

# Risky business

## Private sovereign debt, fiscal crises and human rights

### Introduction

This briefing is based on findings of research<sup>1</sup> conducted by Tax Justice Network-Africa, the Civil Society Legislative Advocacy Centre, and Instituto Centroamericano de Estudios Fiscales, in collaboration with Christian Aid, in Kenya, Nigeria, Guatemala and El Salvador. In these and many other countries, sovereign debt - debt owed by governments - is on the rise, with an increasing proportion owed to private creditors, as governments resort to issuing bonds or borrowing from commercial lenders to finance development and bridge fiscal gaps.

Christian Aid and its partners highlighted the dangers of this trend in 2020.<sup>2</sup> Borrowing from private creditors is more costly and often has other disadvantages for lower income countries, such as shorter maturities. Most importantly, private creditors are not compelled to take part in debt relief arrangements when these are needed.

The issues we raised then are now made more urgent by the global pandemic, deepening climate crisis and war in Ukraine, which together have caused economic downturn, increased public spending needs and created inflationary pressures. Countries facing diminishing revenues and inflows of foreign exchange have continued to prioritise servicing debts, which are largely held in foreign currency, over critical social spending, with serious implications for governments' ability to meet their human rights obligations and commitments to sustainable development.

Our research also reveals a shocking lack of transparency about private loan agreements on the part of both creditors and governments and a lack of accountability of private creditors for the devastating impacts of unsustainable debt.

### Policy messages

- **Both low and middle-income countries are facing fiscal crises in which private creditors are playing an increasingly significant role.**
- **The growing risks of privately held sovereign debt for vulnerable economies and people have serious human rights and development implications.**
- **Private creditors have a responsibility to participate in debt relief arrangements, improve their transparency and review their lending practices.**
- **A new multilateral debt relief mechanism is needed which ensures the participation of private creditors and is available to both low and middle-income countries.**
- **More concessional financing is needed to progress rights and sustainable development in low- and middle-income countries.**
- **Debt sustainability should be assessed on the contribution borrowing makes to fulfilment of rights and sustainable and equitable development, not just on governments' ability to pay irrespective of other priorities.**

Finally, our work and that of the global debt justice movement makes it clear that unsustainable debt burdens are not inevitable or insoluble. Governments, particularly those in the global North and especially the United Kingdom, have the power and responsibility to address these issues and deliver transformative policy solutions to the debt crises people in poverty and marginalised communities are facing.

### Increased role of private sector and implications

Compared to concessional lending, private loans, such as from commercial banks and bondholders, are expensive.<sup>3</sup> Comparatively higher debt servicing costs add to the fiscal constraints lower income countries face and are worsening now with rising interest rates.<sup>4</sup> This, combined with a strong US Dollar against many currencies, is driving up debt repayment costs. New research by Debt Justice suggests interest on bonds issued by lower income countries has increased by an average 5.7 percentage points this year. Just between January and September this year, returns on bonds of El Salvador, (an indication of interest rates) increased from 16% to over 28%, in Kenya and Nigeria, they increased by over 5%<sup>5</sup>.

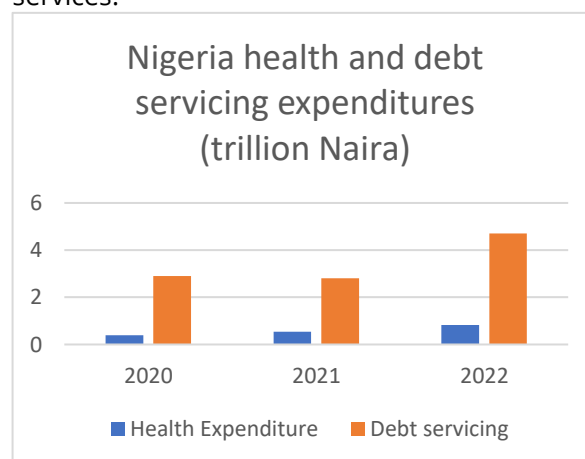
Our joint research shows that Nigeria pays interest rates of between 5% and 9% for private debt it currently holds (which comprises 40% of its \$40bn external debt). This compares to 1% – 3% for concessional loans. As of the end of March 2022, interest paid on private debt had amounted to \$246.1m, more than twice the combined interest on multilateral loans (\$58.2 m) and bilateral loans (\$59.9 m) over the same period<sup>6</sup>. With a tax regime mired in low compliance and regressive policies, Nigeria depends on volatile oil revenues for 90% of foreign earnings and 70% of revenues.<sup>7</sup> This has resulted in recurring budget deficits often funded with high levels of borrowing. Despite its Debt Management Strategy targeting cheaper funding from multilateral and bilateral sources, borrowing from private creditors has risen as a proportion of total debt, partly because of Nigeria's reduced options for concessional financing since it transitioned to lower middle-income country status.<sup>8</sup> Nigeria is also very susceptible to volatile exchange rates. As a result, in 2021, Nigeria spent a whopping 86% of its revenues on servicing debts,<sup>9</sup> making its economy extremely vulnerable to shocks.

Data from Kenya's National Treasury tells a similar story. Between June 2012 and June 2019, debts owed to commercial banks grew as a proportion of total external debt from 7% to 36%,

while the proportion of multilateral debt declined from 60% to 32%, a consistent trend which was only slightly reversed in 2020 because of the significant multilateral lending made available in response to the pandemic crisis. Similar conditions were found in Central American countries. In Guatemala, the proportion of central governments' debt in private hands rose from 56% in 2011 to 82% in 2021;<sup>10</sup> and in El Salvador, the non-financial public sector has seen a gradual increase in the proportion of private debt, from 66% in 2011 to 77% in 2021.<sup>11</sup>

### The human costs of debt crises

The increased costs of servicing debts, driven in a large part by private debt, restricts funds available for public spending in critical areas such as health, social protection, climate adaptation and resilience.<sup>12</sup> The global food crisis<sup>13</sup> has also been exacerbated by pre-existing high debt levels that have limited the ability of governments to adequately respond, while increased climate emergencies also further deepen these dynamics, such as in Kenya, where a serious drought has aggravated its food crisis this year.<sup>14</sup> The human impacts of servicing private debt can be illustrated by comparing escalating debt costs with expenditures on human rights such as health services.



Nigeria's annual debt servicing costs for instance leave very little room for increasing health spending. During the period 2018 to 2022, actual health expenditures were 0.36 trillion Naira, compared to 2.2 trillion Naira spent on debt

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servicing. By 2022, even amidst the urgent health needs of the Covid-19 pandemic, health expenditures had grown to just 0.82 trillion Naira, while debt servicing costs had reached 4.7 trillion Naira. As a percentage of GDP, Nigeria's federal health budget has shown a steady decline from 5% in 2003 to 3% in 2019.<sup>15</sup>

Diversion of scarce public resources to debt servicing also has gendered impacts where this results in cuts or lack of investment in public services or social protection,<sup>16</sup> because women comprise the majority of people living in poverty, are the main providers of unpaid care, and are concentrated in informal or low-paid public sector work. Kenya is currently pursuing a fiscal consolidation programme under which it has committed to significantly curtail overall spending, in large part due to its increasing unsustainable debt burdens.<sup>17</sup>

There is a risk that private loans may contribute to this trend, not only because of their higher costs, but also potentially by facilitating finance for major capital projects, the costs of which may shrink fiscal space for investment in essential services or other critical recurrent expenditures. This may be the case particularly in countries where government borrowing can only be used to fund capital expenditure, such as Kenya, where sectors most likely to be supported by loans include infrastructure and energy.<sup>18</sup> These sectors generally tend to disproportionately employ men and have been demonstrated to generate less jobs overall than investment in care and social sectors.<sup>19</sup> As private loans are often subject to less scrutiny and social and environmental safeguards than World Bank and other multilateral loans, there is a risk they may encourage risky borrowing for capital-intensive projects designed to deliver high returns to investors rather than development impacts and without systems of accountability for affected communities. Ultimately, sovereign debt, and especially borrowing from private creditors, needs to be evaluated on whether it contributes to (or impedes) the fulfilment of human rights and sustainable development.

### Challenges for debt relief

The rise in private sovereign debt has reversed past progress in and now presents several challenges for debt relief. Firstly, the sheer diversity of creditors complicates debt relief negotiations. Research conducted in 2020 found Nigeria then owed at least 224 private bondholders, though even more have probably not been disclosed.<sup>20</sup>

Our research faced considerable difficulty in accessing detailed information about private debt, suggesting that public scrutiny of contractual agreements is often difficult if not impossible, yet it is the details of these, including clauses providing for collective action by multiple creditors, that determine the possibilities for debt relief when countries need it.<sup>21</sup>

Most importantly, there has been a general unwillingness of the private sector to participate in debt relief initiatives voluntarily<sup>22</sup>, and a lack of mandatory mechanisms compelling them to do so. While the DSSI asked private creditors to participate on a voluntary basis, it excluded private creditors from any binding responsibility to take part. As a result, only one private creditor participated<sup>23</sup>. Its successor, the Common Framework for Debt Treatments beyond the DSSI<sup>24</sup> encourages private creditors to participate but has no mechanism for addressing their failure to do so. Its lack of success to date is partly due to the refusal of some private creditors to participate. Lack of participation by some creditors has been a longstanding barrier to timely completion of debt relief arrangements.

To address this, some have suggested that the IMF Policy on Lending into Arrears to Private Creditors<sup>25</sup> which governs the conditions under which the IMF can provide financing to countries which have defaulted on some debts, could be better used. This could put pressure on private creditors to take part in debt relief by enabling countries to proceed with debt relief arrangements even while defaulting on debts owed to creditors that refuse to participate.<sup>26</sup>

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Collective action by private creditors has happened as part of effort to avoid engagement in debt relief. The Institute for International Financing (IIF), which represents many private creditors, resisted calls for private creditors to be compelled to take part in the DSSI, arguing that solvency concerns demanded 'one-to-one' rather than 'top-down' approaches.<sup>27</sup> It proposed instead a voluntary framework,<sup>28</sup> but this was criticised for its complexity, and had little take-up.<sup>29</sup> The IIF's membership includes major credit rating agencies which may have discouraged countries including Kenya and Nigeria from applying for bilateral debt relief under the DSSI, for fear of appearing at risk of default and attracting a downgraded credit rating.<sup>30</sup>

### Transparency and public participation

Public scrutiny of sovereign debt is important to ensure borrowing contributes to fulfilment of rights and development goals and to support effective economic governance more generally. This in turn may help ensure higher credit ratings, cheaper borrowing and more investment in the future<sup>31</sup>. However, our research found a concerning lack of transparency in relation to public borrowing in the four countries.

Nigeria publishes information on its sovereign debts, but disclosure of detail, particularly on loan conditionality and private debt, was found to be patchy, with citizens having to rely on Freedom of Information requests. In Kenya, the terms of loan agreements with private creditors were also found to be shrouded in secrecy and complexity, limiting public scrutiny including around allegations of corruption<sup>32</sup> and whether private creditors are able to exert leverage over Kenya's public financial management.<sup>33</sup> The government of El Salvador declined to provide information requested by ICEFI, even though public debt data is considered by law to be public information.<sup>34</sup> The limited data available from other sources lacks detail on debts stocks and flows by type of creditor, which made it impossible to carry out a sound technical analysis of Salvadorian private debt, probably in violation of IMF's fiscal

transparency code.<sup>35</sup> Overall, our research highlighted a need for much more effective public scrutiny of private sovereign debt.

## Conclusions and recommendations

In both low and middle-income countries unaffordable debt is forcing governments to divert resources from progressing human rights and development goals. But private creditors are still not obliged to take part in debt relief. Arguably this runs counter to business and human rights principles.<sup>36</sup>

The lack of transparency around the identity of private creditors, terms of loans, and how funds are used encourages risky lending and borrowing. Citizens ultimately pay the price, so private lenders have a responsibility to ensure full transparency of loan contracts, review lending practices where these are contributing to unsustainable debt and participate in debt relief negotiations. Governments, which do sometimes make questionable borrowing decisions, also need to be more transparent. However, the blame for unsustainable debt can be laid largely on global decision-making<sup>37</sup> and particularly the G7 group of countries which have as yet has failed to galvanise political will to ensure meaningful debt relief, stem undue influence of commercial lenders, and better regulate financial markets.

The United Kingdom has significant influence over private lending. In 2020, the Jubilee Debt Campaign (now Debt Justice) calculated that 90% of foreign currency bonds owed by the 73 countries then eligible for debt relief under the World Bank, IMF and G20's Debt Servicing Suspension Initiative (DSSI)<sup>38</sup> were governed by English law.<sup>39</sup> In 2021 it was estimated that approximately 30% of these countries' debts was owed to private lenders in the UK.<sup>40</sup>

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**The UK Government should:**

- **Legislate to strengthen the position of low and middle income countries facing debt crisis towards private creditors** including by safeguarding debt relief decision-making from undue private creditor influence and championing private creditor transparency.

**The UK, along with other bilateral donors and multilateral institutions should:**

- **Support measures to compel private creditors to participate in the Common Framework** including through existing IMF mechanisms.
- **Support a new multilateral sovereign debt workout mechanism, available to both low and middle-income countries**, providing a predictable, rules-based system that disincentives risky lending and borrowing and compels all creditors to participate.
- **Expand eligibility for concessional financing** and assess the sustainability of debt by the contribution it makes to human rights and sustainable development, not on governments' ability to pay.



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## Endnotes

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