Document No. 3

Good Debt Management Pays

Summary of lectures at the national awareness seminars for senior officers on management of external debt

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INTRODUCTION

The United Nations Institute for Training and Research (UNITAR) saw a natural opening in the field of training in debt management when the Third Extraordinary Assembly of the Organization of African Unity (OAU) Heads of States and Governments stated (Abuja, 1987) that new and bold initiatives would have to be taken by the creditor community in order to enable countries of the region to implement programmes for economic recovery and appealed to donors to provide technical assistance and counselling services to OAU member countries in order to facilitate their choices of financial and monetary policies to remedy the current crises.

Along with other entities, UNITAR contributed towards seeking and formulating practical solutions to external debt problems. What emerged was that effective debt management should be based on the following six priorities:

- **a.** Formulation of a realistic debt management strategy.
- **b.** Identification of sources of loans and the elaboration of a negotiation strategy for each borrower country concerned.
- **c.** A precise determination of the amount involved in the debt servicing obligations and of possible sources of financing to meet those obligations.
- **d.** The elaboration of data collection, follow-up and evaluation methods at country, sub-regional and African regional level, including the preparation of reliable statistics on external debt.
- **e.** Improved capacities for negotiation with creditors.
- **f.** Improved technical and external debt management capacities.

It was felt that a reform of debt management structures is essential if management is to be improved. Such a reform must necessarily go hand in hand with an improved level of service in debt managing administrations by means of systematic vocational training.

UNITAR's training programme in debt management has had both an awareness-building and a training element. Furthermore, UNITAR believes that debt management begins at the moment when sovereign as well as private potential borrowers contemplate the various options before them. Decision makers need to have at their disposal all the relevant resources including facts, figures and advice to ensure reduced cost of external loans and increased level of profitability for projects financed, wholly or in part, from external sources. The improvement and strengthening of debt management capacity is an essential component in the achievement of this objective.

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UNITAR's contribution to solutions to the problem of external debt management took a concrete form through a feasibility study financed by the Directorate of Development Cooperation (DDA) of the Swiss Federal Department for Foreign Affairs, which culminated in Geneva in April 1987 in a high-level expert meeting. The experts' recommendations placed emphasis on practical activities in the training and further training of national debt managers in African countries through a regional approach.

The present compilation contains summaries of presentations made by various UNITAR resource persons having extensive theoretical and practical experience in the field of debt management. The topics dealt with in this compilation include:

1. External debt, public finance, and the balance of payments by Ms. Jocelyn Horne.

2. External debt and the development process by Mr. Ishrat Husain.

3. Requirements for effective debt management by Mr. Nihal Kappagoda.

4. Legal aspects of external debt management by Professor Rolf Knieper.

We hope that this publication is useful to the readers.

Marcel A. Boisard
Director, UNITAR European Office

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EXTERNAL DEBT, PUBLIC FINANCE, AND THE BALANCE OF PAYMENTS

by Jocelyn Horne[1]

Introduction

This paper addresses the basic linkages between macroeconomic policies, in particular, fiscal policy, and a country's external debt situation. The key macroeconomic issue is how to formulate an overall strategy that addresses the problem of external debt yet contains macroeconomic stabilization policies that will allow for sustainable growth. This task is difficult because of the policy trade-offs involved, as discussed below. In general, demand-management policies alone are inadequate and will need support from a wide range of structural reforms, especially in the fiscal area.

Abstracting from issues related to debt relief, the macroeconomic adjustment programs for dealing with external debt fall into two main groups as discussed below; it is assumed that the objective is to achieve external sustainability, defined broadly as the stabilization of external debt in terms of GDP at some appropriate level, and to restore credit-worthiness.

The first group of policies focuses on the numerator in reducing the stock of net claims on the debtor country by effecting a net transfer of real resources through an improvement in the trade balance. The most reliable strategy for achieving this is by making substantial cuts in domestic absorption. This normally entails a tighter fiscal policy supported by monetary restraint with possible real exchange rate depreciation to improve competitiveness. These policies have to be supported by supply-side measures to address issues relating to structural reform. These are the so-called "orthodox" policies that have been followed by many debtor countries with and without assistance from international agencies.

Ms. Jocelyn Horne *- Ms. Horne has held various teaching positions in her home country and in the United Kingdom from 1976 to 1984. Now a senior economist at the International Monetary Fund (IMF), Ms. Horne is responsible for the formulation of fiscal stabilization programmes for Kenya and Uganda and conducts policy-oriented research on fiscal and macro-economic issues relating to both developing and industrial countries. Ms. Horne is the author of several papers on international and public finance in particular.*

[1] Senior Economist, Fiscal Affairs Department, International Monetary Fund, May 14, 1992. The views expressed are personal and do not reflect any official position of the IMF.

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The second group of policies acts on the denominator by increasing output growth to slow down the dynamic process of debt feeding on itself. There are various strategies in this regard, usually involving substantial increases in domestic spending, sometimes with an emphasis on the distributional aspects of inflation with price/exchange rate controls. These are the so-called "heterodox" policies followed by some Latin-American countries in the mid-1980s. The focus of this paper is on the first group but it is apparent that in following either path, there are costs and tradeoffs involved and, it would appear, a somewhat conflicting role for fiscal policy.

The central problem for a debtor country is that if it follows the first route and implements restrictive macroeconomic policies to generate a trade surplus, it may stabilize external debt at the cost of future growth, thereby undermining the initial benefits of the debt reduction. It is necessary to examine policies that can minimize the costs, policies that attempt to manage the currency composition of external debt, and the role of exchange rate policy. Finally it is necessary to ask how the role of fiscal policy can be strengthened.

Background

Table 1 provides an overview of the external debt problem in Sub-Saharan Africa. It is especially useful when compared with countries with recent debt-servicing problems (countries with debt arrears or rescheduling arrangements), - the fifteen heavily indebted countries identified in the 1985 Baker initiative.

Using either indicator, the Sub-Saharan group shows evidence of a serious debt problem. For example, external debt (excluding arrears) in terms of GDP rose from an estimated 15 percent in 1970 to 73 percent in 1990. Interestingly, using this measure, both groups show a tendency toward stabilization of the ratio in 1989 although the ratio of external debt to GDP in Africa is roughly 1.5 times higher than the other group. The debt service ratio, at 25 percent in 1990, understates the problem because it reflects only payments and not scheduled obligations. If we include the latter, the ratio is closer to 50 percent. Given the need for real import growth to allow a recovery in real output per capita, these figures suggest that the region as a whole will not be able to meet forthcoming debt-service obligations without continuing debt relief on a scale even more massive than that granted in recent years.

One might argue that the debt problem in Sub-Saharan Africa is less serious because a smaller proportion is owed to commercial banks. However, most of the debt, at least in Tanzania and Uganda, is held by the government and imposes a direct burden that, combined with constraints on reducing imports and reliance of export earnings on a few commodities, complicates the fiscal adjustment process.

Framework

The following argument is organized within a simple macroeconomic framework that focuses on the basic accounting identity:

$$CA = S - I$$

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where the current accounts surplus (CA) is equal to the excess of national savings (S) over national investment (I). To improve external balance,-domestic savings must increase relative to domestic investment (in contrast to the microeconomic problem of efficiently allocating a given level of savings). The focus here is on the current account and not on the overall balance of payments because the stock of external debt is equivalent to cumulated current account deficits.

The key macroeconomic problem is how to bring the required surplus of national savings over investment at a level of investment that is high enough to sustain growth. The same problem can be viewed from two sides:

a. Achieving External Adjustment: how to bring a transfer of real resources to the creditor country to generate the required foreign currency through an improvement in the noninterest current account surplus; and

b. Achieving Internal Adjustment: how to mobilize domestic savings to generate an internal surplus of savings over investment to effect the external transfer.

Fiscal policy plays a critical role in mobilizing domestic savings. For example, since government savings is equal to government revenue (excluding grants), less current government expenditure, in order to increase government savings, either revenue must rise or current expenditure must fall. Because so much of the external debt is serviced by the public sector, the burden of fiscal adjustment is considerably greater. A surplus in domestic currency must be generated to service public debt. With given expenditures and given external financing, these resources will need to be generated from tax revenue, domestic borrowing, or from the inflation tax.

The savings-investment identity must always hold, ex-post, but external debt in terms of GDP can be stabilized at an infinite number of levels. The identity is also consistent with an infinite number of configurations of output growth and inflation targets. Even when those targets are set, the actual measures taken will determine how much of the burden is borne by the public and private sectors and by different income groups.

External adjustment

The macroeconomic measures for achieving external adjustment fall into two main categories: 1) expenditure-reduction and 2) expenditure-switch. The origin of the debt problem in Sub-Saharan Africa may in part be traced to excessive levels of externally-financed development expenditure. Fiscal policy was, in fact, the villain in the sense that the investments were either unproductive or, even if profitable, proved unable to generate sufficient income to service the debt in the face of adverse external shocks. Ironically, for most of the groups of countries, the means for achieving an improvement in the trade surplus has been through restrictive fiscal policy with reductions in imports, especially on capital goods rather than through a reduction in current expenditures or the expansion of export industries with consequent adverse effects on growth. In that sense, fiscal policy has again played an ambiguous role, reflecting conflicting objectives and insufficient instruments.

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External adjustment also involves the alternative policy option of opting for an expenditure switch through real depreciation and export promotion. Real exchange rate depreciation has two effects on the external debt to GDP ratio which move it in opposite directions: 1) real depreciation, by increasing exports and GDP, lowers the ratio; and 2) real depreciation induces capital losses and increases the debt ratio. In general, the net effect tends to be positive, that is, a fall in the ratio.

Even if devaluation and/or restrictive fiscal policies do succeed in improving the trade balance, there are major obstacles to substantial export expansion for countries in the region. These stem from the very narrow export base with its concentration on a few commodities. In fact, the major sources of long-lasting gains are likely to come from structural reforms that diversify the export base and increase the flexibility of markets through price decontrol and trade liberalization. A further obstacle to external adjustment is market access in the creditor country.

In general, the process of external adjustment is easier 1) the more diversified and demand-elastic the production structure of the debtor countries, and 2) the closer the demand structure of the debtor country to its trading partners. A debtor country is faced with an extremely unfavourable situation if, for example, its main source of revenue is a product with low-demand elasticity for which it has a large share of the world market, along with other debtor countries.

An additional aspect of external adjustment that complicates the role of fiscal policy, is the fact that these measures (abstracting from direct fiscal measures) can either directly or indirectly worsen fiscal adjustment. For example, a reduction in imports will lower revenue from trade taxes which are usually a significant portion of total revenue in developing countries. The net effect of exchange depreciation on the fiscal balance is often negative; the positive effect on trade tax revenues is outweighed by the negative effects on interest payments and the foreign component of development expenditures. There may also be indirect effects operating through lower growth and, depending on how the fiscal deficit is financed, through inflation. In summary, the means whereby external adjustment is achieved do matter - for the overall growth objective and because the measures may exacerbate fiscal adjustment. In terms of policy, this means that the required structural fiscal adjustment must be greater than it would have been to offset those effects.

Internal adjustment

policies Internal adjustment involves designing a set of policies that will bring about a surplus of government and private savings over investment sufficient to achieve the transfer of real resources to the rest of the world. The difficulty here is designing the package such that total investment is high enough to allow output to grow at the target rate and ensuring that the financing of the fiscal deficit is consistent with the inflation target and the targeted debt to GDP ratios.

The issue with regards to savings is how much the public sector can contribute to increasing national savings via a reduction in current public expenditure relative to government revenue. The answer is very little, at least in the short-term.

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Table 2 shows the contribution of government savings to reducing the overall savings-investment balances in Uganda and Kenya. Government dissavings remained stable because an increase in domestic investment was matched by a rise in domestic savings. In Uganda, government dissavings increased and was the main factor behind a worsening of the overall savings-investment balance.

The constraints on the revenue side are from the very narrow tax base and weaknesses in tax administration. There is a very limited scope for significant cuts on the current expenditure side because a large portion is allocated to the civil service wage bill. Perhaps the best that can be hoped for is rationalization of the civil service and a shifting away from unproductive to productive expenditures.

Fiscal policy, via tax incentives, may act to increase private domestic savings. The main macroeconomic instrument in this regard is monetary policy via increased real interest rates through a reduction in inflation and inflationary expectations. In many of the debtor countries, high inflation rates have distorted financial markets and driven a wedge between the yield to savers and the cost to borrowers. As a result, interest on savings is too low to mobilize adequate domestic savings, while interest on loans is too high to finance investment.

Fiscal policy also plays a critical role on the investment side. The fundamental problem is how to ensure that the growth target is not adversely affected by severe cuts in capital expenditures. A large part of government development expenditures tend to be foreign-financed. Although these projects are usually financed on highly concessional terms, to avoid an external debt problem, these investment projects must be productive to generate the future income to offset their debt-servicing costs. In general, the fiscal program that forms part of an overall debt strategy is one that needs to be closely linked to structural reforms that would include, for example, reform of the tax system, screening of new and existing projects and rates of return, and more efficient utilization of the existing capital stock.

Summary

Regardless of the option chosen for dealing with the external debt problem - whether via a large trade surplus, high growth or exchange rate depreciation - the internal macro and structural adjustment program will be a key determinant of success. Fiscal policy should help mobilize the necessary domestic savings to ensure that government capital expenditures are fully productive.

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Table 1. Measures of Debt Burden

	1981	1982	1983	1984	1985	1986	1987	1988	1989[1]	1990[1]
External Debt/GDP										
Fifteen heavily-indebted countries [2]	37.8	41.6	46.3	47.1	46.1	46.5	45.7	44.6	43.6	41.9
Sub-Saharan Africa	45.2	51.0	53.4	57.8	66.0	66.1	72.1	69.1	71.9	72.6
Debt-Service Ratio[3]										
Fifteen heavily-indebted countries	40.7	51.9	41.8	41.7	40.7	45.3	35.5	39.6	40.8	39.7
Sub-Saharan Africa	20.3	22.5	21.9	23.8	26.5	26.1	23.4	23.4	23.3	25.4
Kenya[4]				29.0	29.0	34.0	29.0	31.0	28.0	
Uganda[4]						53.9	62.3	76.1	79.8	
Tanzania					55.7	55.5	59.5	58.0	55.5	

Sources:
IMF, World Economic Outlook, April 1989, Table A48 and A49; Staff estimates.

[1] Estimate.
[2] Those countries associated with the "Programme for Sustained Growth" presented at the 1985 Fund/Bank Annual Meetings (Argentina, Bolivia, Brazil, Chile, Colombia, Cote d'Ivoire, Ecuador, Mexico, Morocco, Nigeria, Peru, Philippine, Uruguay, Venezuela, and Yugoslavia).
[3] In percent of exports.
[4] Fiscal year beginning July 1.

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Table 2. Savings-Investment Balances (in percent of GDP)

		1987-88	1988-89	1989-90[1]
Uganda				
	Savings-investment balance	-7.4	-8.3	-13.5
	Gross domestic investment	15.1	15.5	17.0
	Public sector[2]	6.2	5.5	8.2
	Private sector	8.9	10.0	8.8
	Gross domestic savings	7.7	7.2	3.5
	Government[3]	-0.6	-1.4	0.2
	Private	8.3	8.6	3.3
Kenya				
	Savings-investment balance	-5.1	-5.1	-5.6
	Gross domestic investment	24.8	25.6	25.7
	Public sector	4.4	6.2	6.2
	Private sector	20.3	19.4	19.5
	Gross domestic savings	19.7	20.5	20.1
	Government	-1.5	-1.4	-2.1
	Private	21.2	21.8	22.2

Source: Data provided by the Ugandan and Kenyan authorities and staff estimates.

[1] Estimate.
[2] Central Government and public enterprises.
[3] Government revenue (excluding grants) - current expenditure.

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EXTERNAL DEBT AND THE DEVELOPMENT PROCESS

by Ishrat Husain[1]

The determinants of economic growth and development are complex, varied and not fully understood. However, it is now recognized that factors both internal and external to a nation impinge upon its growth outcome. Internal factors include resource endowment, economic structure, social and political organizations, domestic policy performance and economic management practices while external factors include terms of trade, external capital flows, natural disasters and man-made disasters such as civil or inter-country wars.

The popular development paradigm followed in the 1960s and 1970s had many distinctive features, including an emphasis on central planning and physical target setting, administrative and discretionary controls on the allocation of scarce resources and the establishment of state enterprises for production. Furthermore, plans emphasized distribution and trade in all economic sectors, expansionary fiscal policies with budgetary deficits supported by external borrowing, and an import-substitution strategy of industrialization under protective barriers.

Mr. Ishrat Husain - Mr. Ishrat Husain is currently Chief Economist, Africa Region of the World Bank. Just before this assignment he was Division Chief, Debt and International Finance Division of the World Bank. He obtained his Master's degree in development economics from Williams College and a Doctorate in Economics from Boston University, Before joining the Bank he had a distinguished career in the Civil Service of Pakistan, rising to the position of Additional Finance Secretary and Additional Secretary, Planning and Development in the Government of Sind. Since joining the Bank in 1979 he has worked as Country Economist for Liberia, Senior Divisional Economist for Ghana and Chief, Bank's Resident Mission in Nigeria. He co-authored a volume of World Bank Symposium proceedings "dealing with the debt crisis" and another volume on "African external finance in the 1990s." He chaired the World Bank conference on debt management in 1989 and published the proceedings of the conference under the title "debt management systems."

[1] At the writing of this paper, the author was the Chief of the Debt and International Finance Division of the World Bank. The opinions expressed in this paper, which was presented at UNITAR- EADB Seminars on Debt Management at Dar-es-Salaam and Kampala, January 15-21, 1990, are those of the author and do not necessarily reflect the views of the World Bank. At present, Mr. Husain is the Chief Economist of the Africa Region at the World Bank.

The results of this strategy have now become apparent primarily in Latin America and Africa where countries are heavily indebted with stagnant per capita incomes,

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declining living standards, massive unemployment, decaying physical assets and undeveloped human resources. It is a small group of elites who have benefitted from this strategy, accumulating large incomes as a result of access to subsidized credit, scarce foreign exchange at over-valued official exchange rates and import licenses. They have also been able to produce behind a protective wall. The result is that rents based on government policies have replaced rents based on property ownership.

In terms of debt, conventional wisdom suggests that the domestic savings in developing countries is insufficient to finance the desired level of investment and therefore, of growth. It is thought that a higher level of imports financed by foreign savings will allow for a more rapid growth of GDP than would otherwise be possible with only domestic savings.

Foreign savings, in the form of grants, concessional debt finance or non-concessional debt finance, has become a significant source of investment in almost all developing countries. The outcome has been mixed. In some cases, the import-GDP ratios declined while GDP was growing. For the countries faced with debt crisis today, the dependence on imports in consumption and production rose continuously over time. These imports were financed by external borrowing while the GDP and export earnings stagnated.

As a result, we can now identify two trends in economic development. Some countries, particularly in Asia, have grown rapidly while improving the living standards of their people. They are on the way to industrialization yet have managed to avoid the debt crisis. However, the outcome in other nations, particularly in Africa and Latin America, is a source of growing concern. Therefore it is instructive to examine the experience of the former group of countries. Perhaps the fundamental question of this paper is why the debt crisis has affected some countries whereas others have performed reasonably well during the 1980s.

Factors which have allowed countries to avoid the debt crisis A large number of developing countries have been able to service their external debt in the 1980s without altering their development process. A number of factors which follow explain why these countries have not suffered a debt crisis:

1. **Rapid Expansion of Exports and Favourable Terms of Trade.** Countries that have pursued outward-oriented policies and have experienced favourable terms of trade, such as many countries in East Asia, have by and large avoided debt problems. These countries did so by raising their payment capacity through the rapid expansion of exports. Since the growth of their exports in the 1980s was higher than the growth of interest payments, these countries were able to reduce their debt burdens relative to exports. In general, economies which pursued export-led growth as opposed to a strategy of import substitution grew faster, industrialized sooner, and had higher rates of productivity growth. This is due to a strong and positive association between growth in exports and growth in output. Exports act as a source of growth because they result in technological diffusion and permit exposure to larger markets and greater competition.

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2. **Immediate Response to Exogenous Shocks.** Countries that promptly undertook adjustment in the face of exogenous shocks, especially those that curtailed consumption in the public sector, did not have to resort to excessive foreign borrowing. On the other hand, the countries that postponed adjustment or considered these shocks a temporary aberration and continued with normal levels of consumption financed by external borrowing are now facing severe payment difficulties. The lesson is that external shocks should be taken seriously. Countries should respond by making necessary cuts in public expenditures and imports to avoid subsequent crisis situations.

3. **Prudent Investment and Efficient Use of Resources.** Countries that made judicious use of external funds in earlier periods to ease infrastructural bottlenecks, invest in human resources or expand productive bases generally did not suffer a debt crisis. Although investment rates are strongly positively correlated with growth rates, the composition of investment and the efficiency of resource use are equally important. Public sector investment to support inefficient and loss-making state enterprises has with some exceptions proven to be less productive.

4. **Decentralization and Diversified Production.** Finally, the development of human capital and local capacity building have been crucial elements. Countries that emphasized more effective decentralized economic institutions and a more diversified pattern of production did relatively better that those which promoted central control over economic activity and a single commodity-based pattern of production and trade.

Debt Reduction, Relief, Forgiveness and Write-Off

Today there is a great deal of emphasis on debt reduction, debt relief, debt forgiveness and debt write-off. In some countries, such as Mexico and Chile, this is an inevitable conclusion as the debt overhang is so pervasive that unless some action is taken to reduce the burden, adjustment itself can not be set on a sustainable basis. Debt reduction therefore is justified if we are persuaded that this will enable the country to resume growth.

Debt reduction is a necessary, but not sufficient condition for an eventual return to creditworthiness. If we do achieve a write-off or reduction in the debt stock or debt servicing, but the underlying economic policies and management practices remain unaltered, then the reduction of debt alone is unlikely to benefit the country's economic prospects. Sooner or later, the country will find itself in the midst of another debt crisis. This is why most international finance institutions advocate debt reduction in the context of an adjustment program. It is thought that by making suitable changes in relative prices, policies and institutions, by reorienting public investment and by bringing about other structural changes in the economy while freeing the domestic resources from being transferred to external creditors, the country's debt servicing obligations will become commensurate with its debt servicing capacity and it will eventually be able to restore creditworthiness.

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Adjustment

It is also important to consider the linkage between adjustment and economic development. Adjustment involves abandoning certain notions of development that have not worked in the past and adopting different approaches. It also involves reshaping and redirecting policies and institutions to conform to this new approach. Once the imbalances are corrected through the adjustment process in a given time phase, economic development can proceed on a sustained basis on the strength of the improved policies and institutions. When countries are no longer forced to react to day-to-day crisis situations, they can focus their attention on the fundamental, long-term questions relating to human capacities, institutions, governance, the environment, population growth, and the distribution of technology.

Every country must design a program of structural adjustment in light of the diagnosis and source of its own problems, the feasibility and workability of reforms, and the sequence and speed of implementation. However, the following points illustrate lessons learned by the countries that had relative success in implementing adjustment programs:

a. **Long-term commitment to the reform process.** The success of adjustment programs depends to a large extent on the commitment of a wide range of policymakers and decision-makers to the reform process. The programs should be owned by the government itself and not perceived to be imposed by outsiders. Adjustment programs usually involve up-front costs to many groups in society and the benefits usually take time to emerge. This can complicate the task of securing a domestic constituency. But to be effective, reforms must be followed through and sustained despite the short-term transitional costs they impose upon some vocal segments of the society. Reversing or switching gears in mid-stream reduces the credibility of subsequent adjustment efforts. Implementation takes time and effort.

b. **Adequate funding and coordination.** External funding to support reasonable and sustainable adjustment has to be sufficient. Adequate financing can give a country the time and resources needed to make orderly adjustments, so long as it does not lead to the indefinite postponement of necessary reforms. Not only should financing be adequate but there should be coordination among various donors and creditors. Financing and sustainability are mutually reinforcing.

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c. **Stabilization elements for domestic demand.** Adjustment programs should have stabilization elements designed to bring domestic demand more in line with available resources. Reforms have succeeded in either increasing the efficiency of resource use or increasing domestic savings and hence the resources available to finance investment and growth. Improvement in public sector management (e.g. the quality of development expenditures and management of public enterprises), removal of price distortions that adversely affect productivity (such as low producer prices for farmers), excessive protection for some industrial goods, and progress towards a more open economy (export expansion and import liberalization) are some of the measures that have paid dividends in the form of efficiency improvement in resource use.

Reforms that promote savings involve either the public sector (budgetary and state enterprise savings) or the private sector (financial sector policies).

d. **Rapid supply response.** The speed of the supply response can determine sustainability. A strong export performance helped the continuation of reforms in Turkey. By contrast, policy reversal in Zambia resulted partly from the lags in export growth. The supply response also depends on greater institutionalization of reforms, thereby strengthening their credibility to investors. Also, complementary reforms to reduce internal regulation and market rigidities are sometimes essential for a stronger supply response. In countries with weak institutions and poor infrastructure, support for sectoral reforms is crucial.

e. **Ease of market entry.** The protection of state-owned manufacturing enterprises interferes with liberalization programs. If market exit or entry is difficult, inefficient firms may linger, and new firms may not start up. Regulations that make it costly for firms to restructure or shut down have been a factor in failed liberalization attempts. Price or wage controls are incompatible with trade policy reforms. In the presence of severe labour market controls, firms may have to shed labour or close down in response to import competition even though the workers could have been profitably employed at lower wages, while industries trying to expand may be unable to bid labour away from contracting sectors with high minimum wages.

Despite these elements of success, we should not exaggerate the benefits of adjustment or underestimate its costs. Adjustment is by no means an easy task. Difficult and painful choices have to be made. Tariff reduction may improve the trade regime but also erode the Government revenues if their main source is tariff duties. Successive devaluations may restore the competitiveness of exports but also increase the budgetary deficit if external debt service payments form a large proportion of the Government expenditure. Cuts in the real wages of civil servants may reduce their incentive to implement policies or to restructure institutions that form part of the structural adjustment program. In all cases, the results have not always been an unqualified success. In many of the most indebted countries, investment ratios are lower and budget deficits higher than before adjustment programs were implemented. In addition, nutritional intake among low-income groups has stagnated.

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Conclusion

Despite the harsh and adverse external and exogenous environment, several countries have made some modest progress in developing their economies. The external debt problem is a real constraint and should not be ignored. But at the same time, empirical evidence shows that the debt-burdened countries that have embarked upon the difficult and long process of structural adjustment have done better than those that did not. Even within a country, performance was better under the adjustment phase than in earlier phases of their economic life. The international community has intensified its efforts to provide adequate resources, including debt reduction and debt relief in support of adjustment. But the debtor countries themselves must continue to assume primary responsibility for their own fate by sustaining adjustment programs and economic reforms.

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REQUIREMENTS FOR EFFECTIVE DEBT MANAGEMENT

by Nihal Kappagoda[1]

Effective debt management requires a capacity to monitor and manage a country's debt comprehensively and efficiently. This could be achieved by implementing debt management projects which include the following components[2] :

a) a well-defined legal and institutional framework to monitor the contracting of loans, their utilisation and repayment;

b) the administrative arrangements for the compilation of data required for debt monitoring and management;

c) facilities for the storage, retrieval and analysis of debt data, either by a manual system or computer software;

d) the organisational arrangements for debt management which involves the creation and staffing of a Debt Management Office (DMO) in an appropriate location; and

e) training in aspects of debt management that are relevant to the needs of the borrowing country.

The Legal and Institutional Framework

An appropriate legislative and institutional framework for external borrowing requires separate legislation for borrowing by the government (for its use or on-lending), parastatal and private sectors, and the Central Bank. This legislation has to be backed by regulations and procedures for the approval of each category of borrowing and service payments. Legislation covering the issue of government guarantees (generally by the Ministry of Finance), its criteria and procedures for their approval is also required. Additionally, procedures are necessary for making withdrawal applications for each loan.

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[1] Mr. Kappagoda is a consultant economist residing in Ontario, Canada. Mr. Kappagoda has published various articles on development and finance in his country and abroad.

[2] Though each would need to be tailored to the country's needs.

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There are several agencies of a government that share responsibility for part or whole of the external borrowing process. These would invariably be the Ministry of Finance and the Central Bank, possibly the Ministry of Planning (where the planning function has not been integrated with the Ministry of Finance), and the Treasury or the Accountant-General's office. In some instances, an autonomous body is set up with special responsibility for external debt either by legislation or administrative order. Additionally, agencies responsible for funnelling borrowed funds to projects and programmes would have to be established.

The legal framework for government borrowing is generally set out in a Foreign Loans Act for foreign borrowing and a Domestic Loans Act for domestic borrowing. Subject to the satisfaction of certain conditions, these Acts authorise the Minister of Finance to raise loans on behalf of the government for specific purposes. They may require the Ministry of Finance to seek the views of the Central Bank on the terms and conditions of the loans, obtain the approval of the Cabinet and/or Parliament or equivalent body for the borrowing and table the agreement in Parliament after signature (in some countries the agreement itself has to be approved by Parliament). It may also be necessary to ensure that the borrowing will not result in the total outstanding debt, exceeding the amount specified in the Act or in a decision of the Cabinet or relevant policy committee.

Government guarantees on parastatal or private sector borrowings are governed by a Loans Guarantee Act (it may also be of the Foreign and Domestic Loans Acts). Such legislation authorises the Minister of Finance to issue guarantees, in some instances after obtaining the approval of Cabinet and/or Parliament or an equivalent body. In some countries, the Minister is only required to report the guarantees issued on a periodic basis, whereas, in others a copy of the agreement subject to the guarantee has to be tabled in Parliament within a specified period after signature. The Ministry of Finance also has to ensure that ceilings, annual or cumulative, which are imposed in the issue of guarantees are complied with. In determining the issue of guarantees, the intended use of the loans as well as the cash flow analysis showing repayment ability are important and need to be regarded. Thus procedures and criteria have to be set out by the Ministry of Finance for the approval of government guarantees.

There are other borrowings of parastatals which do not require government guarantees. These could be governed by a Parastatal Loans Act which may require the approval of the Minister of Finance following that of the parastatal board and the supervising ministry. Even in cases where there is no overall Act governing all parastatal borrowings, individual Acts set-ting up the parastatals would in all probability set out similar procedures. If such provisions do not exist, action has to be taken to introduce procedures for monitoring these borrowings. Experience has shown that un-controlled borrowings by parastatals have led countries without such procedures to debt service difficulties.

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The legal requirements governing private sector borrowing are normally set out in the Central Bank and Exchange Control Acts and regulations framed under them. Often, any private (and parastatal) borrower is required to obtain the approval of the Controller of Exchange before contracting a loan and thereafter for making service payments. Where such requirements do not exist due to liberalised foreign exchange regimes, it would be necessary to introduce a system for registering these borrowings with an exchange control department for purposes of monitoring their build up.

A legal framework described in the preceding paragraphs exists in most countries, though all the provisions may not be complied with. They illustrate the predominance of the Ministry of Finance and the Central Bank in monitoring the contracting of loans, giving them a major role in loan operations and consequently in debt management.

In most countries the Treasury, the Office of the Accountant-General or an equivalent office has responsibility for initiating action on government expenditures, including debt service payments and the accounting thereof as well as loan receipts. In some instances, they have a statutory responsibility for reporting on government guaranteed debt to Parliament or its equivalent. Where the planning function has not been integrated within the Ministry of Finance, the Ministry of Planning has to evaluate projects and programmes while approving their inclusion in the capital budget of the country. Thereafter, the Ministries of Finance and Planning, jointly or individually, will take action to seek external funding for these activities. A country's legislation covering its borrowing, issue of guarantees, and the regulations giving effect to this legislation provides the basis for establishing the institutional and administrative arrangements between the various agencies of government responsible for loan operations for regulating and monitoring their contracting, utilisation and repayment.

Data Requirements and Collection Procedures

The loan database should include all medium and long-term borrowings by the government, the parastatal and private sectors (whether guaranteed by the government or not), and the Central Bank. It should also include short-term trade and bank lines of credit (with maturities of up to one year) for each category of borrower. The information that should be collected in the data files on each loan is very detailed and could be broken down into three broad categories, viz. basic loan details, withdrawal applications and disbursements, as well as debt service payments. In addition, information on exchange and interest rates applicable to the country's loan portfolio should be collected.

Basic loan details, generally available from agreements, would include the creditor, country, and different categories, viz. bilateral, multilateral, commercial bank, supplier or other. The recipient should be classified to indicate whether the funds are for the government, parastatal or private sector; show the guarantee status of the loan; the amount and currency of the loan and the disbursement agency, if different from the creditor. Among other basic information that should be collected are the dates of the agreement, commencement of accrual of commitment fees, effectiveness and termination of disbursement; purpose for which funds have been borrowed; implementing agencies; compliance with the conditions preceding loan effectiveness; economic sector(s) to which funds are to be applied; procedures for disbursement;

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whether funds are to be on-lent or not; and a breakdown of the sub-projects and activities which will be financed by the loan. Thus, the agency implementing the debt management project should have ready access to all loan agreements.

Disbursement information, both forecast and actual, is required and should be available with the implementing agencies and creditors. The data on actual disbursements should include the date, amount and currency of disbursement, and the exchange rate to the local currency. Information is also required on the method of disbursement, whether by direct payment to suppliers, a reimbursement basis, or other means such as advances as well as on withdrawal applications to monitor the utilisation of loans effectively.

Data on actual disbursements is usually the most difficult information to capture. Disbursement advice is sent by creditors for each withdrawal or at periodic intervals, covering disbursements on a single or on several loans. These statements are normally the best source of information. In some instances difficulties arise when the creditor does not identify the disbursements on different loans separately. If disbursements are made on a reimbursement basis, the Central Bank could capture the information at the time of the inward remittance. Difficulties may arise when the Bank is unable to identify loan disbursements on different loans separately or when the date of disbursement by the creditor -which is the date from which charges such as interest begins to accrue- differs from that of the inward remittance.

Where disbursements do not lead to the inflow of foreign exchange but to a physical import, folio-wing direct payment to the supplier by the creditor, disbursement advice is the main source of information. These are not readily available and need to be followed up both with the implementing agency and creditor. Thus, when setting up procedures for collecting disbursement information, the cooperation of both creditors and implementing agencies is necessary.

An indirect benefit from a debt management project would be the ability to monitor loan utilisation with a view to minimising project delays and reducing commitment charges. This is particularly important where the bulk of the loan disbursements takes place on a reimbursement basis. The lack of effective follow up could result in large amounts of the country's foreign exchange reserves being tied up on reimbursement claims.

In addition to covers of principal repayments, interest and commitment fees, service and other financing charges, information on debt service payments, both forecast and actual is required. Payment forecasts can be made initially, based on the information available in loan agreements. Subsequent modifications to it, resulting from delays in the disbursements or a rescheduling of any repayments of principal and interest need to be estimated. In the case of rescheduling, information on arrears, penalties and details of the rescheduled repayment programme is required. Payment data can most often be obtained from the Treasury or Accountant-General for government borrowing, directly from parastatals in respect of their borrowing, and from commercial banks for private sector borrowing through the Exchange Control Department. The Central Bank is thus an important source for all data on debt service payments. As in the case of disbursements, the information required is the date, the amount and currency of payment, and the rate of exchange to the local currency.

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In addition to these three categories of information on each loan, data common to all agreements needs to be collected, for example, data on actual exchange and variable interest rates that are applicable to the country's loan portfolio. Accordingly, the collection involves the compilation of exchange rate files with information collected on a daily or other basis for each loan currency vis-à-vis the local currency and possibly a base currency which is generally that in which the bulk of the country's loans are designated. This could easily be obtained from the Central Bank. Similar data is required for each relevant variable interest rate and will be available only from creditor statements.

The collection of this detailed information on existing debt requires that appropriate arrangements be set up for effective coordination between the different agencies involved in loan operations. These arrangements are necessary to collect the loan inventory and insure that the database is updated periodically and information regarding new commitments, transactions and revised disbursement forecasts is reported when they arise.

One final category of external obligations that needs to be recorded is short-term trade and bank lines of credit with a maturity of one year or less. Often these financing arrangements assume great importance in paying for imports and their continuing roll over (with the accompanying costs) is taken for granted. These facilities are the first to be withdrawn at the onset of payment difficulties, resulting in a large fall in imports. Accordingly, their use needs to be closely monitored. Their short-term nature makes this a very difficult task. By the time the data is collected, the existing credits have often been replaced by new ones. In view of this the DMO should only collect from commercial banks and not attempt to collect information on individual credits.

Data Storage, Retrieval and Analysis

Once arrangements have been made for the collection of data, a debt manager should organise its storage for subsequent retrieval and analysis. This can be done in a set of files or ledgers, which should contain the basic loan details, including separate terms of repayment, disbursement, and payment data for each loan agreement. This can be aggregated selectively or in total to forecast debt service payments or other debt indicators.

Initially most countries will sort, retrieve and analyze debt data manually. As loan numbers increase and operations become more complex, there will be a desire and need to computerise the data using the latest hardware and software technology to facilitate storage, retrieval and analysis. The decision to computerise should depend on the satisfaction of several preconditions. First, a good manual system for data collection should be in place and fully operational. Second, the computer environment within government and particularly in the agency implementing the debt management project should be such that software maintenance not be dependent on support from abroad on a long-term basis. Third, government accounts should be computerised or in the process of being done. Otherwise a small component of government payments will be processed electronically, while the bulk of them will be processed manually. Fourth, a demand should exist within the government to undertake active debt management, particularly in countries with complex loan portfolios.

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Once a decision is taken to computerise debt data on these guidelines, the software chosen should have several basic features. It should be capable of operating on a microcomputer unless loan numbers require the purchase of a larger machine. It should be easy to run and self-explanatory in its usage. This can be achieved by an interactive system which prompts the user for a response by selecting a set of options from a menu-driven programme. In addition, a user should be able to obtain more information on the options offered by having access to on-line help facilities. With comprehensive and clear documentation on the software, it should be possible for project staff to learn the use of the software easily, without relying on skilled computing staff who are in short supply. Even if computing staff is available, access may be difficult due to maintenance responsibilities for the entire agency. Further, software maintenance problems should be minimal with clear instructions available on corrective action to be taken in the event of a breakdown. A final consideration is that the computing language used should have wide usage in the country. If the software is based on an underlying database management system or spread sheet package, it too should be widely used. This will increase the possibility of interaction with other computer users and improve the chances of software support being available locally.

Organisational Arrangements

The implementation of a debt management project requires the early identification of an agency substantially involved in loan operations where the Debt Management Office could be located. The choice would be from amongst the Ministry of Finance, the Planning Commission or Ministry of Planning, the Treasury or Accountant-General's Office, and the Central Bank. There could be instances where the DMO is set up as a statutory body with its mandate embodied in legislation or an administrative order. Whatever legal form this unit may take, it would be necessary to draw up detailed terms of reference and have them endorsed by the political authority in the country. Thereafter it should be widely circulated within government, the parastatal and private sectors, and all creditor agencies so that all requests for information on external borrowing comply with the terms of the mandate assigned to it by the government.

A Debt Policy Committee has to be set up to formulate an annual borrowing plan and strategy. It should establish procedures to ensure that the borrowing limits or ceilings established on total debt outstanding, annual borrowing levels, the debt service ratio (DSR) and other debt indicators can be monitored. Further, a Working Group consisting of representatives from each of the agencies mentioned in the preceding paragraph should be set up to oversee the implementation of the project and arrange for data collection. It may be useful to include a few of the larger borrowers in the parastatal sector in this Group.

The staff of the DMO should have experience in loan operations and accounts; computing skills with experience in the use of microcomputers, database management systems and spreadsheet packages; familiarity with markets and a knowledge of loan instruments used to access them; and a capability to undertake debt analysis, evaluate loan portfolios, and identify opportunities for improving the debt profile of the country. In a number of instances it may be necessary to obtain the assistance of

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external advisers, both short and long-term (the need and timing of such inputs would depend on each country situation).

Knowledge and familiarity with loan operations is necessary to interpret loan agreements and extract basic loan details. Knowledge of loan accounts will also facilitate the compilation of loan transactions. Computing skills will assist in mastering the use of the computer software and the basic tasks of database maintenance. Finally, economic and financial knowledge is necessary to undertake debt policy analysis and engage in active debt management. Whilst four types of skills have been identified, the composition of a project team would vary in each country depending on the complexity of its loan portfolio and loan numbers, availability of the required skills, the debt service situation, the priority assigned to debt management by the government and whether or not it wishes to computerise its debt data.

Training - Training is a major component in debt management projects, imparted at various stages of the project cycle. The first step is to train staff to complete computer coded data entry sheets with information on basic loan details, the repayment terms, and disbursement and payment data. This is done by interpreting loan agreements and extracting transactions data from loan files, ledgers and creditor statements. Further, it would involve the staff of the DMO and other agencies who will be submitting information directly to the DMO on data entry sheets. The next stage of the training would be for the staff who will be using the software. It would cover the use of the microcomputer and its operating system; the input of data into software, the use of its routines and the generation of reports; and various aspects of database maintenance. This would normally take 4-5 weeks. The next training would take place at the time of installation of the software and hardware. It would cover the installation procedures for the software and basic housekeeping functions required to maintain the database and the software. The software installation should take place as soon as possible after the training in the use of the software or immediately preceding it.

Once the database has been completed and the staff of the DMO is using the software to produce standard reports, the next phase of the training will take place. This will be on database management system used for the development of the software and formatting country specific external debt reports using its report writing facility in it. Thereafter the training will cover the use of the management tools in the software and the query language in the database management system to analyze the external debt of the country and evaluate its loan portfolio. Following this, the staff of the DMO will be trained in the use of the software for debt restructuring, including refinancing, rescheduling and debt reduction. Finally, it would be necessary to familiarise staff with the preparations for debt renegotiations with the Paris and London Clubs and their procedures. Depending on the country's loan portfolio, additional training may be required to expose project staff to the major financial markets and the loan instruments used to access them. As stated earlier, training is an activity that straddles every phase of the project. The numbers trained, the location, period and the content of the training has to be tailored to the needs and staff availability in each country.

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LEGAL ASPECTS OF EXTERNAL DEBT MANAGEMENT

by Rolf Knieper[1]

In developing countries, lawyers play only a marginal role in development financing and debt management. Appraisal and implementation of projects and programmes have been firmly in the hands of financial analysts, economists and political actors. Developing countries have rarely taken legal expertise seriously, allowing contractors and other non-lawyers to prepare and negotiate legal documents such as loan agreements.

During the seventies there was widespread optimism as to the possibility that the "Third World" would catch up after a massive transfer of funds and technology. At the time, little attention was paid to the fact that loan agreements and contracts stipulated that technology was not just transferred, but sold and that development capital was available not so much as grants, but in the form of loans. The concept of developmental aid to sovereign nations seemed to work successfully during the first so-called development decade (1960 to 1970). Much of this aid took the form of loans which contained concessional terms such as grace periods and long reimbursement periods of capital, extending up to fifty years.

Today the period of grace is over and many developing countries have found themselves in default on their loans. These defaults engendered the debt crisis, which is still very real even though most transnational banks have recovered from its initial impact. In many countries the debt service has drained national budgets to such an extent that insufficient means remain for domestic programmes relating to education, health and infrastructure. Often, such programmes exist only because of complementary funding provided by foreign aid agencies.

Professor Rolf Knieper - Prior to and after being a Legal Adviser to the Government of the Central African Republic from 1981 to 1988, and to the Government of Chad from 1978 to 1979, Professor Knieper has taught Civil and Economic Law at the University of Bremen since 1972. Professor Knieper also was a visiting scholar at Harvard Law School in 1971 to 1972. Born in 1941, Professor Knieper obtained a doctorate from the University of Frankfurt in 1966. Besides writing a book on the Limits of National Sovereignty and Development, Professor Knieper has contributed extensively to literature in his field and has made a major contribution to the adoption of a new Investment and a new Forestry Code by the National Assembly of the Central African Republic in 1988 and 1989.

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In addition to the lending conducted by private commercial entities, lending by non-commercial international agencies has also contributed to the debt crisis. At the same time, it has been mostly sovereign borrowers who have borne the cost of unsuccessful projects, even though lenders may have contributed to the failure. This means that the former have had to reimburse loans contracted in connection with such projects irrespective of their viability. Furthermore, the sovereign borrowers are not granted compensation for any damage and loss.

In 1989 the World Bank published a report entitled: "Sub-Saharan Africa: From Crisis to Sustainable Growth". It stated that a 1987 evaluation had revealed that half the rural development projects in Africa financed by the World Bank had been failures[2]. The report further stated that "African governments and foreign financiers (commercial banks and export credit agencies as well as donor agencies) must share responsibility. Foreign financiers and suppliers promoted capital exports with attractive credits, and poor coordination among donors caused duplication and waste"[3]. It added that "foreign aid has greatly expanded the opportunities for malfeasance exacerbated by the venality of many foreign contractors and suppliers"[4]. Until now, these findings have not led the parties concerned to rectify this state of affairs through legal means. At present however, legal remedies exist and can be applied.

Could the lack of interest in these remedies be traced to the reluctance among newly independent states to have their agreements, treaties and contracts governed by general, international principles of commercial law? Legal scholars from the developing world have indeed denounced the "Myth of International Contract Law"[5] which was created in the wake of the independence move in order to counteract situations which it was feared, would arise "in connection with certain underdeveloped States of the Middle East and Africa"[6]. Times have evolved since then. The massive ratification of the "Convention of Settlement of Investment Disputes between States and Nationals of other States" of the International Centre for the Settlement of Investment Disputes (ICSID) demonstrates that the initial mistrust of international contract law gave way to acceptance. This convention requires States to "recognize an award ... as binding and enforce the pecuniary obligations" (Art. 54). There has also been a growing acceptance of international commercial arbitration which bases its awards on a chosen law and common principles of private and commercial law[7]. Therefore, it seems that States accept in principle the application of private law to their contracts and acts, as long as they are not of governmental or

[2] See p. 27.
[3] See p. 27.
[4] See p. 61.
[5] M. Sornarajah, The Myth of International Contract Law; Journal of World Trade Law, 1981, pp. 187 ss.
[6] F.A. Mann, The Proper Law of Contract Concluded by International Persons; British Yearbook of International Law 1959 (vol. XXXV), pp. 34 Ss
[7] Craig Park-Paulsson; International Chamber of Commerce Arbitration, 2nd edition, 1990.

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political nature. This is a long step away from the strict concept of sovereignty. Since this step was taken with hesitation and perhaps against profound convictions, there might still be a barrier preventing a full grasp of the opportunities which these legal developments offer. In order to become aware of the potential benefits of these developments, it is appropriate to revisit the various steps and phases of a project cycle and to identify critical facts and acts which might lead to a shift in risk allocation, responsibility and liability.

For the purpose of a legal analysis, it is crucial to recall what all parties accept as a prerequisite: Governments in developing countries look for international cooperation because they lack technological, engineering, economic, financial, marketing and other knowledge and skills which the other parties possess. Development banks are approached not necessarily because of more advantageous loan conditions but rather because they are seen as the custodians of expertise on which less knowledgeable governments can rely.

Development agency handbooks normally specify the phases of a project. Once the project idea is approved, pre-feasibility and feasibility studies follow and lead to concrete proposals. Based on these proposals, project and credit agreements are elaborated and negotiated, and enter into force in accordance with procedures established by either party. A legal opinion usually confirms that the procedures have been respected on the borrower's side. After detailed procurement procedures, the contracts of execution of the project are awarded to the most advantageous bidders. The implementation of the project is closely monitored, a completion report is written and an evaluation normally concludes the cycle. There are differences according to specific circumstances; otherwise it is fair to say that the main elements of any project consist primarily of a feasibility appraisal, recommendations, the negotiation of legal documents, the declaration of the effectiveness of these documents and finally the implementation of the project.

The various phases of the projects are logically sound and not restricted to developmental endeavour but fit any capital investment, public or private. As long as all actors play their roles competently and honestly, projects should not fail, except for unforeseen and unforeseeable circumstances which special provisions and insurances may cover.

Yet, to a large extent, the reality does not correspond to the stipulated practice. It is here that the lawyer has a role to play in stating who should bear the costs of deviation and how the legal obligation subscribed by the parties should be enforced. By way of illustration, legal procedures for the protection of public funds, the invalidation of a contract following corrupt practices and the invalidation of a contract due to misrepresentation will be discussed below.

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Protection of public funds

National loan negotiations and approval procedures are enacted in order to protect public funds from being engaged hastily and without the propositions leading to a contract being checked and counter-checked. It is of crucial importance for all borrowing countries to enact legal procedures which effectively provide such protection. If a loan agreement does not comply with these procedures, the contract is not valid and the proceeds of the credit, if it is disbursed, cannot be recovered as a contractual obligation, but only as unjust enrichment under certain circumstances. Such a claim presupposes that an enrichment can in fact be identified.

The same consequences would follow if a contracting party had used undue pressure or influence or had fraudulently caused and maintained an error which had motivated the government to enter into the agreement.

Invalidation for corruption

A general principle of private law found in most national legal systems is that a contract entered into after the representative of a juridical person - public or private - has been corrupted by the other party does not bind the juridical person. No contractual claim emerges from such an act of collusion and the represented party may seek remedy for damage incurred.

Invalidation for misrepresentation

There exists a clear and general tendency in private and commercial law in countries of both common and civil law traditions to limit the principle of *caveat emptor* in complex business transactions. Contractual liabilities, including compensation for damage in cases of misrepresentation, be it fraudulent or negligent, may be asserted, especially if one party has more knowledge and skills and the other party evidently relied on this higher degree of professional competence when it accepted the project and contract. It is common knowledge that the success of a project depends to a large extent on detailed information, qualified professional statements, and valid forecasts (which are conditioned by a *ceteris paribus* clause). It is for this reason that so much time and money is spent on feasibility studies. Governments are entitled to rely on that competence. If incorrect information is given due to oversight, ignorance or carelessness, or assurances are given where risks should be pointed out, or worse, if studies are biased in order to sell unsuited equipment, why should the resulting loss be borne by the government which does not possess and is known not to possess the requisite professional knowledge and not by the partners in whom the government placed its trust[8]?

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[8] For an example where an African government successfully tried a case - even if it -was later partly reconsidered, cf. La Sentence arbitrale Cameroun c/Klöckner, Revue de l'Arbitrage, 1984, pp. 19 ss.

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Anyone with experience in public investment in a developing country will easily recall cases which fit one of the situations above. Those in charge of debt management in their respective countries are confronted with the difficult task of complementing the macro-financial compilation of outstanding debt by a micro-legal analysis of loan documents in order to determine whether valid claims can be based on the latter. In cases where there is serious doubt, the decision of the tribunals which have jurisdiction over the matter should be sought. Such procedures will certainly not solve the problem of overindebtedness but will undoubtedly alleviate the burden. At the same time - and this might be an even more important point, parties to contracts with developing countries would be warned that lack of professionalism will lead to a loss of funds as it is normal in any commercial relation. Partners in development should definitely not operate on a standard lower than this one.

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About UNITAR

UNITAR is an autonomous body within the United Nations which was established in 1965 to enhance the effectiveness of the UN through appropriate training and research. UNITAR's programmes in the legal aspects of debt, financial management and negotiation are among a wide range of training activities in the field of social and economic development and international affairs carried out, generally, at the request of governments, multilateral organizations, and development cooperation agencies. UNITAR also carries out results-oriented research, in particular research on and for training, and develops pedagogical materials including distance learning training packages.

UNITAR's **Training and Capacity Building Programmes in the Legal Aspects of Debt, Financial Management and Negotiation** are conducted for the benefit of over 35 partner countries mainly from sub-Saharan Africa and Vietnam. These programmes aim at meeting the priority training needs of senior and middle-level government officials through a wide range of seminars, workshops, and training of trainers workshops. In parallel to training activities, the programme also assists in strengthening local capacities of governmental and academic institutions through distance learning training packages, up-to-date publications as well as networking activities.

During 2001, the programme will focus on :

- Training government officials through short-duration regional seminars and workshops on various aspects of debt, financial management and negotiation;
- Developing On-line Training Courses (in parallel with its traditional regional training) with a view to tapping a wider audience and reducing cost of training per participant;
- Strengthening existing ties with regional training centres and offering joint courses with partners in the field;
- Creating awareness among senior government officials of the importance of the legal aspects in the borrowing process and of putting together a multidisciplinary team for loan management and public administration;
- Providing in-depth training and skills development for accountants, economists, financial experts and lawyers coming from government ministries and departments involved in negotiation, financial management and public administration; and
- Developing and disseminating training packages and 'best practice' materials directly related to the practicalities of legal aspects of debt and financial management, with a view to strengthening existing human resources and institutional capacities at the national level.

A description of UNITAR's latest activities and training programmes in the area of debt and financial management is available on its website at: www.unitar.org/dfm.

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