

THE HUMAN RIGHTS IMPLICATIONS OF UGANDA'S BORROWING

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RECOMMENDED CITATION:

Ruth Muhawe (2019), "The Human Rights Implications of Uganda's Borrowing" Volume 15 Issue 3, Makerere Law Journal, pp. 1-33.

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Ruth Muhawe*

Abstract

The relationship between the sovereign debt of developing countries and the protection of the social rights of citizens in those countries has received considerable analysis from the economic, political and moral perspectives, but relatively little has been written from the legal point of view. Consequently, this paper provides legal insights into the lingering crisis that sovereign debt poses to human rights, with a specific focus on the economy of Uganda. The paper is particularly concerned with examining what Uganda's debt burden means for the basic observance and enjoyment of human rights by its citizens of both the present and the future.

Africa's burden of foreign debt represents the single largest obstacle to the continent's development. It takes its toll on human beings with a brutality difficult to capture in words. For the majority of poor people in Africa, continued debt repayment means increasingly inadequate diets, insufficient income to feed and educate children, and mounting susceptibility to diseases. As long as African countries are forced to spend almost US\$15 billion each year repaying debts to G8 governments and international financial institutions, they will be unable to address their urgent domestic needs. The constant outward flow of desperately needed resources undermines poverty-reduction initiatives and cripples efforts to cope with the devastating impact of disaster and disease.¹

1.0 INTRODUCTION

* LLB IV Student, Makerere University.

¹ Fantu Cheru, 'Playing Games with African Lives: The G7 Debt Relief Strategy and the Politics of Indifference' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis* (Oxford University Press 2006) 36

The gist of the phenomenon of the “social contract” as developed by philosophers like John Locke and Jean-Jacques Rousseau is that when men and women agree to yield parts of their autonomy and cede control to the state, the government is then obliged to protect the natural rights of its subjects.² If the government neglects this obligation, it forfeits its validity or legitimacy and ultimately its office.³ This theory underlies the provision in Article 1(3) of the 1995 Constitution of Uganda which emphasizes that the power and authority of government and its organs derives from the people.

Public debt is incurred primarily for financing budget deficits, the development of domestic financial markets, supporting the country’s balance of payments position, bolstering foreign reserves and pursuing monetary policy objectives.⁴ Economists however caution against ‘debt overhang’ – the acquisition of large debts which creates a climate of permanent financial fragility in a country, leaving it in a financial and economic slump without domestic revenue to pay for current expenditures.⁵ Appropriate development means development activities that are consistent with international human rights standards, are sustainable, and that involve the beneficiaries in the design, implementation and management of the development activity.⁶

Human rights on the other hand are based on principles of empowerment, participation and accountability. At one time, these were seen as irrelevant or antagonistic to economic growth and development. Today however, the importance of participatory and accountable decision making has been echoed by virtually every relevant international body, and good governance directives are a key element of

² John Locke, *Two Treatises of Government* (Awnsham Churchill, England 1689)

³ Jean- Jacques Rosseau, *The Social Contract* (France 1762)

⁴ Office of the Attorney General, ‘Follow-up Audit Report on the Utilisation of External Public Debt’ (2015). Accessible at: www.oag.go.ug

⁵ Christian Barry, ‘Sovereign Debt, Human Rights and Policy Conditionality’ [2011] *The Journal of Political Philosophy* 4.

⁶ Daniel Bradlow, ‘Debt, Development and Human Rights: Lessons from South Africa’ [1991] *12 Michigan Journal of International Law* 649.

multilateral lending.⁷ Accountability is therefore at the core of human rights, and is the rationale behind the spirit and content of human rights instruments.

Accountability by the State is arguably a specific human right vested in the citizens of any country. National law is the primary mechanism for the protection of human rights, even when the laws may not explicitly be labelled as pertaining to human rights.⁸ This is important to note because not every human rights standard gives rise to a remedy in the event of violation.⁹ Redress is usually available only if the country accused of the violation has agreed to be held accountable by an international human rights body, or if the right is protected by domestic law, the obligation of the State clarified and the remedy also set out.¹⁰

While discussing agency as one of the proposed UN Basic Principles on Sovereign Debt, the UN Conference on Trade and Development (UNCTAD) emphasises that government officials involved in sovereign lending and borrowing transactions do so for the public interest.¹¹ The principle is expounded to mean that when they contract debt obligations, they have a responsibility to protect the interests of their citizens. This is because sovereign debt binds the continuing legal entity of the State including the future generations of its citizens. Another principle discussed thereunder is that of transparency which imposes an obligation on states to put in place and implement a comprehensive legal framework that defines procedures, responsibilities and accountability mechanisms. Because the tax payers of a country will ultimately be responsible for the repayment of sovereign debt, their representatives in the legislature should be involved in the decisions about whether and how to incur the debt.

⁷ Chris Jochnick, 'The Legal Case for Debt Repudiation,' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis* (Oxford University Press) 142.

⁸ Under national law, the 1995 Constitution of Uganda provides for accountability to the people by those in governance- under Objective XXVI. Article 8A of the Constitution gives this objective the force of law by requiring that the State be governed in line with the national principles and directives of state policy. In addition, Article 38 requires that citizens be allowed to participate in the affairs of government individually or through their chosen representatives, and Article 159(2) restricts government's power to borrow or lend to the approval of Parliament.

⁹ Chrystin Ondersma, 'A Human Rights Framework for Debt Relief,' [2014] 36 (1) U. Pa. Journal of International Law 287.

¹⁰ *ibid.*

¹¹ UNCTAD, *UN Basic Principles on Sovereign Debt* (10th January 2012)

In a developed world, it is easy to ignore the problem of the sovereign debt of developing countries, or to take no more than a general political interest in the issue when it is portrayed by the media at special occasions.¹² And yet this problem touches on many fundamental issues such as concepts of justice, tensions between human rights protection and financial interests, and the relationship between the developing world and the industrialized North.¹³

Decisions about fiscal policy usually make front page news and form the focus of political controversy, while debt management policy usually gets little attention.¹⁴ It is the quiet part of government's efforts at economic stabilization.¹⁵ Debt management is not just an automatic program of financing the deficit; the way government finances the deficit has major consequences for the economy.¹⁶ For example, the near-global financial melt-down in 2008 arose directly from the excessive accumulation of debt within the US.¹⁷ In addition, the history of international finance is littered with instances of governments that declared themselves unable to meet their financial obligations on a timely basis.¹⁸ Governments with a poor track record, little credibility and limited political resolve especially when their own financial woes were aggravated by widespread corporate and bank failures have been particularly susceptible to default.¹⁹

Notwithstanding the above, human rights under international law predominate over conflicting obligations including debt servicing.²⁰ In fact, the essence of the legal obligation of debt incurred by a government is to ensure the economic and social

¹² Sabine Michalowski, *Unconstitutional Regimes and the Validity of Sovereign Debt- A Legal Perspective* (2nd Edition Routledge 2014) 1.

¹³ *ibid.*

¹⁴ Paul Nadler, 'Decisions about Financing the National Debt Influence Our Economy' [1993] 8 Com. Lending Review 63.

¹⁵ *ibid.*

¹⁶ *ibid.*, p.66

¹⁷ Joseph Stiglitz, 'Free fall; America, Free Markets And The Sinking Of The World Economy' [2010] 231-234.

¹⁸ See the cases of Greece and Argentina for further analysis.

¹⁹ Arturo Porzecanski, 'Dealing With Sovereign Debt: Trends and Implications' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis*, (Oxford University Press 2006) 268.

²⁰ Jochnick (n 7) 141.

aspirations of its people, by assigning priority to their basic health, nutritional and educational necessities.²¹

Clearly therefore, the people and their well-being should be at the centre of all policy decision-making including the acquisition and management of public debt, as opposed to being a mere after-thought as some form of collateral to handle after the crisis befalls the economy. Unfortunately, the latter is commonly the practice. Economic human rights are a powerful foundation for macro-economic performance, but so long as nation states value sovereignty, it is not likely that these rights will be enforceable by citizens against their own governments.²²

This paper therefore considers what should legally be the place of the people at the table of decision-making on issues relating to sovereign debt. Attention is drawn to the inevitable link between a country's debt and the human rights of its citizens. The paper also holds a discussion on the concept of illegitimate or odious debt and analyses its application to and implications for Uganda's borrowing. Focus is then shifted directly to the case of Uganda—tracing its debt from the 1980s to date, with a detailed presentation of the current debt situation and analysis of developing trends. A brief overview of the existing legal, policy and institutional framework guides the critique on whether the same is adequate. A discussion is also made of how Uganda's borrowing affects both current and future generations, with a critical consideration of the degree to which enough or any attention is being paid to the issue. The paper concludes by making the recommendations necessary to progress towards a more comfortable and desired position.

2.0 SOVEREIGNTY, SOVEREIGN DEBT AND HUMAN RIGHTS.

The international financial community portrays lending as necessary and good, but since 1999 developing countries have been paying more than US\$260m per day to the industrialised countries because of that lending, and it seems that the benefits to many poor countries are less than what has been claimed.²³

²¹ IACHR Res. 322 of 1982.

²² Steven Ramirez, 'Taking Economic Human Rights Seriously After the Debt Crisis' [2011] 42 Loy. U. Chi. Law Journal.713-739

²³ Joseph Hanlon, 'Defining Illegitimate Debt: When Creditors Should Be Liable For Improper Loans' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads*:

First, International policies often make the conferral of aid, debt, relief or additional trading opportunities to a country depend upon its having successfully implemented specific policies, achieved certain social or economic outcomes, or demonstrated itself as committed to conducting itself in specified ways.²⁴ The countries of Sub-Saharan Africa have largely been turned into an IMF/World Bank ‘macro-economic guinea pig’ because their poor credit ratings make them largely dependent on resources from the multilateral institutions.²⁵ As a result, these countries have ceded important parts of their sovereignty to these institutions.²⁶

Besides, debt servicing that infringes upon a government’s ability to carry out basic sovereign functions as it instead focuses on meeting conditions imposed by creditors undermines the right to self-determination.²⁷ For example, the HIPC initiative²⁸ has failed to resolve Africa’s debt crisis and has instead left many developing countries committing scarce resources to debt servicing instead of meeting the needs of their people.²⁹

However, the UN condemns the repayment of debt under predatory conditions due to the direct negative effects it has on the capacity of sovereign governments to fulfil their obligations on economic social and cultural rights in particular.³⁰ Countries should not be forced to exhaust all resources to pay off sovereign debt, much less when repayment will be at the expense of the well-being of their citizens.³¹ Debt servicing deprives governments of as much as half their annual budgets, eliminating vital social services, undermining democratic processes and condemning the poorest populations to a vicious cycle of impoverishment.³²

Challenges and Proposals for Resolving the Third World Debt Crisis (Oxford University Press 2006) 118.

²⁴ Barry (n 5) 1.

²⁵ Cheru (n 1) 39-40.

²⁶ T. Mkandawire and C. Soludo, *Our Continent, Our Future; African Perspectives on Structural Adjustment* (Africa World Press 1999).

²⁷ Jochnick (n 7) 145.

²⁸ The initiative fronted by the IMF and World Bank in 1996 to assist highly indebted poor countries (HIPC) with debt relief.

²⁹ Cheru (n 1) 51.

³⁰ UNGA Res. 68/304 of 2014

³¹ Julieta Rossi, ‘Sovereign Debt Restructuring, National Development and Human Rights’ [2016] 23 Sur- International Journal on Human Rights 185, 192.

³² Jochnick (n 7) 132.

When a state borrows, it is effectively selling a resource to the creditor- the right to part of the future taxable income of those subject to its tax authority.³³ Also, since creditors cannot *de jure* take control of a country or seize a significant amount of its assets in the event of default, supply of credit to the debtor state is instead restricted.³⁴ But setting aside the periodic crises and stunted development caused by over-indebtedness, the real cost of sovereign debt is paid in tiny instalments every day by people without access to health care, education and clean water, whose livelihoods are crimped by crumbling public infrastructure and faltering economies.³⁵

A possible counter argument made by some scholars is that since improvements in a country's highways or ports, schools or hospital care all benefit future tax payers, long-term borrowing is merely a way for the government to share the present costs of such projects with those future tax payers through interest and principal repayments, which their taxes will cover³⁶ An immediate criticism however lies in the reasoning that the agents who take out the loan and those obliged to repay it are different (as it is the finance ministers and other public officials who make the decision to borrow a sum to be suffered by present and future citizens) and sometimes, the much promised benefits simply don't accrue.³⁷

There therefore seem to be many parallel but supporting angles to this link between sovereign debt and human rights. On the one hand, poor countries may need to borrow to have enough to fulfil the economic, social and cultural rights of their citizens. On the other hand, over- borrowing results in a heavy tax burden on the citizens to meet debt servicing obligations. Eventually, failure to meet these obligations restricts the supply of credit to the debtor country, credit it needs to function and take care of its citizens. This paradox has been captured by some analysts thus:

³³ Barry (n 5) 8.

³⁴ Daniel Marx, Jose Echague and Guido Sandleris, 'Sovereign Debt and the Debt Crisis in Emerging Countries: The Experience of the 1990s' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis*, (Oxford University Press 2006) 56.

³⁵ Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis*, (Oxford University Press 2006) 3.

³⁶ Barry (n 5) 3.

³⁷ *ibid.*, p.7

It is hard to imagine how most countries would govern themselves well or reliably fulfil the human rights of their people without their national government enjoying some rights to borrow in the name of their present and future citizens. Sovereign debt raises serious human rights concerns however, when very high levels of debt significantly limit the ability of countries to manage their affairs effectively. High debt levels can limit the capacities of governments to provide the social services necessary to ensure even a minimally adequate standard of living for their people, and divert resources and energy from the pursuit of short and long-term strategies that would further their peoples' well-being.³⁸

The question then becomes about where to draw the line. A government can always tax more or spend less to make resources available to service its debt, but too much taxation can eventually become economically inefficient and counter-productive.³⁹ Reducing expenditures can also cut into basic services that many would rank morally preferable or in some ways more desirable than debt service.⁴⁰ The reconciliation point would therefore be that those in charge of debt acquisition and management involve the people, be adequately accountable and present clear and tangible indicators of how the loans taken out are benefiting the population.

Instead, present and past governments of many excessively-indebted countries are being criticised for not being even minimally representative of the interests of those they rule.⁴¹ They are constantly accused of failing to give due consideration to the interests of their people, in both the making of decisions, and in the decisions themselves. Proving the accuracy of these assertions is what would determine whether sovereign debt is not just a factor explaining the human rights under-fulfilment in Africa, but has elevated into a manifestation of human rights violation.

³⁸ Barry (n 5) 3.

³⁹ Jack Boorman, 'Dealing Comprehensively and Justly With Sovereign Debt' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis*, (Oxford University Press 2006) 233.

⁴⁰ *ibid.*

⁴¹ Barry (n 5) 7.

2.1 The Concept of Illegitimate and Odious Debt.

The doctrine of odious debt originated with arguments made by the US in 1898 during peace negotiations following the Spanish-American war. The US claimed that neither the US nor Cuba should be responsible for the debt Cuba incurred under colonial rule because first, the debt had been imposed upon the people of Cuba without their consent and second, it had not been incurred for the benefit of the Cuban people. These arguments prevailed, with Spain taking responsibility for the Cuban debt under the peace treaty.⁴²

The doctrine of odious debt holds that debt should not be transferable to successor regimes if (1) it was incurred without the consent of the people and (2) was not for their benefit.⁴³ By established principle, consent of the people could be equated with coming to power through a free and fair election. Could it be extended to debt incurred only by decisions or sanction of representatives of the people in Parliament? The underlying principle is that just as an individual does not have to repay money that someone fraudulently borrows in her name, a country should not be responsible for debt that was incurred without the people's consent and was not for their benefit.⁴⁴ Even the debt relief movement rests on two main arguments: debt further impoverishes poor countries, and loans were often illegitimate in the first place.⁴⁵

Some campaign groups including Jubilee South have argued that a substantial part of poor- country debt is 'illegitimate' and that therefore the people of those countries should not be saddled with repayment of those debts. This notion is vastly explored by Joseph Hanlon in his paper, *'Defining Illegitimate Debt: when Creditors Should be Liable for Improper Loans.'*⁴⁶ First, he explains that a loan is illegitimate if it would be against the national law, is unfair, improper, objectionable, or infringes public policy. This broad test has received a lot of criticism as will be shown. Hanlon argues the concept around illegitimate debt to be that the lenders should instead be made

⁴² Treaty of Paris, December 10, 1898.

⁴³ Seema Jayachandran and Michael Kremer, 'Odious Debt' [2006] 96(1) American Economic Review 1.

⁴⁴ *ibid.*, p. 2

⁴⁵ *ibid.*, p. 17

⁴⁶ Chris Johnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis* (Oxford University Press 2006) 109- 131

liable for their bad lending and that the people of poor countries should not be forced to repay loans that the lender should never have made in the first place.

His paper also provides examples of debts that have been considered illegitimate: from loans which fuelled corruption, to loans for dams and mining projects which resulted in intense environmental and social damage as argued by Jubilee South 2001. It is also frequently argued that the rich North has a debt to the South, historically for slave trade and colonialism, and more recently for the damage done by cold war proxy wars and environmental depredations. Some loans have been considered politically incorrect, for example an Argentine federal judge in 2000 who ruled that debt contracted during the period of military dictatorship (1976-83) was illegitimate.⁴⁷

But more interestingly, Hanlon argues that inappropriate loans include those to formally elected governments that have become dictatorial and are no longer using the funds in the interest of the people. The problem with how far this line of argument can be used to get out of indebtedness is that it is more social and humanitarian than legal. One author has argued that the attempt by several NGOs notably Jubilee South to stretch the concept of illegitimacy to cover the bulk of all Southern sovereign debts by for example defining debts for projects that failed to deliver the expected benefits as illegitimate is legally and economically untenable.⁴⁸

There is great conflict between the narrow and the broad definition of illegitimate or odious debt, with each school of thought making sound argument for why it should be construed one way and not the other. For the broad school, differing definitions have been used. A debt has been said to be illegitimate when; the debt was incurred by an undemocratic regime, the borrowed funds have been used for what are regarded as morally reprehensible purposes such as financing suppressive regimes, repayment is a threat to fundamental human rights, the debt has grown to unmanageable proportions as a result of external factors over which the country has no control like higher market interests, and when debt that was originally

⁴⁷ Olmos Alejandro v Various Former Government Officers, 14 July 2000.

⁴⁸ Raffer Kunibert, 'Odious, Illegitimate, Illegal or Legal Debts- What Difference Does it Make for International Chapter 9 Arbitration?' [2007] 70 Law and Contemporary Problems 221, 231.

commercial is taken over by the government of a debtor country through the triggering of government guarantees.⁴⁹

The Norway Minister of foreign Affairs (2004) commented on this definition as appearing to catch all debt, and warned that if all these criteria were accepted, to advocate for cancelling illegitimate debt would easily be seen as a recommendation to cancel all developing countries debt which is neither appropriate nor desirable.⁵⁰ Hanlon's very broad definition therefore reflects the problem that 'illegitimate' threatens to cover virtually any sovereign, developing-country debt.

The issue is that if one implication of the illegitimacy debate is that developing countries have no responsibility for having taken up loans for illegitimate purposes, this is a very dangerous premise. Naturally, if debts can be defined as illegitimate later on the basis of evolutions impossible to predict when loans were signed, this in itself would mean less financing and more expensive loans, especially for the poorest countries.⁵¹ It would also be blatantly unfair to bona fide creditors who comply with their legal duties, as the risk that perfectly legal and legitimate contracts might suddenly turn illegitimate is wholly different.⁵² A duty of care is already imposed on lenders to observe professional standards and investigate relevant facts, such as whether the person signing the contract has authority to do so.⁵³ But there are limits to creditor duties, and not all risk can or should simply be shifted onto creditors.

Another conflict exists around what constitutes 'odious' debt. One view is that under the existing doctrine, both conditions ('without the consent of the people' and 'not for their benefit') must hold for a debt to be considered odious. Thus, the debts of a regime that loots but rules democratically or of a non-democratic regime that spends in the interests of the people would not be considered odious.⁵⁴ This view further argues that whereas loans are beneficial to the people if the government is not odious and detrimental to them if the government loots the proceeds, a country

⁴⁹ Ministry of Foreign Affairs, Norway (2004) *Debt Relief for Development- A Plan Of Action* p.19. Accessed at <http://www.regjeringen.no/upload/kilde/ud/rap/2004/0225/ddd/pdfv/217380->

⁵⁰ Ministry of Foreign Affairs (n 49).

⁵¹ Kunibert (n 48) 230.

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ Michael Kremer and Seema Jayachandran, 'Odious Debt' (2002) NBER Working Paper No. 8953.

should repay its loans either way, even if it has been looted by an odious regime.⁵⁵ Therefore for debt to be odious the borrowing government has to be both undemocratic and loot the funds or use them for repression.

A contrary view takes a more liberal approach to suggest that one should also consider cases where the government is democratic but loots the proceeds from borrowing or is democratic but spends incompetently so its borrowing does not benefit the people.⁵⁶ It is argued that in the latter case, even if the international community does not want to go so far as to block such government's ability to borrow, it might still want to make it clear that it would not help rescue creditors who lend to the government.⁵⁷ While most would argue that a democratic country following inefficient policies should be able to spend as it pleases, many contend that the international community should not have to subsidise wasteful spending, and it sometimes does so in the form of international aid packages to countries whose economies have collapsed.⁵⁸

There are a number of cases in which dictators have borrowed from abroad, expropriated the funds for personal use, and then left the debts to the population they ruled. For example under Mobutu Sese Seko, the former Zaire accumulated over \$12billion in sovereign debt while Mobutu diverted public funds to his personal account, overseas treasure and to his efforts to retain power. Similarly, the apartheid regime in South Africa borrowed from private banks through the 1980s and a large percentage of its budget went to financing the military and police and otherwise repressing the African majority.

In addition, there are debts that might be legal by strictly formal standards, yet whose existence or servicing violates established norms.⁵⁹ If these debts were recognised as illegal, there would be no need for relief as the debts would be void ab initio. But this doctrine remains a minority legal view among legal scholars and has gained little momentum within the international law community, largely out of

⁵⁵ *ibid.*, p. 8

⁵⁶ *ibid.*, p. 25

⁵⁷ *ibid.*

⁵⁸ Kremer and Jayachandran (n 54) 27.

⁵⁹ Kunibert (n 48) 229.

concern that the concept of odious debt could prove to be a very slippery slope.⁶⁰ Countries could claim that previous debt was odious as an excuse to renege on legitimate debt, and if creditors anticipated being unable to collect on legitimate loans, the debt market would shut down.⁶¹

Therefore, although as Hanlon points out the concept of illegitimacy is important in pointing the blame of the debt crisis to politically driven and imprudent actions of creditors rather than on the borrowers, this is not yet a well Uganda can draw from. There is need to first define the terms ‘odious’ and ‘illegitimate’ in a meaningful, uniform and internationally recognised way, so as to determine what precisely is to be understood by such debts in order to determine how they should be treated if those accepted legal norms prevailed. Only then can the case for Ugandan citizens being absolved of the duty to pay back the wildly accumulating and yet unproductive debt be properly be made.

Additionally, defining Uganda’s debt as illegitimate could put the country at risk of economic sanction. There are proposals for an institution that assesses whether regimes are odious.⁶² On such determination, arguments are made to shut down the borrowing capacity of illegitimate regimes as a form of economic sanction against them.⁶³ Even further, there are calls to block regimes from any borrowing that will be used in ways that do not benefit the people, even if the regime does not loot or repress them but simply follows bad economic policies.⁶⁴

This is based on the earlier stated rationale that the international community should not subsidise wasteful spending, and trade sanctions have been seen to be ineffective as third parties have incentives to break them. Instead, the case is made for limiting sanctioned governments’ ability to borrow. For a country like Uganda which doesn’t fund even half of its own budget, such a position would be very disastrous to the economy and heavily impact the ability of its citizens to enjoy even the minimum standard of human rights.

⁶⁰ Jayachandran and Kremer (n 43) 2.

⁶¹ Jayachandran and Kremer (n 43) 2.

⁶² Kremer and Jayachandran (n54) 1.

⁶³ *ibid.*, p. 2

⁶⁴ Kremer and Jayachandran (n 54) 25.

3.0 THE HISTORY OF UGANDA'S DEBT.

The existence of over-indebtedness throughout most of the developing world for decades defies the implication of immediacy and urgency that normally defines what would be termed as a crisis.⁶⁵ For over 25 years, the guiding principle of official debt relief has been to do the minimum to avert default, but never enough to solve the debt predicament.⁶⁶ Uganda's story can be summarised this way:

Since the 1980s, the international financial institutions and Western creditor governments engaged in a self-deceptive and destructive game of managing the third world debt problem from afar and forcing unpopular economic policies down the throats of powerless countries in the belief that the bitter medicine of macroeconomic adjustment would ultimately put those countries on a path to prosperity and freedom from debt. Two decades later, however, many poor countries are in worse condition than when they started implementing structural adjustment programs (SAPs) mandated by the IMF and World Bank.⁶⁷

In nominal terms, Uganda's debt burden rose from US\$172m in 1970 to US\$3.6b in 1998, the year in which it first received debt relief under the HIPC Initiative.⁶⁸ The country's external debt had increased over the decades because of the accumulation of arrears as a result of successive governments defaulting on debt obligations, deteriorating terms of trade, expansionary fiscal policies and heavy borrowing for economic recovery and stabilisation programmes.⁶⁹ By 1994, 70% of Uganda's debt was owed to multilateral creditors. In total, Uganda was granted debt relief amounting to US\$1b in net present value (NPV) terms to be delivered over a period of 20 years.⁷⁰ The Ministry reports as follows;

⁶⁵ Johnnick and Preston (eds.) (n 35) 4.

⁶⁶ *ibid.*

⁶⁷ Cheru (n 1) 35.

⁶⁸ Florence Kuteesa and Rosetti Nayenga 'HIPC Debt Relief and Poverty Reduction Strategies: Uganda's Experience' in Jan- Joost Teunissen and Age Akkerman (eds.), *HIPC Debt Relief, Myths And Reality* (FONDAD 2004) 48. Accessible at www.fondad.org.ug

⁶⁹ *ibid.*

⁷⁰ *ibid.*

Nearly two decades ago, Uganda's debt had peaked to unsustainable levels such that the economy did not have the capacity to meet its debt obligations. Fortunately, Uganda became the first country to qualify for debt relief under the HIPC initiative in 1998 and subsequently under the Enhanced HIPC in 2000. In 2006, Uganda benefited from another form of debt relief under the Multi-lateral Debt Relief Initiative (MDRI). All this debt relief eased Uganda's debt service obligations and our debt position has since remained sustainable.⁷¹

However, it also reports a slowing-down of the country's economic growth in the last five years, averaging 4.5% compared to the 7% achieved during the 1990s and early 2000s.⁷² The combined relief given to Uganda under HIPC I and II was supposed to enable the country remain on a sustainable development path for the foreseeable future.⁷³ However, results from the two debt sustainability analyses (DSAs) conducted in 2002 showed a rise in debt levels to almost 200%.⁷⁴ Since 1998, a series of sovereign debt crises in the developing world have reminded everybody that although increased external financing can enhance economic growth and welfare, it may also make countries more vulnerable to costly debt crises.⁷⁵

The following table illustrates how Uganda's debt continues to grow rapidly over the years.

Figure 1: Trend of Public Debt in Billion USD from FY 2012/13 to December 2017

⁷¹ Ministry of Finance, Planning and Economic Development, 'Public Debt Management Framework' (2013) 2.

⁷² Ministry of Finance, Planning and Economic Development, 'Report on Public Debt, Guarantees, other Financial Liabilities and Grants for the Financial Year 2017/2018' (presented to Parliament in March 2018) 4.

⁷³ Kuteesa and Nayenga (n 68) 53.

⁷⁴ *ibid.*

⁷⁵ Marx (n 34) 55.



Source: Debt Policy and Issuance Department Report, Ministry of Finance, Planning and Economic Development.

A trend analysis of growth in interest payments over the last 10 years notes steady progress in the increase of government expenditure on interest payments with an annual average percentage of 78.5, which should raise a red-flag to debt mangers, advisers and policy makers.⁷⁶ Indebtedness over the years has been aggravated by poor economic governance at the national level, as corrupt and unaccountable political elites often supported by Western powers indulge in corruption, abuse of office and repression, ill-conceived projects, fiscal imprudence and capital flight which subsequently increase external debt.⁷⁷ The excesses of many corrupt leaders, however, does not raise eyebrows as long as these puppet regimes faithfully serve the foreign polices of Western powers.⁷⁸

4.0 UGANDA'S CURRENT DEBT SITUATION- THE CRISIS⁷⁹

⁷⁶ Uganda Debt Network, 'Performance of Uganda's Debt Portfolio and Development Challenges; Key Lessons' [2017] Issues Paper 5.

⁷⁷ Cheru (n 1) 38.

⁷⁸ *ibid.*

⁷⁹ The statistics presented hereunder are a summary of information gathered from various government publications including the 2013 Public Debt Management Framework, the Medium Term Debt Management Strategy 2018/2019- 2021/2022 of April 2018, and the Report on Public Debt, Guarantees, Other Financial Liabilities and Grants for the Financial Year 2017/2018 of March 2018, all by the Ministry of Finance, Planning and Economic Development.

Uganda's debt burden is gradually deepening as debt build up is increasingly getting discordant with debt sustainability and economic growth.⁸⁰ Heavy borrowing in recent years has tested government's prudence in fiscal utilization and the management of borrowed resources from the time of debt relief in the 1990s and 2000s. Some reports have indicated a public debt stock beyond the 50% threshold, pushing the country into another debt trap.⁸¹ Such figures are unhealthy for an economy aspiring to reach middle-income status with a debt position that is half of its GDP and with domestic borrowing also increasingly getting costly.

Total public debt rose to \$10.2b in December 2017 from \$8.7b at the end of December 2016 with 67% external debt. This is an increase of 17%, a result of which increased the public debt to GDP ratio from 35.7% to 38.1%. Public debt service involves payment of the principal, interest and other contractual obligations in relation to government debt.⁸² By end of December 2017, total external debt service amounted to \$120.9m: 61.6% principal, 32% interest loan service and 6% commissions. Debt service increased by 0.9% from 2016 to 2017.

Multilateral creditors accounted for 68%, while the rest was provided by bilateral and commercial creditors. Bilateral creditors involve both Paris and non-Paris Club creditors.⁸³ The latter in Uganda include China, Saudi Arabia and India while the largest Paris Club creditors include Germany, France and Japan. Multilateral creditors are now dominated by the International Development Association and the African Development Fund.

According to the Ministry of Finance, the current debt portfolio is dominated by concessional external debt characterised by fixed and low interest rates, with long repayment periods and maturities. These features have a strong influence on the overall cost and risk exposure on Uganda's existing debt portfolio. But even more

⁸⁰ Uganda Debt Network (n 76) 1.

⁸¹ *ibid.*

⁸² Article 160(2) of the 1995 Constitution of Uganda defines public debt to include the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt. See also Section 3 of the PFMA 2015.

⁸³ Paris Club is an informal group of creditor nations whose objective is to find solutions to payment problems faced by debtor nations. It has 19 permanent members, including most of the Western Europe nations, the US and Japan. Non- Paris Club Bilateral Creditors on the other hand consists of nations that do not belong to the former.

disturbing is the country's large undisbursed balance which stood at US\$4.5b as of December 2017. Such poor external debt portfolio performance issues relate to committing loans without sufficient project preparation by the implementing entities. The low absorption capacity for resources has continued to increase the cost of government debt through aspects like commitment fees.

One scholar has argued that to the extent that highly indebted poor countries are effectively bankrupt, it follows that they are not servicing their debts.⁸⁴ If they 'appear' to be servicing their debts that is in large part because they are simultaneously receiving new money from official lenders in the form of loans or grants in a phenomenon known as defensive lending.⁸⁵ No government or individual minister wants to admit the reality of the debt problem and yet in most cases, these are the people who oversaw the accumulation of that debt.⁸⁶ Therefore, the much-quoted ratios of public or external debt to GDP often do not convey the degree of vulnerability of a sovereign to default risk.⁸⁷

But even the Uganda government acknowledges that whereas the present value of total public debt to GDP is within the 2013 Public Debt Management Policy Framework and IMF and World Bank benchmarks, there are still glaring risks to the rapidly-rising public debt especially external debt.⁸⁸ It warns that the exchange rate volatility and slow growth in exports could constrain Uganda's ability to meet her debt obligations.⁸⁹ Civil society also warns that due to financing development through increased indebtedness, the government is now confronted with a huge debt cost burden such that the sustainability of Uganda's debt is questionable.⁹⁰ In addition, high debt may strain various prospects for economic growth by discouraging public investment due to the high debt service costs.

⁸⁴ David Roodman, 'Creditor Initiatives in the 1980s and 1990s,' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis* (Oxford University Press 2006) 27.

⁸⁵ *ibid.*

⁸⁶ Boorman (n 39) 234.

⁸⁷ Porzecanski (n 19) 26.

⁸⁸ Bank of Uganda, 'Monetary Policy Report' [2018] 17.

⁸⁹ *ibid.*

⁹⁰ Uganda Debt Network. (n 76) 2.

Following debt relief under the HIPC initiative and MIDR initiative over the past two decades, external debt has rapidly increased in recent years and is increasingly becoming a source of concern to policy makers, analysts and multilateral institutions.⁹¹ Despite evidence that debt relief can save lives, none of these initiatives has succeeded in resolving Uganda's debt crisis.⁹²

The most recent developments from the Office of the Auditor General in a Report released to Parliament this January 2019 indicate that Uganda's public debt has increased by 22% over the last financial year.⁹³ The Auditor General reported that if the government were to service the loans as projected in the next financial year 2019/2020, it would require more than 65% of the total revenue collections, which is over and above the historical sustainability levels of 40%. He also noted that significant value loans have stringent conditions which could have adverse effects on Uganda's ability to sustain its debt. These conditions include a waiver of sovereign immunity by the government over all its properties and itself from enforcement of any form of judgement, adoption of foreign laws in any proceedings to enforce agreements, and requiring the government to pay all legal fees and insurance premiums on behalf of the creditor.

In essence, Uganda is continuously becoming a slave to her masters of credit, while the much promised long-term development by borrowing to invest in infrastructure and industry does not seem to be producing the intended results. Therefore, while external debt ratios currently may appear manageable, their rapid growth is a concern and requires action if a re-occurrence of the debt crisis of the late 1980s and the 1990s is to be avoided.

5.0 Developing Trends.

Sovereign credit markets changed substantially in the 1990s in comparison to the 1980s. The most striking transition was in the composition of creditor groups: the resolution of a debt crisis now requires dealing with a very large number- tens of

⁹¹ Ministry of Finance, Planning and Economic Development (MoFPED) (n 72) 15.

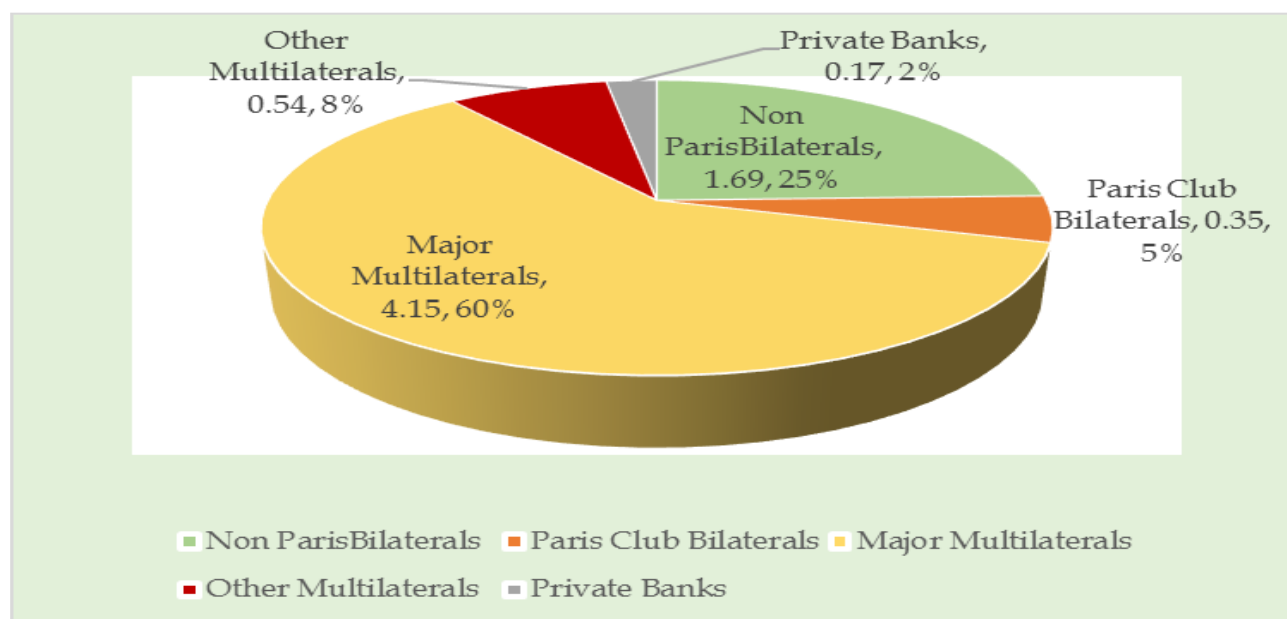
⁹² Cheru (n 1) 48.

⁹³ Moses Kyeyune, 'Uganda's Public Debt Worrying- Auditor General' *Daily Monitor* (5th January 2019). Accessible at: www.monitor.co.ug

thousands of bondholders scattered around the globe.⁹⁴ Markets have changed. Countries, and especially the emerging market countries, rely much less on commercial bank credit and much more on securitized debt issued in the international bond markets.⁹⁵

In Uganda; China, Japan, France and Germany are the leading creditors in the bilateral category that accounted for 28.7% of the external debt as at end of December 2017.⁹⁶ The Public Debt Management Framework 2013 expands the scope of debt from the traditional concessional financing to alternative means of financing.⁹⁷ Today, China loans dominate the credit portfolio from non-concessional sources.⁹⁸ The sourcing of Uganda’s debt as of 2017 is illustrated below.

Figure 2: External Debt Composition by Creditor.



Source: Ministry of Finance, Planning and Economic Development. (see FN 72)

By the mid-1980s, the World Bank and the IMF increasingly pressed troubled debtors to make still deeper reforms in exchange for adjustment loans. If governments privatised state entities, ended subsidies and removed barriers to foreign trade and investment, the international financial institutions argued, then

⁹⁴ Marx (n 34) 68.

⁹⁵ Boorman (n 39) 233.

⁹⁶ MoFPED. (n 72).

⁹⁷ p.7

⁹⁸ Uganda Debt Network (n 76) 5.

investors would take risks again, economies would grow and tax revenues and foreign exchange would flow into government coffers.⁹⁹ Unfortunately, this did not work. And rather than working to reduce the market failure or offset the consequences, the IMF and other developed country lenders have done what they can to make sure that those countries that have entered into these unfair contracts fulfil them, whatever the costs to their people.¹⁰⁰

The debt crises of the 1980s demonstrated that financial institutions exert influence over the social and economic policies of developing countries in financial distress. The IMF and the World Bank increased their influence by expanding the scope of the conditions attached to their financial support to include a broad range of economic and development issues.¹⁰¹ Commercial bank creditors on the other hand have used their leverage to force sovereign debtors to assume most of the costs associated with renegotiating their debt, and where applicable, to assume responsibility for private sector debt.¹⁰² This situation is troubling and challenges the sovereignty and freedom of action of debtor countries.

The resultant failure of globalisation to promote good governance and protect human rights has created a vacuum that has been filled by China.¹⁰³ This dynamic was analysed thus:

The flaws associated with globalisation have given rise to a new politics of confrontation due to dissatisfaction among the developing countries. This has allowed China to revive the South and assume its leadership...China seeks to build relations that are seemingly accommodative and non-antagonistic as opposed to competition which lies at the heart of globalisation...China accepts individual African countries' political and economic systems as it does not insist

⁹⁹ Roodman (n 84) 18.

¹⁰⁰ J.E Stiglitz, 'Ethics, Market and Government Failure, and Globalization: Perspectives on Debt and Finance' in Chris Jochnick and Fraser Preston (eds.), *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis* (Oxford University Press 2006) 162.

¹⁰¹ Bradlow (n 6) 647.

¹⁰² *ibid.*

¹⁰³ Zibani Maudeni, 'Globalisation and its Failure: Implications for Governance and Human Rights in Africa' [2010] 10 University of Botswana Law Journal 87.

on democratisation, human rights protection, the rule of law, good economic management or economic reforms as preconditions for political, social and economic relations.¹⁰⁴

China and Japan generally exclude human rights and good governance conditions in their initiatives.¹⁰⁵ They give priority to infrastructural development, trade, investment and rural development. With this laxity, Chinese-Africa relations are most likely to drive the continent into serious debt, which works against the dignity of the African people.¹⁰⁶ Also, while Uganda's government consistently reports that debt portfolio is sustainably below the requisite threshold, the current increasing non-concessional bilateral borrowing trend debt will definitely not be sustainable in the long run, signalling that future spending will predictably rise even higher.¹⁰⁷

6.0 THE LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK FOR UGANDA'S DEBT MANAGEMENT.

Historically, what has mattered most for development is not whether governments intervened in the workings of the economy, but the fine details of how they did so.¹⁰⁸ The UN Basic Principles on Sovereign Debt Restructuring Processes call for transparency to enhance the accountability of the actors concerned, by the timely sharing of data and processes related to sovereign debt workouts.¹⁰⁹ Government officials who authorize and execute borrowings carry responsibilities *vis-à-vis* the people who must ultimately repay the money, which status makes wrongful any form of self-interest or peculation on the part of government.¹¹⁰

As demonstrated earlier, Uganda's Constitution provides for accountability to the people, in particular through their representatives. Under Article 152, no tax can be imposed except under the authority of an Act of Parliament. Article 159 grants government the power to borrow or lend from any source, subject to authorisation

¹⁰⁴ B. Osei-Hwedie, 'China-Africa Relations in the New Millennium: Opportunities and Challenges' [2005] 2(1) The ICFAI Journal of International Relations 45-59.

¹⁰⁵ Maudeni (n 103) 89.

¹⁰⁶ *Ibid.*, p.88

¹⁰⁷ Uganda Debt Network (n 76) 7.

¹⁰⁸ Roodman (n 84) 19.

¹⁰⁹ UNGA Res. A/69/L.84, Principle 3.

¹¹⁰ UNCATD (n 11) Principle 8.

by Parliament.¹¹¹ The President is required to cause information to be presented to Parliament on the utilisation and performance of the loan. This mandate is extended to the Auditor General by Article 163(3b) which requires that the office conduct financial and value-for-money audits in respect of any project involving public funds. Parliament is also further mandated to monitor all expenditure of public funds under Article 164(3).

In 2015, the Public Finance and Management Act (PFMA) was promulgated to handle among others, the aspect of debt acquisition and management. It provides that the fiscal objectives of the country shall be based on the maintenance of prudent and sustainable levels of public debt.¹¹² Again, Parliament is required by §12(2) to ensure that public resources are held and utilised in a transparent, accountable, efficient, effective and sustainable manner. Section 36 vests the authority of government to raise loans in the Minister for Finance. With specific exception to loans raised to manage monetary policy and those raised through the issuance of securities, the Act requires that all other loans raised by the Minister have their terms and conditions laid before Parliament.¹¹³ No loan is to be enforceable unless approved by a parliamentary resolution.

Other safeguards include the requirement by §42 that the Minister in charge submit a report to Parliament on public debt and cause it to be published. The Ministry is required, while presenting the national budget, to table a plan on public debt and any other financial liabilities for the financial year.¹¹⁴ Section 43 restricts all expenditures to be incurred by government on projects which are extremely financed, to appropriation by Parliament. Part VII of the Act provides for accounting officers, accountant generals, an internal auditor general and audit committees. By §78(1), if any of these officials or departments fail to meet the requirements of the Act, Parliament is mandated to ask the Minister to make a report with an explanation.

¹¹¹ Article 159(2), 1995 Constitution of Uganda

¹¹² Public Finance and Management Act 2015, S 4(2b)

¹¹³ PFMA 2015, S 36(5).

¹¹⁴ PFMA 2015, S 13(10a) (iv). The latest is the Report on Public Debt, Guarantees, Other Financial Liabilities and Grants for the Financial Year 2017/2018, presented to Parliament by Hon. Matia Kasajja in March 2018.

The Ministry releases Medium Term Debt Management Strategies occasionally¹¹⁵, explaining the factors that informed the choice of the plan presented, the state of the country's debt and its composition by creditor, as well as the characteristics of the prevailing debt portfolio. Government also undertakes Debt Sustainability Analysis (DSA) on an annual basis to assess the country's level of indebtedness (solvency) and its ability to service its debt, now and in the future (liquidity) based on the performance of the economy.¹¹⁶ These initiatives are in compliance with the policy set out by the 2013 framework (supra), which sets the benchmark for government of Uganda to be that the country's debt as a proportion to GDP does not exceed 50%.¹¹⁷

Other players include the Office of the Auditor General which compiles Follow-up Audit Reports on the utilisation of external public debt as well as Value for Money Audit Reports to check the management of public debt by the Ministry. Bank of Uganda also records commentaries and observations on the current values of public debt and the projected impacts on the economy.¹¹⁸ Civil society is represented by Uganda Debt Network, an organisation founded in 1996 to champion the cause for debt relief.¹¹⁹ It has now established itself as a leading avenue to influence accountable public resource management in Uganda. The Office of the Auditor General in the Follow-up Audit Report of December 2015 mentioned as its motivation, the organisation which raised concerns over the slow absorption of loans as well as media reports.¹²⁰

On the face of it therefore, Uganda seems to have in place the required comprehensive framework defining procedures, apportioning responsibility and drawing out accountability. The focus should as such be shifted to whether the same is being adequately implemented and yielding the necessary results. There have been complaints of missing information from the Auditor General's reports which portrays a low level of transparency in the dissemination of key information about loan-supported projects to various stakeholders, but also impairs the picture

¹¹⁵ The 4th Edition for the period 2018/2019- 2021/2022 released in April 2018 is the 4th to be released since the beginning of the initiative.

¹¹⁶ MoFPED (n 71) 37.

¹¹⁷ p. 12

¹¹⁸ See for example, Monetary Policy Report by Bank of Uganda, August 2018, p.17

¹¹⁹ <https://www.udn.or.ug>

¹²⁰ p.2

of economic returns the country would obtain.¹²¹ Also, some loans are periodically signed before parliamentary approval which affects and sometimes delays loan effectiveness.¹²² This remains a cost to citizens in terms of loan repayment when outright expected performance falls short.

On the international level, the UN observed that the link between sovereign debt and governing state commitments to respect and guarantee human rights was generally absent in the regulations governing the international financial sector.¹²³ It took *the Argentine conflict* with the holdout bondholders who had participated in its debt restructuring to bring to light legal gaps at the international level that had to be filled.¹²⁴ This is a legal gap evident in Uganda's framework as well. For developing countries, one must take into account that debt relief especially debt cancellation and restructuring of debt is an important mechanism to safeguard the people's well-being and their ability to exercise basic rights.¹²⁵ Therefore, it is important that more efforts are steered in that direction.

7.0 HOW UGANDA'S DEBT AFFECTS ITS CITIZENS.

Sometimes, even those calling for the forgiveness of debt lose sight of the identification of the definitive source of credit and the cost to the ultimate providers.¹²⁶ Behind every official credit are tax payers. It is frequently argued that the heavy and unsustainable debt that developing countries are asked to repay largely originates from periods when they were governed by dictatorial regimes that did not necessarily represent the interests of the people who are now expected to repay this debt.¹²⁷ However as explained earlier, a state borrowing in essence gives the creditor a right to the future taxable income of those subject to its tax authority, i.e. the present and future generations of citizens.

¹²¹ Uganda Debt Network (n 76) 2.

¹²² *Ibid.*, p.3

¹²³ UNHRC, 'Guiding Principles on Foreign Debt and Human Rights, and the Principles on Promoting Responsible Sovereign Lending and Borrowing'

¹²⁴ *NML Capital Ltd v Republic of Argentina*, 573 U.S Supreme Court 2250, 189 L. Ed. 2d 234 (2014)

¹²⁵ Rossi (n 31) 189.

¹²⁶ Boorman (n 39) 241.

¹²⁷ Michalowski (n 12) 3.

A person's human rights are fulfilled when they have access to the natural and social resources that are ordinarily required to achieve a level of civic status and a standard of living that are minimally adequate, and when such access to these resources is secure.¹²⁸ Uganda's expenditure on interest payments consumes a huge chunk of national resources thereby cheating human development and service delivery efforts. Such cost burdens deprive other sectors of resources necessary to address the social recurrent economic needs of the citizens. As a consequence, debt has a dramatic impact on health, education, nutrition and the employment of hundreds of millions of people. It also undermines political stability, the environment and long-term development. Consequently, living standards for the majority of Ugandans continue to decline.

The delay or failure to utilize loans increases the cost of debt to tax payers in the form of commitment fees paid on undisbursed loans. It also undermines timely implementation of the projects for which these resources are borrowed and therefore denies citizens the intended benefits of the loans.¹²⁹ For the year ending June 2015, while other East African countries had disbursement levels above the African average of 20% for their World Bank portfolio, Uganda was at 12%.¹³⁰ In 2017, the energy sector realised more loan disbursement than other sectors, at 43.1%. This was followed by works and transport at 18.6%. Health on the other hand was at 2.7% and education at 3.5%.¹³¹

It is trite to point out that the much-touted economic adjustment has been achieved on the backs of the poor. Liberalisation of the economy and privatisation of state enterprises in the 1990s by the government saw the retrenchment of many employees who were left to suffer the drastic effects of job loss—some of them to date. Increasing malnutrition, rising unemployment and poverty levels continue to threaten the social fabric of highly indebted poor countries. It has actually been observed that;

Debt servicing often absorbs well over one-quarter of African countries' limited government revenues, crowding out critical public

¹²⁸ Barry (n 5) 1.

¹²⁹ Office of the Auditor General (n 4) 3.

¹³⁰ *ibid.*

¹³¹ MoFPED (n 71) 44.

investment in human development. Throughout Sub-Saharan Africa, health systems are collapsing for lack of medicines, schools have no books and universities suffer lack of library and laboratory facilities. Even the so-called African 'success' cases such as Ghana and Uganda are basically being held afloat for demonstration purposes by continuing aid inflows...Many of the highly indebted poor countries currently service their debt at the cost of widespread malnutrition, premature death, excessive morbidity and reduced prospects for economic growth. If the resources devoted to debt service were freed up and successfully redirected toward basic human needs, there would be significant improvement in human welfare.¹³²

These observations are supported with data presented by another scholar who records;

The poorest and most highly indebted poor countries account for 2/3 of all AIDS victims and have an average life expectancy of 51 years. The immediate benefits of debt relief underscore the flip side of the crisis. Debt payments now outweigh international aid by a factor of almost 10:1 and make it impossible for developing countries to tackle pressing crises including AIDS, refugees and natural disasters. Having sacrificed a generation of children, sold or destroyed much of their natural resources and therefore undermined their economic potential to service debts, the long term prospect for these countries is desperate.¹³³

This desperation explains the extreme levels of taxation in Uganda today, the most recent being the introduction of the controversial and highly contested Over-the-Top (OTT) tax on the use of social media and mobile money services.¹³⁴ This was shortly followed by the tabling of a bill to tax workers' retirement benefits.¹³⁵ Whereas fiscal policy is one of the major tools the government has at its disposal to enable the fulfilment of debt obligations, questions need to be asked about what such

¹³² Cheru. (n 1) 42, 50.

¹³³ Jochnick (n 7) 134.

¹³⁴ The Excise Duty (Amendment) Act, 2018.

¹³⁵ The National Social Security Fund (Amendment) Bill 2019, Section 19 and 20

developments mean for the citizens' rights to information and to the internet, to social security, to development, as well as the enjoyment of other economic and social rights.

The impact of debt on Uganda's sovereignty is another blow to the human rights of its people. Rather than writing off bad loans, debts have resulted in a permanent state of economic crisis for debtor countries, a steady flow of resources from South to North and an ever stronger political-economic influence of creditor governments over the policies of developing countries.¹³⁶ Meanwhile, attempts to defend sovereignty can only go so far. In 1998, the Central Bank in *Bank of Uganda v. Banco Arabe Espanol*¹³⁷ sought to deny liability for a loan of US\$1m that the Uganda government had borrowed from the Spanish bank. Kanyeihamba JSC (as he then was) delivered the lead judgement dismissing the Bank's arguments and affirming the duty to repay the loan. He noted that:

Uganda, a sovereign state, and its central bank freely and willingly sent their emissaries to Spain looking for a loan which they got from the respondent, a respectable banking institution, and they accepted the terms and conditions of that loan which government received ... There have been cases in the past and presumably there will be more such cases in the future, in which it is right and proper to plead and argue vigorously for the sovereignty of the state of Uganda and in its defence and that of its institutions against all sorts of claims. In my opinion, this is not one of them.¹³⁸

Therefore, debt repayment and servicing also opens the door to foreign influence and intervention in fundamental development decisions. Once the economy is being driven by such external forces, it ceases to matter that the people have representation in Parliament and can rally behind civil society organisations.

8.0 CONCLUSION AND RECOMMENDATIONS.

¹³⁶ Jochnick (n 7) 135.

¹³⁷ *Bank of Uganda v Banco Arabe Espanol*, SCCA No.8 of 1998 [1998] UGSC 1 (1 January 1998). Accessible at <http://www.ulii.org>.

¹³⁸ *Bank of Uganda* (n 88) 11-12.

A major push toward more effective means of dealing with unsustainable debt came from the recognition that the absence of such measures has been extremely costly both for citizens of the debtor countries and for the countries' creditors.¹³⁹ But Uganda is not going to miraculously swing into a period of debt freedom and budgetary surplus. History has proven that even initiatives for debt relief alone are insufficient to cause such transformation. Ending debt trouble almost always requires that creditors and debtors strike realistic compromises on repayment.¹⁴⁰

Immediate measures are required to improve the absorption and utilisation of external resources. A formal mechanism would require the creation of institutional structures through which funds flow from banks to qualifying projects.¹⁴¹ Findings of the different audits should continuously be publicised to ensure transparency and accountability in debt management. Specifically, there is a need for a clear empirical analysis on the exact contribution of debt to economic growth. This information is missing from all the reports published by government. The country needs to re-evaluate its priorities and deal with resource underutilisation and mismanagement. Whereas it may be inevitable to borrow, we must answer the question as to whether we are borrowing for the right reasons. More importantly, whether the debt accumulation is yielding any substantial fruit.

The international plane sets an even higher standard for accountability.¹⁴² States are required to ensure greater transparency in negotiations and agreements between states and international financial and aid institutions. This must include the publication and the widest possible dissemination of proposed and final agreements concerning financial aid, debt repayment and monetary policy. After all, citizens have a right to information in possession of the State.¹⁴³ In addition, the public must be given an appropriate opportunity to provide their own views prior to final decisions being made, with plan modifications remaining a possibility at any time.

¹³⁹ Boorman (n 39) 226.

¹⁴⁰ Roodman (n 63) 14.

¹⁴¹ Bradlow (n 6) 670.

¹⁴² UNSG Report 1995, para. 91.

¹⁴³ Article 41, 1995 Constitution of Uganda.

The UN also demands that any foreign debt strategy be designed not to hamper the steady improvement of conditions guaranteeing the enjoyment of human rights, and must be intended, *inter alia*, to ensure that debtor developing countries achieve an adequate growth level to meet their people's social and economic needs.¹⁴⁴ Furthermore, it emphasizes that the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot and should not be subordinated to the implementation of structural adjustment policies, growth programs and economic reforms arising from the debt.¹⁴⁵

There is a call from NGOs and others, including the IMF itself, for civil society to have a role in the discussions leading to a debt-relief plan.¹⁴⁶ The question is not whether they should participate, especially in ostensibly-democratic societies like Uganda, but the form and mechanism through which such participation should be organised. This goes down to the issues of how policies and debt sustainability are really determined. For example, the government budget is the key instrument of economic policy. Civil society should continue to vigorously take part in the budget-making process by making representations to the government through participation in parliamentary debate, submitting presentations to the committees in charge, general lobbying, and through any other means available. That is where effective participation is required; that is where transparency is needed; and the process through which the trade-offs that ultimately help determine sustainability will be made.¹⁴⁷

Lastly, Instead of concentrating only on taxation, Uganda should explore alternative and more rigorous efforts at sustainability to create a stable debt situation. It should now look into how best it can promote inclusive economic growth and sustainable development, whilst minimizing economic and social costs and respecting human rights. Sustainable development strategies must pay due regard to the human rights of a country's citizens. The indifference toward African lives must be

¹⁴⁴ UNCHR (1989: Article 21).

¹⁴⁵ UNHCR (2001: Article 7).

¹⁴⁶ Boorman (n 39) 241.

¹⁴⁷ Boorman (n 39) 243.

challenged and exposed if we are to create a just world order where human rights and human dignity take precedence over corporate rights and creditors' greed.¹⁴⁸

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¹⁴⁸ Cheru (n 1) 51.

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