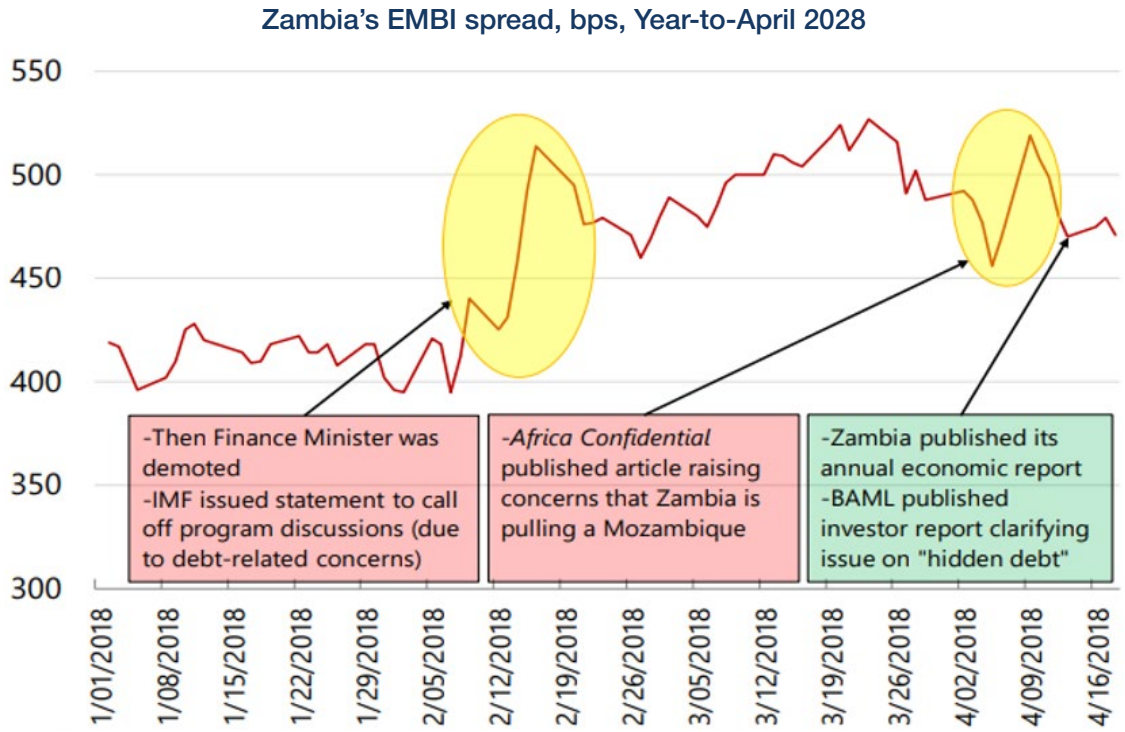
As recent research suggests, creditors lose more money in debt restructurings when more "new" debt is found.[35] **When unreported debt comes to light, both lenders and borrowers lose**.

Conversely, improving debt and fiscal transparency can actually lower interest rates.[36] Debt transparency, as part of broader fiscal transparency efforts, can even improve credit ratings "by .7 and 1 notches in advanced and developing economies respectively."[37] This happens because when creditors have more information available to them, they make more accurate risk assessments of a country's ability to repay, thus reducing uncertainty about repayment.

To illustrate the immediate consequences of lender uncertainty regarding a government's fiscal situation, Zambia's interest rate spread shot up by 50 points (0.5 percent) in the course of a week while the market awaited publication of its annual economic report in 2018.

> **Creditors lose more money in debt restructurings when more "new" debt is found. When unreported debt comes to light, both lenders and borrowers lose.**

Graph 1: Zambia's interest rates[38]



Source. Bloomberg.

Furthermore, publication of interest rates could reduce information asymmetries between lenders and borrowers, increasing competition in the market and so lowering interest rates. If borrower governments know the interest rates being charged by different lenders, they can use that information to bargain for lower interest rates.

#4: Is disclosure allowed if it's not required by law?

The fiction: *Borrowers and lenders cannot disclose their loan information since it is not required by the borrower's law. The recent trend of confidentiality clauses included in most loan agreements stipulates that the borrower is expected to keep associated information confidential, unless required by law. Accordingly, the provisions do not impose additional confidentiality burdens but merely reflect the borrower country's status quo disclosure rules.*[39]

THE FACTS

The argument that borrowers must be explicitly empowered under the law to disclose public debt information in order to do so embraces a particular and highly selective view of the law wherein "everything not expressly permitted is prohibited." When public debt is at issue, this perspective is incompatible with the core tenets of democratic governance. It also runs counter to constitutional transparency requirements increasingly found in the basic laws of countries around the world and to the RTI laws of the majority of countries that have adopted them.

While all countries should ideally enact comprehensive laws mandating proactive, complete, transaction-level public disclosure of public debt obligations and contingent liabilities, it may

not be politically or logistically feasible to enact such laws in a particular context at a particular time. Nonetheless, **the absence of such laws does not preclude the proactive disclosure of such information as a matter of conventional practice**. Additionally, countries and their public bodies holding any relevant information have the obligation, subject to very narrow exceptions, to disclose such information – including public debt information – on request if there is an RTI law in place. Contracts cannot require a borrower to act illegally, and RTI laws should always apply as overriding mandatory provisions in debt instruments.

> **Borrowers and creditors *can and should* disclose loans, even in the absence of a legal requirement to do so.**

Neither borrowers nor lenders should be permitted to take advantage of a borrowing country's legal lacunae in order to hide information that is essential to understanding the true state of a country's public finances. Accordingly, sweeping confidentiality provisions that enable disclosure only if it is expressly required by law are, on their face, unjustifiable. Moreover, if the country has any RTI law in force, most likely such confidentiality provisions are invalid and can have no effect. Nevertheless, such contradictions are rarely appreciated by civil servants of the executive branch and seldom reach courts for judicial ruling.

Even more narrowly tailored confidentiality provisions, such as those found in most commercial lending templates that offer explicit carve-outs for disclosure to international financial institutions like the World Bank and IMF, fail to mitigate the broader problem.[40] While disclosure to these multilateral institutions is critical, limiting disclosure to these bodies, absent a broader proactive disclosure obligation under the borrower's law, ignores the intersections among governance, public debt and economic and social stability.

Borrowers and creditors *can and should* disclose loans, even in the absence of a legal requirement to do so. The absence of a legal requirement of proactive disclosure *does not* preclude disclosure as a matter of law.

#5: If the borrower would like to disclose, can the lender forbid it?

The fiction: *Borrowing countries must accept lender-imposed confidentiality clauses due to lack of negotiation capacity, especially in the context of dire fiscal crises.[41] For instance, when governments are facing a cash crunch or lack negotiation expertise, they may enter into debt contracts that include confidentiality clauses for the sake of expediency.*

THE FACTS

Research shows that borrower debt transparency is actually better for the borrower country and for individual political leaders. It supports efficient market functioning and increases investor confidence, which reduces market uncertainty and stabilizes expectations about the consistency of future policy decisions.[42] This not only supports reductions in the cost of borrowing over time, but also helps a country retain access to capital markets and, in times of stress, quicker access to funding.

Debt transparency is actually better for the borrower country and for individual political leaders.

Individual political leaders also benefit from debt transparency. Research on financial audits suggests that voters tend to reward politicians with "clean" audits[43] and penalize incumbents with "dirty" audits.[44] In other words, **improved transparency helps the borrower negotiate better terms and is in politicians' interest.** Given this, there is virtually no situation in which confidentiality for the sake of expediency is justified by better outcomes in loan terms for the borrower country, or for a country's good-faith electoral politics.

Where financially feasible, responsible borrowing is not rushed. It often includes bringing on expert negotiators and/or legal counsel. In addition to negotiating the best financial deal for the borrower, this counsel would also be expected to negotiate in the sovereign borrower's best interest. Although the financial costs of bringing in experts is difficult to justify for heavily indebted poor countries (HIPCs) and many emerging market countries and is not typical for Official Development Assistance (ODA)/Paris Club loans, in all cases, responsible borrowing practices are foundational for getting a better deal in a loan agreement. Lenders that impose confidentiality clauses on borrowers that prevent them from disclosing debt information as a matter of public interest weaken the borrower's credibility and financial stability.

Beyond this, as noted above, if the borrower country has an RTI law in force, then such confidentiality clauses are likely unenforceable, since contracts cannot require a borrower to do something illegal.

#6: If the lender would like to disclose, can the borrower forbid it?

The fiction: *Lenders cannot disclose information without the borrower's consent. A bedrock principle of banking is client confidentiality, and thus, lenders defer to the borrower's wishes to maintain confidentiality.*

THE FACTS

While private bankers have a broad obligation of confidentiality to their customers (including sovereign borrowers), this principle does not apply where disclosure is required under applicable laws and regulations – of either the lender or borrower country or under other international frameworks.[45] Moreover, under model form agreements, confidential provisions are intended to *protect* the borrower, not to establish sweeping consent requirements. Accordingly, claims by private lenders that disclosure prohibitions are regularly imposed by borrowers are disingenuous at best, as they deviate from established norms.[46]

In practice, the policies, guidelines and templates used by multilateral lenders and market associations of private lenders demonstrate that lender confidentiality obligations should be interpreted narrowly. For example, while even the World Bank generally maintains confidentiality in specified instances (for a time-bound period), the "overall orientation of [the Bank's] policy framework aims for greater public disclosure in connection with Bank operations."[47] Further,

Pictured: The skyline of Nairobi, Kenya. Kenya faces significant challenges with debt opacity.
Credit: Antony Trivet Photography - Shutterstock

the lending documentation of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA)[48] (through their relevant "General Conditions" language) expressly refers to the right of the World Bank to disclose in accordance with its *Policy on Access to Information*.[49]

In addition, the Institute of International Finance's (IIF) *Voluntary Principles for Debt Transparency* (specifically designed for private sector lenders) note that while "many loans contain express confidentiality provisions in favour of the obligors [borrowers]," borrower consent is "not necessarily required"; rather, it is "advisable."[50] Buttressing the transparency default, template language provided in the IIF's *Implementation Note* contains an express acknowledgement by the borrower that the lender may disclose certain information in relation to the agreement pursuant to the Principles, pursuant to the (now-defunct)[51] OECD public debt reporting database. Similar clarifications will undoubtedly apply for reporting to the new debt registry to be housed at the World Bank, as called for under commitment number 48 of the Financing for Development 2025 outcome document (Seville Commitment).[52]

In reality, confidentiality clauses are far more often imposed by the lender on the borrower than the other way around. As noted in Fiction #2, **the only reasons borrowers may wish to bar disclosure of core public debt information are generally highly suspect.** While some states, like Ecuador, have legislative frameworks that functionally operate to limit or preclude the public disclosure of key public debt data, such frameworks run counter to the principles of open governance.[53]

Efforts by bilateral lenders to support more transparency include statements through the G7 ("We welcome the focus on debt transparency in the DSSI, as essential to debt sustainability and economic growth")[54] and the G20 Operational Guidelines for Sustainable Financing ("... G20 countries will enhance information sharing with respect to debt sustainability, including signaling to IIF's staff if large public liabilities appear not to have been included in the [Debt Sustainability Analysis] of a debtor country").[55] But, just like the IIF principles, these commitments for improved debt transparency are *voluntary*.

CONCLUSION AND RECOMMENDATIONS

There is no legitimate reason why the public should not know about debt taken out in their name, for it is they who will have to repay it. After all, the public debt is the *public's* debt.

Hidden debt is bad for borrowers. It complicates restructuring processes, increases borrowing costs, weakens democratic checks and balances, increases the risk of corruption and can derail economies. Lenders also benefit from a full understanding of a borrower country's debt obligations, both at the time of making the loan, as well as in any subsequent renegotiation or restructuring processes.

To improve debt transparency, consider the following recommendations:

Borrower Countries:

1. **Borrower countries should enact legislation mandating full-debt transparency and requiring the proactive public disclosure of complete, transaction-level information related to public debt.** Laws addressing public debt contracting, management and disclosure should clearly, comprehensively and consistently define "public debt," preferably through recognizing the economic equivalent functions of debt (substance of debt obligations). These should include provisions to disclose debt contracted by SOEs, local governments and other non-central government agencies, and include comprehensive coverage of institutions and contingent liabilities, rather than by defining a closed list of instruments (forms of debt).[56]

   The legal framework would ideally address:[57]

   a. The scope of coverage of borrowing institutions to apply to all public entities with borrowing authority (such as state-owned and semi-state-owned enterprises, public corporations, public-private partnerships, social security funds, extrabudgetary funds, and other contingent liabilities, collateralized debt and debt with collateral-type features, domestic non-marketable debt and swaps, etc.) at all levels of government (central, subnational and local);
   b. The scope of disclosure requirements, such as transaction-level debt data[58] information of both financial and non-financial terms;

c. Roles and responsibilities assignments for the preparation and approval of the disclosure publications;
d. Frequency for the preparation, updating and publication of the disclosure report;
e. Minimum content of the disclosure reports (while maintaining flexibility for the government to develop a more detailed regulatory framework on the content and structure of disclosure reports);
f. Timeframe for the disclosure of debt information to ensure (i) timeliness and proactive public dissemination of debt information (note that disclosure upon maturity is too late to be of use), and (ii) that all previously disclosed debt information must remain accessible, as long as any relevant legal claim can be potentially brought with respect to the acquisition or management of any other elements of the debt of any nature; and
g. Channels or outlets for publication.

Principles of proactive disclosure should apply. These include: that the information should be available to everyone free of charge; that it should be findable where published; and that the information should be relevant, comprehensible and up-to-date.[59]

Public debt reporting laws in **Benin, Kenya, Mexico, Rwanda** and other jurisdictions offer useful models. Mexico, for instance, legally requires the public disclosure of an entire public debt agreement, and there is no evidence of harm to either lending institutions or the borrower entities as a result.[60]

2. **Regulations in borrower countries should establish provisions for the disclosure by default of transaction-level financial and non-financial debt information.** Concrete exceptions to the disclosure of information should be clearly defined in RTI regulation. Public financial management or public debt management acts should further expand on RTI legislation with clear and narrow definitions of what constitutes confidential information in lending contracts or funding agreements.

   As a minimum, regulation on confidentiality provisions should include:[61]

   a. which information may be subject to non-disclosure, including a clear justification (that proves a risk of actual harm to a protected interest) of the reasons for non-disclosure;
   b. who controls this information, and any appeal procedures available;
   c. what are the permissible instances for non-disclosure;
   d. how long the duty of non-disclosure is required;[62] and
   e. appropriate carve-outs that grant them the right to disclose information.

3. **Access to confidential debt information should be expressly granted to borrower country oversight institutions, including the legislative body (parliament) and supreme audit institutions.** As in the review of classified intelligence or national security information, specific debt information classified as confidential should be accessed by relevant oversight bodies, through specific provisions (e.g. closed or special hearings).[63]

Pictured: Old Mozambican money (metical) in a counting machine. Credit: Janusz Pienkowski - Shutterstock

Creditor Countries:

4. **Creditor countries should enact and enforce legislation mandating transparency through the disclosure of transaction-level financial and non-financial information to publicly accessible debt databases – both national and international. Further, the laws of creditor countries should require that the RTI laws of the borrower country, and particularly any laws requiring the proactive disclosure of public debt data, apply as overriding mandatory provisions within debt instruments.**[64]

   Regarding application to private/commercial lenders, such an approach aligns with a recent proposal from the Bretton Woods Committee suggesting that creditor countries adopt legislation to require large financial institutions to disclose, as part of their domestic reporting requirements, lending arrangements with sovereign governments (at all levels).[65]

   Creditor disclosure would ideally address, e.g.,

   a. lender identity;
   b. amount of loans (currency and drawdown schedule);
   c. the beneficiary;
   d. use of proceeds;
   e. guarantee and guarantor;
   f. interest payable (including any formula);
   g. method of repayment (including currency);
   h. fees payable and to whom (management, commitment, arrangement, etc.);
   i. maturity;
   j. structure;
   k. amount and details of any collateral;

l. events of default (particularly government (EoD);
m. termination clauses, including any formulas for calculating termination payments;
n. confidentiality clauses;
o. governing law of the agreement;
p. the extent of the waiver of sovereign immunity;
q. dispute resolution mechanisms;
r. all conditions precedent to the loan, including confirmation of a legal opinion/ parliamentary approval (if any), related to the procedural requirements for borrower country debt acquisition; and
s. other relevant data.[66]

International Community:

5. **Support the establishment of a single global debt registry, to which both borrowers and lenders disclose loan details.[67]**

   Ensure that the managing institution of the database releases loan-by-loan in a rapid and timely manner and not on a consolidated basis. Require lender reporting to allow for comparison and consolidation.

Endnotes

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