10. Exhibit OOO-1 Part 10_pages 1059-1305

4 December 2015

The Accountant General
National Treasury
P O BOX 30007-00100
NAIROBI

Dear Sir,

SOVEREIGN BOND PROCEEDS ACCOUNT NO. 603149985 (JPMORGAN CHASE NEW YORK) AND SOVEREIGN BOND TAP PROCEEDS ACCOUNT NO. 36341018 (CITIBANK NEW YORK) STATEMENTS

We refer to the various correspondences between the National Treasury and the Central Bank of Kenya on the subject matter.

The Central Bank of Kenya wrote to JP Morgan Chase New York and Citibank New York requesting for account statements for the two accounts from the date they were opened until they were closed. We are pleased to attach copies of the statements for your records.

Yours faithfully

John K. Birech
Ag. Director
Financial Markets

Moses M. Muthui
Authorized Signatory
Financial Markets

Cc The Principal Secretary
National Treasury
P.O. Box 30007-00100
NAIROBI

J.P.Morgan

JPMorganChase

JPMorgan Chase Bank, N.A.
Northeast Market
P O Box 659754
San Antonio, TX 78265-9754

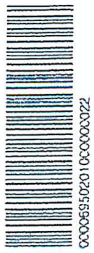
June 16, 2014 through June 30, 2014
Account Number: 000000603149985

CUSTOMER SERVICE INFORMATION

If you have any questions about your statement, please contact your Customer Service Professional.

00000695 DDC 997 921 18214 NNNNNNNNNNN P1 000000000 63 0000

GOK/CBK SOVEREIGN BOND
HAILE SELASSIE AVENUE
PO BOX 60000
NAIROBI 00200
KENYA



Please inform us of your Social Security/Tax ID Number.

JPMorgan Chase Bank
1 Fricker Road, Cnr. Hurlingham Road
Illovo, Johannesburg 2196
South Africa
Private Bag X9936, Sandton 2146, South Africa
Tel: +27 (11) 507 0300 Fax: +27 (11) 507 0748

CHECKING SUMMARY

Commercial Checking With Interest

	INSTANCES	AMOUNT
Beginning Balance		$0.00
Deposits and Additions	4	1,999,074,304.62
Other Withdrawals, Fees & Charges	1	- 21,431.65
Ending Balance	5	$1,999,052,872.97

Annual Percentage Yield Earned This Period	0.20%
Interest Paid This Period	$76,541.62
Interest Paid Year-to-Date	$76,541.62

DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
06/24	Book Transfer Credit B/O: JP Morgan Securities Ltd London United Kingdom Ec40J-P Ref: Isin: US491798Af18/US500Mm 5.875 2019/Isin: US491798Ae43/US1500Mm6.875 2024/Bnf/Dom: Kenyanat: Kenya Trn: 0085700174Fe	$875,041,000.00
06/24	Chips Credit Via: Citibank N.A./0008 B/O: Citigb2L Ref: Nbnf=Gok/Cbk Sovereign Bond Nairobi Kenya 00200-/Ac-000000006031 Org=/8378061 Citigb2L Ogb=Citibank N.A. London United Kingdom Wc2R 1Hb Bbi=/Bnf/Gok Cbk Sovereign Bond Ssn: 0218161 Trn: 5604900175Fc	846,721,763.00
06/24	Chips Credit Via: Citibank N.A./0008 B/O: Citigb2L Ref: Nbnf=Gok/Cbk Sovereign Bond Nairobi Kenya 00200-/Ac-000000006031 Org=/8378061 Citigb2L Ogb=Citibank N.A. London United Kingdom Wc2R 1Hb Bbi=/Bnf/Gok Cbk Sovereign Bond Ssn: 0217825 Trn: 5321100175Fc	277,235,000.00
06/30	Interest Payment	76,541.62
Total Deposits and Additions		$1,999,074,304.62

4/12/2015

J.P.Morgan

JPMorganChase

June 16, 2014 through June 30, 2014
Account Number: 000000603149985

OTHER WITHDRAWALS, FEES & CHARGES

DATE	DESCRIPTION	AMOUNT
06/30	Federal Interest Withheld	$21,431.65
Total Other Withdrawals, Fees & Charges		$21,431.65

Your service charges, fees and earnings credit have been calculated through account analysis.

DAILY ENDING BALANCE

DATE	AMOUNT
06/24	$1,998,997,763.00
06/30	1,999,052,872.97

INTEREST RATE ON COLLECTED BALANCE

INTEREST RATE(S)

06/16 TO 06/30 AT 0.20%

JPMorganChase

J.P.Morgan

June 16, 2014 through June 30, 2014
Account Number: 000000603149985

BALANCING YOUR CHECKBOOK

Note: Ensure your checkbook register is up to date with all transactions to date whether they are included on your statement or not.

1. Write in the Ending Balance shown on this statement: Step 1 Balance: $_____

2. List and total all deposits & additions not shown on this statement:

Date	Amount	Date	Amount	Date	Amount

Step 2 Total: $_____

3. Add Step 2 Total to Step 1 Balance. Step 3 Total: $_____

4. List and total all checks, ATM withdrawals, debit card purchases and other withdrawals not shown on this statement.

Check Number or Date	Amount	Check Number or Date	Amount

Step 4 Total: -$_____

5. Subtract Step 4 Total from Step 3 Total. This should match your Checkbook Balance: $_____

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS: Call or write us at the phone number or address on the front of this statement (non-personal accounts contact Customer Service) if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TRANSACTIONS: Contact the bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing no later than 30 days after the statement was made available to you. For more complete details, see the Account Rules and Regulations or other applicable account agreement that governs your account.

EQUAL HOUSING LENDER JPMorgan Chase Bank, N.A. Member FDIC

JPMorganChase

J.P.Morgan

June 16, 2014 through June 30, 2014
Account Number: 000000603149985

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J.P.Morgan

JPMorganChase

JPMorgan Chase Bank, N.A.
Northeast Market
P O Box 659754
San Antonio, TX 78265-9754

July 01, 2014 through July 31, 2014
Account Number: 000000603149985

CUSTOMER SERVICE INFORMATION

If you have any questions about your statement, please contact your Customer Service Professional.

00000713 DDC 997 921 21314 NNNNNNNNNN P1 000000000 63 0000
GOK/CBK SOVEREIGN BOND
HAILE SELASSIE AVENUE
PO BOX 60000
NAIROBI 00200
KENYA

00007139201022000022

Please inform us of your Social Security/Tax ID Number.

JPMorgan Chase Bank
1 Fricker Road, Cnr. Hurlingham Road
Illovo, Johannesburg 2196
South Africa
Private Bag X9936, Sandton 2146, South Africa
Tel: +27 (11) 507 0300 Fax: +27 (11) 507 0747

CHECKING SUMMARY

Commercial Checking

	INSTANCES	AMOUNT
Beginning Balance		$1,999,052,872.97
Deposits and Additions	1	169,415.65
Electronic Withdrawals	2	- 1,000,000,000.00
Other Withdrawals, Fees & Charges	2	- 97,456.15
Ending Balance	5	$999,124,832.47
Interest Paid This Period		$169,415.65
Interest Paid Year-to-Date		$245,957.27

DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
07/30	Interest Payment	$169,415.65
Total Deposits and Additions		$169,415.65

ELECTRONIC WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
07/03	Chips Debit Via: Standard Chartered Bank/0256 A/C: Standard Chartered Bank London Ec2V 5Dd, England Ref: Principal And Interest Due 09-07-2014, Loan No. 001018698 Proj. Syndicated Loan Facilty Ssn: 0292449 Trn: 1992400184Fs	$604,560,737.50
07/03	Fedwire Debit Via: Kenya/021084571 Ref:/Time/10:18 Imad: 0703B1Ogc08C007903 Trn: 3184200184Fs	395,439,262.50
Total Electronic Withdrawals		$1,000,000,000.00

4/12/2015

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July 01, 2014 through July 31, 2014
Account Number: 000000603149985

OTHER WITHDRAWALS, FEES & CHARGES

DATE	DESCRIPTION	AMOUNT
07/15	Account Analysis Settlement Charge	$50,019.77
07/30	Federal Interest Withheld	47,436.38
	Total Other Withdrawals, Fees & Charges	$97,456.15

Your service charges, fees and earnings credit have been calculated through account analysis.

DAILY ENDING BALANCE

DATE	AMOUNT
07/03	$999,052,872.97
07/15	999,002,853.20
07/30	999,124,832.47

JPMorganChase

J.P.Morgan

July 01, 2014 through July 31, 2014
Account Number: 000000603149985

BALANCING YOUR CHECKBOOK

Note: Ensure your checkbook register is up to date with all transactions to date whether they are included on your statement or not.

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Date	Amount	Date	Amount	Date	Amount

Step 2 Total: $_____

3. Add Step 2 Total to Step 1 Balance. Step 3 Total: $_____

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Check Number or Date	Amount	Check Number or Date	Amount

Step 4 Total: -$_____

5. Subtract Step 4 Total from Step 3 Total. This should match your Checkbook Balance: $_____

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EQUAL HOUSING LENDER

JPMorgan Chase Bank, N.A. Member FDIC

JPMorganChase

J.P.Morgan

July 01, 2014 through July 31, 2014
Account Number: 000000603149985

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J.P.Morgan

JPMorganChase

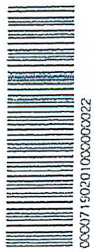
JPMorgan Chase Bank, N A
Northeast Market
P O Box 659754
San Antonio, TX 78265-9754

August 30, 2014 through September 30, 2014
Account Number: 000000603149985

CUSTOMER SERVICE INFORMATION

If you have any questions about your statement, please contact your Customer Service Professional.

00000719 DDC 997 921 27414 NNNNNNNNNN P1 000000000 63 0000
GOK/CBK SOVEREIGN BOND
HAILE SELASSIE AVENUE
PO BOX 60000
NAIROBI 00200
KENYA



Please inform us of your Social Security/Tax ID Number.

JPMorgan Chase Bank
1 Fricker Road, Cnr. Hurlingham Road
Illovo, Johannesburg 2196
South Africa
Private Bag X9936, Sandton 2146, South Africa
Tel: +27 (11) 507 0300 Fax: +27 (11) 507 0748

CHECKING SUMMARY

Commercial Checking

	INSTANCES	AMOUNT
Beginning Balance		$999,018,457.60
Deposits and Additions	1	999,018,457.60
Electronic Withdrawals	2	- 1,998,036,915.20
Ending Balance	3	$0.00
Interest Paid Year-to-Date		$245,957.27

DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
09/08	Book Transfer Credit B/O: Gok/Cbk Sovereign Bond Nairobi Kenya 00200- Org: Central Bank of Kenya PO Box 6000 Ref:/Acc/Being Transfer of Sovereign Bond/Euro Bond Proceeds Trn: 8577200251Fs	$999,018,457.60
Total Deposits and Additions		$999,018,457.60

ELECTRONIC WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
09/08	Book Transfer Debit A/C: Gok/Cbk Sovereign Bond Nairobi Kenya 00200- Org: Central Bank of Kenya PO Box 6000 Ref:/Acc/Being Transfer of Sovereign Bond/Euro Bond Proceeds Trn: 8577200251Fs	$999,018,457.60
09/10	Fedwire Debit Via: Kenya/021084571 Ref:/Acc/Being Transfer of Sovereign Bond/Euro Bond Proceeds/Time/08:15 Imad: 0910B1Ogc08C001627 Trn: 8618800253Fs	999,018,457.60
Total Electronic Withdrawals		$1,998,036,915.20

Your service charges, fees and earnings credit have been calculated through account analysis.

ac 4/12/2015

J.P.Morgan

JPMorganChase

August 30, 2014 through September 30, 2014
Account Number: 000000603149985

DAILY ENDING BALANCE

DATE	AMOUNT
09/08	$999,018,457.60
09/10	0.00

J.P.Morgan

JPMorganChase

August 30, 2014 through September 30, 2014
Account Number: 000000603149985

BALANCING YOUR CHECKBOOK

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2. List and total all deposits & additions not shown on this statement:

Date	Amount	Date	Amount	Date	Amount

Step 2 Total: $_____

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Check Number or Date	Amount	Check Number or Date	Amount

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EQUAL HOUSING LENDER JPMorgan Chase Bank, N.A. Member FDIC

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J.P.Morgan

JPMorganChase

JPMorgan Chase Bank, N.A.
Northeast Market
P O Box 659754
San Antonio, TX 78265-9754

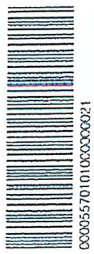
August 01, 2014 through August 29, 2014
Account Number: 000000603149985

CUSTOMER SERVICE INFORMATION

If you have any questions about your statement, please contact your Customer Service Professional.

00000557 DDC 997 921 24214 NNNNNNNNNNN P1 000000000 63 0000

GOK/CBK SOVEREIGN BOND
HAILE SELASSIE AVENUE
PO BOX 60000
NAIROBI 00200
KENYA



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JPMorgan Chase Bank
1 Fricker Road, Cnr. Hurlingham Road
Illovo, Johannesburg 2196
South Africa
Private Bag X9936, Sandton 2146, South Africa
Tel: +27 (11) 507 0300 Fax: +27 (11) 507 0747

CHECKING SUMMARY

Commercial Checking

	INSTANCES	AMOUNT
Beginning Balance		$999,124,832.47
Other Withdrawals, Fees & Charges	1	- 106,374.87
Ending Balance	1	$999,018,457.60
Interest Paid Year-to-Date		$245,957.27

OTHER WITHDRAWALS, FEES & CHARGES

DATE	DESCRIPTION	AMOUNT
08/15	Account Analysis Settlement Charge	$106,374.87
Total Other Withdrawals, Fees & Charges		$106,374.87

Your service charges, fees and earnings credit have been calculated through account analysis.

DAILY ENDING BALANCE

DATE	AMOUNT
08/15	$999,018,457.60

4/12/205

JPMorganChase

J.P.Morgan

August 01, 2014 through August 29, 2014
Account Number: 000000603149985

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EQUAL HOUSING LENDER

JPMorgan Chase Bank, N.A. Member FDIC

citi

CITIBANK, N.A.
CUSTOMER SERVICE DEPT
1 PENNS WAY
NEW CASTLE DE 19720

(PRIMARY) CENTRAL BANK OF KENYA
HAILE SELASSIE AVENUE
NAIROBI/KENYA
60000 - 00200

(RECONCILEMENT) NONE

CYCLE STATEMENT FOR ACCOUNT 3 6 3 4 - 1 0 1 8 554
3 6 3 4 - 1 0 1 8 554

NAME: CBK/GOK SOVEREIGN BOND TAP PRO

RULE-OFF PERIOD: MONTHLY

PERIOD FROM: 12/01/14 TO 12/31/14

CUSTOMER CONTACT: GERALD NYAOMA -DIRECTOR

TELEPHONE: NO TELEPHONE

FOR INQUIRIES CONCERNING YOUR ACCOUNT
CONTACT: DEPROD

SPECIAL INSTRUCTIONS:

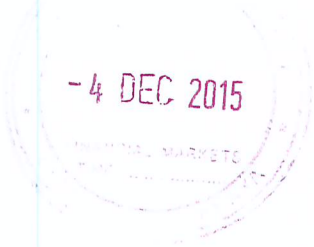
NONE
ROUTING INSTRUCTIONS:
DO NOT MAIL PPR 11/26/14

REPORTS:
SUMMARY BY TRANSACTION
PAID CHECKS
BACKVALUE DETAIL REPORT
INTEREST STATEMENT SUMMARY

OUTPUTS:
NONE

COPIES: 01

(SECONDARY) NONE



REPORT DATE 01/02/15 ACCOUNT 3634-1018 RULE OFF FROM 12/01/14 TO 12/31/14 RUN DATE 01/01/15 TIME 01:14

ACCOUNT NAME - CBK/GOK SOVEREIGN BOND TAP PRO STATEMENT PAGE 1

OPENING LEDGER BALANCE 0.00

OPENING AVAILABLE BALANCE 0.00

DATE	REFERENCE # / BATCH TRACK	TRANSACTION DESCRIPTION	DEBITS	CREDITS	LEDGER BALANCE
12/03/14	21433700003 650000007262	SAME DAY CR TRANSFER OUR REF NUM: S0643370F89101 DETAILS: NONE PROVIDED OTHER REF: 3406423885 ORDER PARTY: 0008378061 DEBIT PARTY: 10990765 CITIBANK N.A. LONDON		382,551,426.00	382,551,426.00
12/03/14	21433700004 650020141262	SAME DAY CR TRANSFER OUR REF NUM: F014337011DF01 DETAILS: THE REPUBLIC OF KENYA U.S. $250,000,000 5.875% NOTES DUE 2019 US491798AF18 ; U.S. $500,000,000 6.875% NOTES DUE 2024 US491798AE4 DOM: KENYANAT: KENYA YOUR REF: FAX OF 14/12/02 OTHER REF: 1148100336FE ORDER PARTY: 060015498 JP MORGAN SECURITIES LTD LONDON UNITED KINGDOM EC4OJ-P DEBIT PARTY: 021000021 JPMORGAN CHASE BANK		238,483,308.00	621,034,734.00
12/03/14	21433700002 650000007262	SAME DAY CR TRANSFER OUR REF NUM: S0643370F7F001 DETAILS: NONE PROVIDED OTHER REF: 3406423884 ORDER PARTY: 0008378061 DEBIT PARTY: 10990765 CITIBANK N.A. LONDON		194,402,198.00	815,436,932.00
12/18/14	31435200005 650067608262	SAME DAY DR TRANSFER OUR REF NUM: S06435115ECA01 DETAILS: TRANSFER OF GOK/CBK SOVEREIGNBOND TAP PROCEEDS YOUR REF: FT14351HMTVD OTHER REF: FT14351HMTVD BENEFICIARY: CBKEKENX ORDER PARTY: CBKEKENXXXX CENTRAL BANK OF KENYA NAIROBI, KENYA CREDIT PARTY: 021084571 CENTRAL BK OF KENYA	815,436,932.00		0.00

REPORT DATE 01/02/15 ACCOUNT 3634-1018 RULE OFF FROM 12/01/14 TO 12/31/14 RUN DATE 01/01/15 TIME 01:14

STATEMENT

ACCOUNT NAME - CBK/GOK SOVEREIGN BOND TAP PRO PAGE 2

TOTALS	ITEMS	DEBITS	CREDITS	BALANCE
DEBITS	1	815,436,932.00		
CREDITS	3		815,436,932.00	
CLOSING LEDGER AS OF 12/31/14				0.00
CLOSING AVAILABLE AS OF 12/31/14				0.00

REPORT DATE 01/02/15 ACCOUNT 3634-1018 RULE OFF FROM 12/01/14 TO 12/31/14 RUN DATE 01/01/15 TIME 01:14

CHECK LIST PAGE 1

NO DATA PRODUCED FOR THIS REPORT AT THIS TIME

REPORT DATE 01/02/15 ACCOUNT 3634-1018 RULE OFF FROM 12/01/14 TO 12/31/14 RUN DATE 01/01/15 TIME 01:14

ACCOUNT NAME - CBK/GOK SOVEREIGN BOND TAP PRO BACKVALUE DETAIL REPORT PAGE 1

NO DATA PRODUCED FOR THIS REPORT AT THIS TIME

REPORT DATE 01/02/15 ACCOUNT 3634-1018 RULE OFF FROM 12/01/14 TO 12/31/14 RUN DATE 01/01/15 TIME 01:14

INTEREST STATEMENT SUMMARY

ACCOUNT NAME - CBK/GOK SOVEREIGN BOND TAP PRO PAGE 1

DATE	AGGR/INVESTED AVAIL BALANCE	BACKVALUE ADJUSTMENTS	ADJUSTED BALANCE	SWEEP INTEREST	OVERDRAFT INTEREST	WAIVE INDICATOR	RATE
12/01/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/02/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/03/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/04/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/05/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/06/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/07/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/08/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/09/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/10/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/11/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/12/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/13/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/14/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/15/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/16/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/17/14	815,436,932.00	0.00	815,436,932.00	N/A	0.00		0.0000
12/18/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/19/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/20/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/21/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/22/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/23/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/24/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/25/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/26/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/27/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/28/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/29/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/30/14	0.00	0.00	0.00	N/A	0.00		0.0000
12/31/14	0.00	0.00	0.00	N/A	0.00		0.0000
TOTAL				$0.00 A	$0.00 A		

RATE USED: PRIME NET INTEREST $0.00

file

BANKI KUU YA KENYA
CENTRAL BANK OF KENYA
Haile Selassie Avenue
P. O. Box 60000 - 00200 Nairobi, Kenya
Telephone: 2860000, Fax: 340192

29th October 2015

CBK/BD/KRA/CERT-PMG/BAL/15/16

The Principal Secretary
The National Treasury
P.O. Box 30007-00100
NAIROBI

Dear Sir,

CERTIFICATE OF BALANCE

We refer to your letter dated 28th October 2015 on the above subject.

We hereby certify that **Sovereign Bond Proceeds Account** had a **Nil Balance** as at 26th October 2015 as indicated below:-

ACCOUNT NO.	ACCOUNT TITLE	KES.
1000212764	Sovereign Bond Proceeds Account	0.00

Please also find attached certified copies of the account statement as requested.

Yours faithfully,

L. K. KIPSANAI
MANAGER
BANKING SERVICES

S. LANGAT (MRS)
MANAGER
BANKING SERVICES

Cc: Director General Accounting Services
The National Treasury

Run Date: 29/10/2015 Run Time: 15:07:37

CENTRAL BANK OF KENYA
BANKI KUU YA KENYA
P.O.BOX 60000-0200
NAIROBI

STATEMENT OF ACCOUNT

PAGE NO : 1

ACCOUNT NUMBER : 1000212764

ACCOUNT TITLE : PROCEEDS FROM THE SOVEREIGN BOND-KES

STATEMENT PERIOD: From 01/06/2014 To 26/10/2015

OPENING BALANCE : 0.00

NO.	Value Date	Refernce.No	Details	Debit	Credit	Balance
1	08/09/2014	FT14251WN8J6	Transfer PA 105526 :	0.00	88,463,084,420.45	88,463,084,420.45
2	08/09/2014	FT14251WN8J6	:PS-THE NATIONAL TREASURY SOVEREIGN BOND PROCEEDS Transfer PA 105526 :	88,463,084,420.45	0.00	0.00
3	08/09/2014	FT14251FYPFP	:PS-THE NATIONAL TREASURY SOVEREIGN BOND PROCEEDS Transfer PA 105526 :	0.00	88,463,084,420.45	88,463,084,420.45
4	15/09/2014	FT14258TKPPJ	:PS-THE NATIONAL TREASURY SOVEREIGN BOND PROCEEDS Transfer : :	25,000,000,000.00	0.00	63,463,084,420.45
5	19/09/2014	FT14262DHVHF	TREASURY LETTER REF:AG/CONF/17/01/1 Vol.1/25 DD 15092014 Transfer : :	25,000,000,000.00	0.00	38,463,084,420.45
6	30/10/2014	FT1430308K3N	TRANSFER OF SPECIAL BOND PROCEEDS V IDE LETTER REF:AG/CONF./17/01/1 VOL. 1/22 DD 19.09.2014 Transfer : :	15,000,000,000.00	0.00	23,463,084,420.45
			TRANSFER OF SPECIAL BOND PROCEEDS VIDE LETTER REF:AG/CONF./17/01/1 VOL.1/25 DD 28.10.2014			

Certified true Copy of the Original
Central Bank of Kenya, Nairobi
Banking Division
Authorized Signatory

7	17/12/2014	FT143513F06N	Transfer Central Bank of Kenya: :	0.00	73,805,196,715.30	97,268,281,135.75
8	21/01/2015	FT15021XP5RY	Transfer : :	25,000,000,000.00	0.00	72,268,281,135.75
9	17/03/2015	FT150765J77Z	Transfer : :	25,000,000,000.00	0.00	47,268,281,135.75
10	02/06/2015	FT15153WV98K	TRANSFER OF SPECIAL BOND PROCEEDS VIDE LETTER REF:AG/CONF/17/01/1VOL1 /50 DD 16032015 Transfer : :	30,000,000,000.00	0.00	17,268,281,135.75
11	01/07/2015	FT15182WBGRD	TRANSFER OF SPECIAL BOND LETTER REF:AG/CONF./17/01/1VOL.1/58 DD 02062015 Transfer : :	17,268,281,135.75	0.00	0.00
			NT TRANSFER LETTER REF:AG/CONF.17/ /1/1VOL.1/(59) DD 30062015			

Certified true Copy of the Original
Central Bank of Kenya, Nairobi
Banking Division
.....Authorized Signatory

CLOSING BALANCE : 0.00

Kenya: Transactions with the Fund from May 01, 1984 to January 31, 2024

Download this file

TSV -- TSV tips

(in SDRs)

Year	General Resources Account			Poverty Reduction and Growth Trust 1/2/			Resilience and SustainablityTrust			Total		
	Purchases		Charges and Interest Paid	Loans		Interest Paid	Loans		Interest Paid	Purchases and Loans		Charges and Interest Paid
	Disbursements	Repurchases		Disbursements	Repayments		Disbursements	Repayments		Disbursements	Repayments	
2024	360,410,000	0	0	108,830,000	0	0	45,233,300	0	0	514,473,300	0	0
2023	229,060,000	0	37,143,996	77,620,000	21,576,300	0	0	0	0	306,680,000	21,576,300	37,143,996
2022	276,830,000	0	9,277,559	238,840,000	50,344,700	0	0	0	0	515,670,000	50,344,700	9,277,559
2021	474,950,000	0	1,583,736	211,690,000	91,190,400	0	0	0	0	686,640,000	91,190,400	1,583,736

2020	0	0	0	542,800,000	97,704,000	0	0	0	0	542,800,000	97,704,000	0
2019	0	0	0	0	111,274,000	0	0	0	0	0	111,274,000	0
2018	0	0	0	0	103,267,700	0	0	0	0	0	103,267,700	0
2017	0	0	0	0	85,749,300	0	0	0	0	0	85,749,300	0
2016	0	0	0	0	48,653,600	0	0	0	0	0	48,653,600	0
2015	0	0	0	0	47,140,000	0	0	0	0	0	47,140,000	0
2014	0	0	0	0	38,570,000	0	0	0	0	0	38,570,000	0
2013	0	0	0	143,842,000	30,000,000	0	0	0	0	143,842,000	30,000,000	0
2012	0	0	0	143,842,000	18,750,000	0	0	0	0	143,842,000	18,750,000	0
2011	0	0	0	200,836,000	15,000,000	0	0	0	0	200,836,000	15,000,000	0
2010	0	0	0	0	16,720,000	31,498	0	0	0	0	16,720,000	31,498
2009	0	0	0	135,700,000	11,720,000	1,172,886	0	0	0	135,700,000	11,720,000	1,172,886
2008	0	0	0	0	6,720,000	840,341	0	0	0	0	6,720,000	840,341
2007	0	0	0	75,000,000	6,720,000	636,752	0	0	0	75,000,000	6,720,000	636,752
2006	0	0	0	0	9,212,500	528,762	0	0	0	0	9,212,500	528,762
2005	0	0	0	50,000,000	4,985,000	560,901	0	0	0	50,000,000	4,985,000	560,901
2004	0	0	0	0	9,508,000	360,569	0	0	0	0	9,508,000	360,569
2003	0	0	0	25,000,000	14,031,000	307,986	0	0	0	25,000,000	14,031,000	307,986
2002	0	0	0	0	14,031,000	369,922	0	0	0	0	14,031,000	369,922
2001	0	0	0	0	18,585,169	448,885	0	0	0	0	18,585,169	448,885
2000	0	0	0	33,600,000	32,162,672	459,990	0	0	0	33,600,000	32,162,672	459,990
1999	0	0	0	0	43,733,004	612,890	0	0	0	0	43,733,004	612,890
1998	0	0	0	0	46,073,330	834,433	0	0	0	0	46,073,330	834,433
1997	0	0	0	0	48,913,330	1,073,123	0	0	0	0	48,913,330	1,073,123

1996	0	0	0	24,925,000	41,866,664	1,258,516	0	0	0	24,925,000	41,866,664	1,258,516
1995	0	0	0	0	25,796,665	1,337,388	0	0	0	0	25,796,665	1,337,388
1994	0	0	8,264	22,615,000	9,703,333	1,311,060	0	0	0	22,615,000	9,703,333	1,319,324
1993	0	41,518,750	1,554,897	22,615,000	2,840,000	1,217,566	0	0	0	22,615,000	44,358,750	2,772,463
1992	0	58,756,250	6,173,488	0	0	1,222,833	0	0	0	0	58,756,250	7,396,321
1991	0	29,093,750	11,497,234	35,233,333	181,238	1,491,682	0	0	0	35,233,333	29,274,988	12,988,916
1990	0	76,244,381	18,309,658	100,466,667	1,459,200	494,712	0	0	0	100,466,667	77,703,581	18,804,370
1989	0	98,041,382	24,040,407	80,466,667	4,752,000	117,472	0	0	0	80,466,667	102,793,382	24,157,879
1988	102,600,000	67,438,817	20,544,844	28,400,000	8,001,352	156,933	0	0	0	131,000,000	75,440,169	20,701,777
1987	0	83,925,611	23,536,487	0	9,090,954	88,533	0	0	0	0	93,016,565	23,625,020
1986	0	89,803,902	33,545,328	0	9,028,554	134,582	0	0	0	0	98,832,456	33,679,910
1985	123,100,000	69,716,337	37,865,975	0	8,202,954	179,658	0	0	0	123,100,000	77,919,291	38,045,633
1984	46,150,000	39,583,232	20,609,122	0	2,603,877	211,680	0	0	0	46,150,000	42,187,109	20,820,802

[1/] Includes loans under the Structural Adjustment Facility and Trust Fund.

[2/] Formerly Poverty Reduction and Growth Facility and Exogenous Shocks Facility Trust.

Kenya: Financial Position in the Fund

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JAM ET AL. *v.* INTERNATIONAL FINANCE CORP.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17–1011. Argued October 31, 2018—Decided February 27, 2019

In 1945, Congress passed the International Organizations Immunities Act (IOIA), which, among other things, grants international organizations the "same immunity from suit . . . as is enjoyed by foreign governments." 22 U. S. C. §288a(b). At that time, foreign governments were entitled to virtually absolute immunity as a matter of international grace and comity. In 1952, the State Department adopted a more restrictive theory of foreign sovereign immunity, which Congress subsequently codified in the Foreign Sovereign Immunities Act (FSIA), 28 U. S. C. §1602. The FSIA gives foreign sovereign governments presumptive immunity from suit, §1604, subject to several statutory exceptions, including, as relevant here, an exception for actions based on commercial activity with a sufficient nexus with the United States, §1605(a)(2).

Respondent International Finance Corporation (IFC), an IOIA international organization, entered into a loan agreement with Coastal Gujarat Power Limited, a company based in India, to finance the construction of a coal-fired power plant in Gujarat. Petitioners sued the IFC, claiming that pollution from the plant harmed the surrounding air, land, and water. The District Court, however, held that the IFC was immune from suit because it enjoyed the virtually absolute immunity that foreign governments enjoyed when the IOIA was enacted. The D. C. Circuit affirmed in light of its decision in *Atkinson* v. *Inter-American Development Bank*, 156 F. 3d 1335.

Held: The IOIA affords international organizations the same immunity from suit that foreign governments enjoy today under the FSIA. Pp. 6–15.

(a) The IOIA "same as" formulation is best understood as making international organization immunity and foreign sovereign immunity

Syllabus

continuously equivalent. The IOIA is thus like other statutes that use similar or identical language to place two groups on equal footing. See, *e.g.*, Civil Rights Act of 1866, 42 U. S. C. §§1981(a), 1982; Federal Tort Claims Act, 28 U. S. C. §2674. Whatever the ultimate purpose of international organization immunity may be, the immediate purpose of the IOIA immunity provision is expressed in language that Congress typically uses to make one thing continuously equivalent to another. Pp. 6–9.

(b) That reading is confirmed by the "reference canon" of statutory interpretation. When a statute refers to a general subject, the statute adopts the law on that subject as it exists whenever a question under the statute arises. In contrast, when a statute refers to another statute by specific title, the referenced statute is adopted as it existed when the referring statute was enacted, without any subsequent amendments. Federal courts have often relied on the reference canon to harmonize a statute with an external body of law that the statute refers to generally. The IOIA's reference to the immunity enjoyed by foreign governments is to an external body of potentially evolving law, not to a specific provision of another statute. Nor is it a specific reference to a common law concept with a fixed meaning. The phrase "immunity enjoyed by foreign governments" is not a term of art with substantive content but rather a concept that can be given scope and content only by reference to the rules governing foreign sovereign immunity. Pp. 9–11.

(c) The D. C. Circuit relied upon *Atkinson*'s conclusion that the reference canon's probative force was outweighed by an IOIA provision authorizing the President to alter the immunity of an international organization. But the fact that the President has power to modify otherwise applicable immunity rules is perfectly compatible with the notion that those rules might themselves change over time in light of developments in the law governing foreign sovereign immunity. The *Atkinson* court also did not consider the opinion of the State Department, whose views in this area ordinarily receive "special attention," *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, 581 U. S. ___, ___, and which took the position that immunity rules of the IOIA and the FSIA were linked following the FSIA's enactment. Pp. 11–13.

(d) The IFC contends that interpreting the IOIA immunity provision to grant only restrictive immunity would defeat the purpose of granting immunity in the first place, by subjecting international organizations to suit under the commercial activity exception of the FSIA for most or all of their core activities. This would be particularly true with respect to international development banks, which use the tools of commerce to achieve their objectives. Those concerns are

Syllabus

inflated. The IOIA provides only default rules. An international organization's charter can always specify a different level of immunity, and many do. Nor is it clear that the lending activity of all development banks qualifies as commercial activity within the meaning of the FSIA. But even if it does qualify as commercial, that does not mean the organization is automatically subject to suit, since other FSIA requirements must also be met, see, *e.g.*, 28 U. S. C. §§1603, 1605(a)(2). Pp. 13–15.

860 F. 3d 703, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which THOMAS, GINSBURG, ALITO, SOTOMAYOR, KAGAN, and GORSUCH, JJ., joined. BREYER, J., filed a dissenting opinion. KAVANAUGH, J., took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 17–1011

BUDHA ISMAIL JAM, ET AL., PETITIONERS *v.* INTERNATIONAL FINANCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[February 27, 2019]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The International Organizations Immunities Act of 1945 grants international organizations such as the World Bank and the World Health Organization the "same immunity from suit . . . as is enjoyed by foreign governments." 22 U. S. C. §288a(b). At the time the IOIA was enacted, foreign governments enjoyed virtually absolute immunity from suit. Today that immunity is more limited. Most significantly, foreign governments are not immune from actions based upon certain kinds of commercial activity in which they engage. This case requires us to determine whether the IOIA grants international organizations the virtually absolute immunity foreign governments enjoyed when the IOIA was enacted, or the more limited immunity they enjoy today.

Respondent International Finance Corporation is an international organization headquartered in the United States. The IFC finances private-sector development projects in poor and developing countries around the world. About 10 years ago, the IFC financed the construc-

tion of a power plant in Gujarat, India. Petitioners are local farmers and fishermen and a small village. They allege that the power plant has polluted the air, land, and water in the surrounding area. Petitioners sued the IFC for damages and injunctive relief in Federal District Court, but the IFC claimed absolute immunity from suit. Petitioners argued that the IFC was entitled under the IOIA only to the limited or "restrictive" immunity that foreign governments currently enjoy. We agree.

I

A

In the wake of World War II, the United States and many of its allies joined together to establish a host of new international organizations. Those organizations, which included the United Nations, the International Monetary Fund, and the World Bank, were designed to allow member countries to collectively pursue goals such as stabilizing the international economy, rebuilding war-torn nations, and maintaining international peace and security.

Anticipating that those and other international organizations would locate their headquarters in the United States, Congress passed the International Organizations Immunities Act of 1945, 59 Stat. 669. The Act grants international organizations a set of privileges and immunities, such as immunity from search and exemption from property taxes. 22 U. S. C. §§288a(c), 288c.

The IOIA defines certain privileges and immunities by reference to comparable privileges and immunities enjoyed by foreign governments. For example, with respect to customs duties and the treatment of official communications, the Act grants international organizations the privileges and immunities that are "accorded under similar circumstances to foreign governments." §288a(d). The provision at issue in this case provides that international organizations "shall enjoy the same immunity from suit

and every form of judicial process as is enjoyed by foreign governments." §288a(b).

The IOIA authorizes the President to withhold, withdraw, condition, or limit the privileges and immunities it grants in light of the functions performed by any given international organization. §288. Those privileges and immunities can also be expanded or restricted by a particular organization's founding charter.

B

When the IOIA was enacted in 1945, courts looked to the views of the Department of State in deciding whether a given foreign government should be granted immunity from a particular suit. If the Department submitted a recommendation on immunity, courts deferred to the recommendation. If the Department did not make a recommendation, courts decided for themselves whether to grant immunity, although they did so by reference to State Department policy. *Samantar* v. *Yousuf*, 560 U. S. 305, 311–312 (2010).

Until 1952, the State Department adhered to the classical theory of foreign sovereign immunity. According to that theory, foreign governments are entitled to "virtually absolute" immunity as a matter of international grace and comity. At the time the IOIA was enacted, therefore, the Department ordinarily requested, and courts ordinarily granted, immunity in suits against foreign governments. *Ibid.*; *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 486 (1983).[1]

In 1952, however, the State Department announced that it would adopt the newer "restrictive" theory of foreign

[1]The immunity was "virtually" absolute because it was subject to occasional exceptions for specific situations. In *Republic of Mexico* v. *Hoffman*, 324 U. S. 30 (1945), for example, the State Department declined to recommend, and the Court did not grant, immunity from suit with respect to a ship that Mexico owned but did not possess.

sovereign immunity. Under that theory, foreign governments are entitled to immunity only with respect to their sovereign acts, not with respect to commercial acts. The State Department explained that it was adopting the restrictive theory because the "widespread and increasing practice on the part of governments of engaging in commercial activities" made it "necessary" to "enable persons doing business with them to have their rights determined in the courts." Letter from Jack B. Tate, Acting Legal Adviser, Dept. of State, to Acting Attorney General Philip B. Perlman (May 19, 1952), reprinted in 26 Dept. State Bull. 984–985 (1952).

In 1976, Congress passed the Foreign Sovereign Immunities Act. The FSIA codified the restrictive theory of foreign sovereign immunity but transferred "primary responsibility for immunity determinations from the Executive to the Judicial Branch." *Republic of Austria* v. *Altmann*, 541 U. S. 677, 691 (2004); see 28 U. S. C. §1602. Under the FSIA, foreign governments are presumptively immune from suit. §1604. But a foreign government may be subject to suit under one of several statutory exceptions. Most pertinent here, a foreign government may be subject to suit in connection with its commercial activity that has a sufficient nexus with the United States. §1605(a)(2).

C

The International Finance Corporation is an international development bank headquartered in Washington, D. C. The IFC is designated as an international organization under the IOIA. Exec. Order No. 10680, 3 CFR 86 (1957); see 22 U. S. C. §§282, 288. One hundred eighty-four countries, including the United States, are members of the IFC.

The IFC is charged with furthering economic development "by encouraging the growth of productive private enterprise in member countries, particularly in the less

developed areas, thus supplementing the activities of" the World Bank. Articles of Agreement of the International Finance Corporation, Art. I, Dec. 5, 1955, 7 U. S. T. 2193, T. I. A. S. No. 3620. Whereas the World Bank primarily provides loans and grants to developing countries for public-sector projects, the IFC finances private-sector development projects that cannot otherwise attract capital on reasonable terms. See Art. I(i), *ibid*. In 2018, the IFC provided some $23 billion in such financing.

The IFC expects its loan recipients to adhere to a set of performance standards designed to "avoid, mitigate, and manage risks and impacts" associated with development projects. IFC Performance Standards on Environmental and Social Sustainability, Jan. 1, 2012, p. 2, ¶1. Those standards are usually more stringent than any established by local law. The IFC includes the standards in its loan agreements and enforces them through an internal review process. Brief for Respondent 10.

In 2008, the IFC loaned $450 million to Coastal Gujarat Power Limited, a company located in India. The loan helped finance the construction of a coal-fired power plant in the state of Gujarat. Under the terms of the loan agreement, Coastal Gujarat was required to comply with an environmental and social action plan designed to protect areas around the plant from damage. The agreement allowed the IFC to revoke financial support for the project if Coastal Gujarat failed to abide by the terms of the agreement.

The project did not go smoothly. According to the IFC's internal audit, Coastal Gujarat did not comply with the environmental and social action plan in constructing and operating the plant. The audit report criticized the IFC for inadequately supervising the project.

In 2015, a group of farmers and fishermen who live near the plant, as well as a local village, sued the IFC in the United States District Court for the District of Columbia.

They claimed that pollution from the plant, such as coal dust, ash, and water from the plant's cooling system, had destroyed or contaminated much of the surrounding air, land, and water. Relying on the audit report, they asserted several causes of action against the IFC, including negligence, nuisance, trespass, and breach of contract. The IFC maintained that it was immune from suit under the IOIA and moved to dismiss for lack of subject matter jurisdiction.

The District Court, applying D. C. Circuit precedent, concluded that the IFC was immune from suit because the IOIA grants international organizations the virtually absolute immunity that foreign governments enjoyed when the IOIA was enacted. 172 F. Supp. 3d 104, 108–109 (DC 2016) (citing *Atkinson* v. *Inter-American Development Bank*, 156 F. 3d 1335 (CADC 1998)). The D. C. Circuit affirmed in light of its precedent. 860 F. 3d 703 (2017). Judge Pillard wrote separately to say that she would have decided the question differently were she writing on a clean slate. *Id.*, at 708 (concurring opinion). Judge Pillard explained that she thought the D. C. Circuit "took a wrong turn" when it "read the IOIA to grant international organizations a static, absolute immunity that is, by now, not at all the same 'as is enjoyed by foreign governments,' but substantially broader." *Ibid.* Judge Pillard also noted that the Third Circuit had expressly declined to follow the D. C. Circuit's approach. See *OSS Nokalva, Inc.* v. *European Space Agency*, 617 F. 3d 756 (CA3 2010).

We granted certiorari. 584 U. S. ___ (2018).

II

The IFC contends that the IOIA grants international organizations the "same immunity" from suit that foreign governments enjoyed in 1945. Petitioners argue that it instead grants international organizations the "same immunity" from suit that foreign governments enjoy to-

day. We think petitioners have the better reading of the statute.

A

The language of the IOIA more naturally lends itself to petitioners' reading. In granting international organizations the "same immunity" from suit "as is enjoyed by foreign governments," the Act seems to continuously link the immunity of international organizations to that of foreign governments, so as to ensure ongoing parity between the two. The statute could otherwise have simply stated that international organizations "shall enjoy absolute immunity from suit," or specified some other fixed level of immunity. Other provisions of the IOIA, such as the one making the property and assets of international organizations "immune from search," use such noncomparative language to define immunities in a static way. 22 U. S. C. §288a(c). Or the statute could have specified that it was incorporating the law of foreign sovereign immunity as it existed on a particular date. See, *e.g.*, Energy Policy Act of 1992, 30 U. S. C. §242(c)(1) (certain land patents "shall provide for surface use to the same extent as is provided under applicable law prior to October 24, 1992"). Because the IOIA does neither of those things, we think the "same as" formulation is best understood to make international organization immunity and foreign sovereign immunity continuously equivalent.

That reading finds support in other statutes that use similar or identical language to place two groups on equal footing. In the Civil Rights Act of 1866, for instance, Congress established a rule of equal treatment for newly freed slaves by giving them the "same right" to make and enforce contracts and to buy and sell property "as is enjoyed by white citizens." 42 U. S. C. §§1981(a), 1982. That provision is of course understood to guarantee continuous equality between white and nonwhite citizens with respect

to the rights in question. See *Jones* v. *Alfred H. Mayer Co.*, 392 U. S. 409, 427–430 (1968). Similarly, the Federal Tort Claims Act states that the "United States shall be liable" in tort "in the same manner and to the same extent as a private individual under like circumstances." 28 U. S. C. §2674. That provision is most naturally understood to make the United States liable in the same way as a private individual at any given time. See *Richards* v. *United States*, 369 U. S. 1, 6–7 (1962). Such "same as" provisions dot the statute books, and federal and state courts commonly read them to mandate ongoing equal treatment of two groups or objects. See, *e.g.*, *Adamson* v. *Bowen*, 855 F. 2d 668, 671–672 (CA10 1988) (statute making United States liable for fees and expenses "to the same extent that any other party would be liable under the common law or under the terms of any statute" interpreted to continuously tie liability of United States to that of any other party); *Kugler's Appeal*, 55 Pa. 123, 124–125 (1867) (statute making the procedure for dividing election districts "the same as" the procedure for dividing townships interpreted to continuously tie the former procedure to the latter).

The IFC objects that the IOIA is different because the purpose of international organization immunity is entirely distinct from the purpose of foreign sovereign immunity. Foreign sovereign immunity, the IFC argues, is grounded in the mutual respect of sovereigns and serves the ends of international comity and reciprocity. The purpose of international organization immunity, on the other hand, is to allow such organizations to freely pursue the collective goals of member countries without undue interference from the courts of any one member country. The IFC therefore urges that the IOIA should not be read to tether international organization immunity to changing foreign sovereign immunity.

But that gets the inquiry backward. We ordinarily

assume, "absent a clearly expressed legislative intention to the contrary," that "the legislative purpose is expressed by the ordinary meaning of the words used." *American Tobacco Co.* v. *Patterson*, 456 U. S. 63, 68 (1982) (alterations omitted). Whatever the ultimate purpose of international organization immunity may be—the IOIA does not address that question—the immediate purpose of the immunity provision is expressed in language that Congress typically uses to make one thing continuously equivalent to another.

B

The more natural reading of the IOIA is confirmed by a canon of statutory interpretation that was well established when the IOIA was drafted. According to the "reference" canon, when a statute refers to a general subject, the statute adopts the law on that subject as it exists whenever a question under the statute arises. 2 J. Sutherland, Statutory Construction §§5207–5208 (3d ed. 1943). For example, a statute allowing a company to "collect the same tolls and enjoy the same privileges" as other companies incorporates the law governing tolls and privileges as it exists at any given moment. *Snell* v. *Chicago*, 133 Ill. 413, 437–439, 24 N. E. 532, 537 (1890). In contrast, a statute that refers to another statute by specific title or section number in effect cuts and pastes the referenced statute as it existed when the referring statute was enacted, without any subsequent amendments. See, *e.g.*, *Culver* v. *People ex rel. Kochersperger*, 161 Ill. 89, 95–99, 43 N. E. 812, 814–815 (1896) (tax-assessment statute referring to specific article of another statute does not adopt subsequent amendments to that article).

Federal courts have often relied on the reference canon, explicitly or implicitly, to harmonize a statute with an external body of law that the statute refers to generally. Thus, for instance, a statute that exempts from disclosure

agency documents that "would not be *available by law* to a party . . . in litigation with the agency" incorporates the general law governing attorney work-product privilege as it exists when the statute is applied. *FTC* v. *Grolier Inc.*, 462 U. S. 19, 20, 26–27 (1983) (emphasis added); *id.*, at 34, n. 6 (Brennan, J., concurring in part and concurring in judgment). Likewise, a general reference to federal discovery rules incorporates those rules "as they are found on any given day, today included," *El Encanto, Inc.* v. *Hatch Chile Co.*, 825 F. 3d 1161, 1164 (CA10 2016), and a general reference to "the crime of piracy as defined by the law of nations" incorporates a definition of piracy "that changes with advancements in the law of nations," *United States* v. *Dire*, 680 F. 3d 446, 451, 467–469 (CA4 2012).

The same logic applies here. The IOIA's reference to the immunity enjoyed by foreign governments is a general rather than specific reference. The reference is to an external body of potentially evolving law—the law of foreign sovereign immunity—not to a specific provision of another statute. The IOIA should therefore be understood to link the law of international organization immunity to the law of foreign sovereign immunity, so that the one develops in tandem with the other.

The IFC contends that the IOIA's reference to the immunity enjoyed by foreign governments is not a general reference to an external body of law, but is instead a specific reference to a common law concept that had a fixed meaning when the IOIA was enacted in 1945. And because we ordinarily presume that "Congress intends to incorporate the well-settled meaning of the common-law terms it uses," *Neder* v. *United States*, 527 U. S. 1, 23 (1999), the IFC argues that we should read the IOIA to incorporate what the IFC maintains was the then-settled meaning of the "immunity enjoyed by foreign governments": virtually absolute immunity.

But in 1945, the "immunity enjoyed by foreign govern-

ments" did not *mean* "virtually absolute immunity." The phrase is not a term of art with substantive content, such as "fraud" or "forgery." See *id.*, at 22; *Gilbert* v. *United States*, 370 U. S. 650, 655 (1962). It is rather a concept that can be given scope and content only by reference to the rules governing foreign sovereign immunity. It is true that under the rules applicable in 1945, the *extent* of immunity from suit was virtually absolute, while under the rules applicable today, it is more limited. But in 1945, as today, the IOIA's instruction to grant international organizations the immunity "enjoyed by foreign governments" is an instruction to look up the applicable rules of foreign sovereign immunity, wherever those rules may be found—the common law, the law of nations, or a statute. In other words, it is a general reference to an external body of (potentially evolving) law.

C

In ruling for the IFC, the D. C. Circuit relied upon its prior decision in *Atkinson*, 156 F. 3d 1335. *Atkinson* acknowledged the reference canon, but concluded that the canon's probative force was "outweighed" by a structural inference the court derived from the larger context of the IOIA. *Id.*, at 1341. The *Atkinson* court focused on the provision of the IOIA that gives the President the authority to withhold, withdraw, condition, or limit the otherwise applicable privileges and immunities of an international organization, "in the light of the functions performed by any such international organization." 22 U. S. C. §288. The court understood that provision to "delegate to the President the responsibility for updating the immunities of international organizations in the face of changing circumstances." *Atkinson*, 156 F. 3d, at 1341. That delegation, the court reasoned, "undermine[d]" the view that Congress intended the IOIA to in effect update itself by incorporating changes in the law governing foreign sover-

eign immunity. *Ibid.*

We do not agree. The delegation provision is most naturally read to allow the President to modify, on a case-by-case basis, the immunity rules that would otherwise apply to a particular international organization. The statute authorizes the President to take action with respect to a single organization—"any such organization"—in light of the functions performed by "such organization." 28 U. S. C. §288. The text suggests retail rather than wholesale action, and that is in fact how authority under §288 has been exercised in the past. See, *e.g.*, Exec. Order No. 12425, 3 CFR 193 (1984) (designating INTERPOL as an international organization under the IOIA but withholding certain privileges and immunities); Exec. Order No. 11718, 3 CFR 177 (1974) (same for INTELSAT). In any event, the fact that the President has power to modify otherwise applicable immunity rules is perfectly compatible with the notion that those rules might themselves change over time in light of developments in the law governing foreign sovereign immunity.

The D. C. Circuit in *Atkinson* also gave no consideration to the opinion of the State Department, whose views in this area ordinarily receive "special attention." *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l. Drilling Co.*, 581 U. S. ___, ___ (2017) (slip op., at 9). Shortly after the FSIA was enacted, the State Department took the position that the immunity rules of the IOIA and the FSIA were now "link[ed]." Letter from Detlev F. Vagts, Office of the Legal Adviser, to Robert M. Carswell, Jr., Senior Legal Advisor, OAS, p. 2 (Mar. 24, 1977). The Department reaffirmed that view during subsequent administrations, and it has reaffirmed it again here.[2] That longstanding

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[2] See Letter from Roberts B. Owen, Legal Adviser, to Leroy D. Clark, Gen. Counsel, EEOC (June 24, 1980) in Nash, Contemporary Practice of the United States Relating to International Law, 74 Am. J. Int'l. L. 917,

view further bolsters our understanding of the IOIA's immunity provision.

D

The IFC argues that interpreting the IOIA's immunity provision to grant anything less than absolute immunity would lead to a number of undesirable results.

The IFC first contends that affording international organizations only restrictive immunity would defeat the purpose of granting them immunity in the first place. Allowing international organizations to be sued in one member country's courts would in effect allow that member to second-guess the collective decisions of the others. It would also expose international organizations to money damages, which would in turn make it more difficult and expensive for them to fulfill their missions. The IFC argues that this problem is especially acute for international development banks. Because those banks use the tools of commerce to achieve their objectives, they may be subject to suit under the FSIA's commercial activity exception for most or all of their core activities, unlike foreign sovereigns. According to the IFC, allowing such suits would bring a flood of foreign-plaintiff litigation into U. S. courts, raising many of the same foreign-relations con-

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918 (1980) ("By virtue of the FSIA, and unless otherwise specified in their constitutive agreements, international organizations are now subject to the jurisdiction of our courts in respect of their commercial activities, while retaining immunity for their acts of a public character."); Letter from Arnold Kanter, Acting Secretary of State, to President George H. W. Bush (Sept. 12, 1992) in Digest of United States Practice in International Law 1016–1017 (S. Cummins & D. Stewart eds. 2005) (explaining that the Headquarters Agreement of the Organization of American States affords the OAS "full immunity from judicial process, thus going beyond the usual United States practice of affording restrictive immunity," in exchange for assurances that OAS would provide for "appropriate modes of settlement of those disputes for which jurisdiction would exist against a foreign government under the" FSIA); Brief for United States as *Amicus Curiae* 24–29.

cerns that we identified when considering similar litigation under the Alien Tort Statute. See *Jesner* v. *Arab Bank, PLC*, 584 U. S. ___, ___–___ (2018); *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. 108, 116–117 (2013).

The IFC's concerns are inflated. To begin, the privileges and immunities accorded by the IOIA are only default rules. If the work of a given international organization would be impaired by restrictive immunity, the organization's charter can always specify a different level of immunity. The charters of many international organizations do just that. See, *e.g.*, Convention on Privileges and Immunities of the United Nations, Art. II, §2, Feb. 13, 1946, 21 U. S. T. 1422, T. I. A. S. No. 6900 ("The United Nations . . . shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity"); Articles of Agreement of the International Monetary Fund, Art. IX, §3, Dec. 27, 1945, 60 Stat. 1413, T. I. A. S. No. 1501 (IMF enjoys "immunity from every form of judicial process except to the extent that it expressly waives its immunity"). Notably, the IFC's own charter does not state that the IFC is absolutely immune from suit.

Nor is there good reason to think that restrictive immunity would expose international development banks to excessive liability. As an initial matter, it is not clear that the lending activity of all development banks qualifies as commercial activity within the meaning of the FSIA. To be considered "commercial," an activity must be "the *type*" of activity "by which a private party engages in" trade or commerce. *Republic of Argentina* v. *Weltover, Inc.*, 504 U. S. 607, 614 (1992); see 28 U. S. C. §1603(d). As the Government suggested at oral argument, the lending activity of at least some development banks, such as those that make conditional loans to governments, may not qualify as "commercial" under the FSIA. See Tr. of Oral Arg. 27–30.

And even if an international development bank's lending activity does qualify as commercial, that does not mean the organization is automatically subject to suit. The FSIA includes other requirements that must also be met. For one thing, the commercial activity must have a sufficient nexus to the United States. See 28 U. S. C. §§1603, 1605(a)(2). For another, a lawsuit must be "based upon" either the commercial activity itself or acts performed in connection with the commercial activity. See §1605(a)(2). Thus, if the "gravamen" of a lawsuit is tortious activity abroad, the suit is not "based upon" commercial activity within the meaning of the FSIA's commercial activity exception. See *OBB Personenverkehr AG* v. *Sachs*, 577 U. S. ___, ___–___ (2015); *Saudi Arabia* v. *Nelson*, 507 U. S. 349, 356–359 (1993). At oral argument in this case, the Government stated that it has "serious doubts" whether petitioners' suit, which largely concerns allegedly tortious conduct in India, would satisfy the "based upon" requirement. Tr. of Oral Arg. 25–26. In short, restrictive immunity hardly means unlimited exposure to suit for international organizations.

* * *

The International Organizations Immunities Act grants international organizations the "same immunity" from suit "as is enjoyed by foreign governments" at any given time. Today, that means that the Foreign Sovereign Immunities Act governs the immunity of international organizations. The International Finance Corporation is therefore not absolutely immune from suit.

The judgment of the United States Court of Appeals for the D. C. Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KAVANAUGH took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 17–1011

BUDHA ISMAIL JAM, ET AL., PETITIONERS *v.*
INTERNATIONAL FINANCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[February 27, 2019]

JUSTICE BREYER, dissenting.

The International Organizations Immunities Act of 1945 extends to international organizations "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." 22 U. S. C. §288a(b). The majority, resting primarily upon the statute's language and canons of interpretation, holds that the statute's reference to "immunity" moves with the times. As a consequence, the statute no longer allows international organizations immunity from lawsuits arising from their commercial activities. In my view, the statute grants international organizations that immunity—just as foreign governments possessed that immunity when Congress enacted the statute in 1945. In reaching this conclusion, I rest more heavily than does the majority upon the statute's history, its context, its purposes, and its consequences. And I write in part to show that, in difficult cases like this one, purpose-based methods of interpretation can often shine a useful light upon opaque statutory language, leading to a result that reflects greater legal coherence and is, as a practical matter, more sound.

I

The general question before us is familiar: Do the words of a statute refer to their subject matter "statically," as it

was when the statute was written? Or is their reference to that subject matter "dynamic," changing in scope as the subject matter changes over time? It is hardly surprising, given the thousands of different statutes containing an untold number of different words, that there is no single, universally applicable answer to this question.

Fairly recent cases from this Court make that clear. Compare *New Prime Inc.* v. *Oliveira*, 586 U. S. ___, ___ (2019) (slip op., at 7) (adopting the interpretation of "'contracts of employment'" that prevailed at the time of the statute's adoption in 1925); *Wisconsin Central Ltd.* v. *United States*, 585 U. S. ___, ___ (2018) (slip op., at 2) (adopting the meaning of "'money'" that prevailed at the time of the statute's enactment in 1937); *Carcieri* v. *Salazar*, 555 U. S. 379, 388 (2009) (interpreting the statutory phrase "'now under Federal jurisdiction'" to cover only those tribes that were under federal jurisdiction at the time of the statute's adoption in 1934); and *Republic of Argentina* v. *Weltover*, *Inc.*, 504 U. S. 607, 612–613 (1992) (adopting the meaning of "'commercial'" that was "attached to that term under the restrictive theory" when the Foreign Sovereign Immunities Act was enacted in 1976), with *Kimble* v. *Marvel Entertainment*, *LLC*, 576 U. S. ___, ___ (2015) (slip op., at 14) (noting that the words "'restraint of trade'" in the Sherman Act have been interpreted dynamically); *West* v. *Gibson*, 527 U. S. 212, 218 (1999) (interpreting the term "'appropriate'" in Title VII's remedies provision dynamically); and *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 275–276 (1995) (interpreting the term "'involving commerce'" in the Federal Arbitration Act dynamically).

The Court, like petitioners, believes that the language of the statute itself helps significantly to answer the static/dynamic question. See *ante*, at 7–9. I doubt that the language itself helps in this case. Petitioners point to the words "as is" in the phrase that grants the international

organizations the "same immunity from suit . . . *as is* enjoyed by foreign governments." Brief for Petitioners 23–24. They invoke the Dictionary Act, which states that "words used in the present tense include the future" "unless the context indicates otherwise." 1 U. S. C. §1. But that provision creates only a presumption. And it did not even appear in the statute until 1948, *after* Congress had passed the Immunities Act. Compare §1, 61 Stat. 633, with §6, 62 Stat. 859.

More fundamentally, the words "as is enjoyed" do not conclusively tell us *when* enjoyed. Do they mean "as is enjoyed" at the time of the statute's enactment? Or "as is enjoyed" at the time a plaintiff brings a lawsuit? If the former, international organizations enjoy immunity from lawsuits based upon their commercial activities, for that was the scope of immunity that foreign governments enjoyed in 1945 when the Immunities Act became law. If the latter, international organizations do not enjoy that immunity, for foreign governments can no longer claim immunity from lawsuits based upon certain commercial activities. See 28 U. S. C. §1605(a)(2).

Linguistics does not answer the temporal question. Nor do our cases, which are not perfectly consistent on the matter. Compare *McNeill* v. *United States*, 563 U. S. 816, 821 (2011) (present-tense verb in the Armed Career Criminal Act requires applying the law at the time of previous conviction, not the later time when the Act is applied), with *Dole Food Co.* v. *Patrickson*, 538 U. S. 468, 478 (2003) (present-tense verb requires applying the law "at the time suit is filed"). The problem is simple: "Without knowing the point in time at which the law speaks, it is impossible to tell what is past and what is present or future." *Carr* v. *United States*, 560 U. S. 438, 463 (2010) (ALITO, J., dissenting). It is *purpose*, not linguistics, that can help us here.

The words "same . . . as," in the phrase "same immunity

. . . as," provide no greater help. The majority finds support for its dynamic interpretation in the Civil Rights Act of 1866, which gives all citizens the "*same* right" to make and enforce contracts and to buy and sell property "*as* is enjoyed by white citizens." 42 U. S. C. §§1981(a), 1982 (emphasis added). But it is *purpose*, not words, that readily resolves any temporal linguistic ambiguity in that statute. The Act's objective, like that of the Fourteenth Amendment itself, was a Nation that treated its citizens equally. Its purpose—revealed by its title, historical context, and other language in the statute—was "to guarantee the then newly freed slaves the same legal rights that other citizens enjoy." *CBOCS West*, *Inc.* v. *Humphries*, 553 U. S. 442, 448 (2008). Given this purpose, its dynamic nature is obvious.

Similarly, judges interpreting the words "same . . . as" have long resolved ambiguity not by looking at the words alone, but by examining the statute's purpose as well. Compare, *e.g.*, *Kugler's Appeal*, 55 Pa. 123, 123–125 (1867) (adopting a dynamic interpretation of "same as" statute in light of "plain" and "manifest" statutory purpose); and *Gaston* v. *Lamkin*, 115 Mo. 20, 34, 21 S. W. 1100, 1104 (1893) (adopting a dynamic interpretation of "same as" election statute given the legislature's intent to achieve "simplicity and uniformity in the conduct of elections"), with *O'Flynn* v. *East Rochester*, 292 N. Y. 156, 162, 54 N. E. 2d 343, 346 (1944) (adopting a static interpretation of "same as" statute given that the legislature "did not contemplate" that subsequent changes to a referenced statute would apply (interpreting N. Y. Gen. Mun. Law Ann. §360(5) (West 1934))). There is no hard-and-fast rule that the statutory words "as is" or the statutory words "same as" require applying the law as it stands today.

The majority wrongly believes that it can solve the temporal problem by bringing statutory canons into play. It relies on what it calls the "reference canon." That canon,

as it appeared more than 75 years ago in Sutherland's book on statutory construction, says that "when a statute refers to a general subject, the statute adopts the law on that subject as it exists *whenever a question under the statute arises.*" *Ante*, at 9 (citing 2 J. Sutherland, Statutory Construction §§5207–5208 (3d ed. 1943); emphasis added).

But a canon is at most a rule of thumb. Indeed, Sutherland himself says that "[n]o single canon of interpretation can purport to give a certain and unerring answer." 2 Sutherland, *supra*, §4501, p. 316. And hornbooks, summarizing case law, have long explained that whether a reference statute adopts the law as it stands on the date of enactment or includes subsequent changes in the law to which it refers is "fundamentally a question of legislative intent and purpose." Fox, Effect of Modification or Repeal of Constitutional or Statutory Provision Adopted by Reference in Another Provision, 168 A. L. R. 627, 628 (1947); see also 82 C. J. S., Statutes §485, p. 637 (2009) ("The question of whether a statute which has adopted another statute by reference will be affected by amendments made to the adopted statute is one of legislative intent and purpose"); *id.*, at 638 (statute that refers generally to another body of law will ordinarily include subsequent changes in the adopted law only "as far as the changes are consistent with the purpose of the adopting statute").

Thus, all interpretive roads here lead us to the same place, namely, to context, to history, to purpose, and to consequences. Language alone cannot resolve the statute's linguistic ambiguity.

II

"Statutory interpretation," however, "is not a game of blind man's bluff." *Dole Food Co.*, 538 U. S., at 484 (BREYER, J., concurring in part and dissenting in part). We are "free to consider statutory language in light of a

statute's basic purposes," *ibid.*, as well as "'the history of the times when it was passed,'" *Leo Sheep Co.* v. *United States*, 440 U. S. 668, 669 (1979) (quoting *United States* v. *Union Pacific R. Co.*, 91 U. S. 72, 79 (1875)). In this case, historical context, purpose, and related consequences tell us a great deal about the proper interpretation of the Immunities Act.

Congressional reports explain that Congress, acting in the immediate aftermath of World War II, intended the Immunities Act to serve two related purposes. First, it would "enabl[e] this country to fulfill its commitments in connection with its membership in international organizations." S. Rep. No. 861, 79th Cong., 1st Sess., 3 (1945); see also *id.*, at 2–3 (explaining that the Immunities Act was "basic legislation" expected to "satisfy in full the requirements of . . . international organizations conducting activities in the United States"); H. R. Rep. No. 1203, 79th Cong., 1st Sess., 3 (1945) (similar). And second, it would "facilitate fully the functioning of international organizations in this country." S. Rep. No. 861, at 3.

A

I first examine the international commitments that Congress sought to fulfill. By 1945, the United States had entered into agreements creating several important multilateral organizations, including the United Nations (UN), the International Monetary Fund (IMF), the World Bank, the UN Relief and Rehabilitation Administration (UNRRA), and the Food and Agriculture Organization (FAO). See *id.*, at 2.

The founding agreements for several of these organizations required member states to grant them broad immunity from suit. The Bretton Woods Agreements, for example, provided that the IMF "shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity." Articles of Agreement of

the International Monetary Fund, Art. IX, §3, Dec. 27, 1945, 60 Stat. 1413, T. I. A. S. No. 1501. UNRRA required members, absent waiver, to accord the organization "the facilities, privileges, immunities, and exemptions which they accord to each other, including . . . [i]mmunity from suit and legal process." 2 UNRRA, A Compilation of the Resolutions on Policy: First and Second Sessions of the UNRRA Council, Res. No. 32, p. 51 (1944). And the UN Charter required member states to accord the UN "such privileges and immunities as are necessary for the fulfillment of its purposes." Charter of the United Nations, Art. 105, 59 Stat. 1053, June 26, 1945, T. S. No. 993.

These international organizations expected the United States to provide them with essentially full immunity. And at the time the treaties were written, Congress understood that foreign governments normally enjoyed immunity with respect to their commercial, as well as their noncommercial, activities. Thus, by granting international organizations "the same immunity from suit" that foreign governments enjoyed, Congress expected that international organizations would similarly have immunity in both commercial and noncommercial suits.

More than that, Congress likely recognized that immunity in the commercial area was even more important for many international organizations than it was for most foreign governments. Unlike foreign governments, international organizations are *not* sovereign entities engaged in a host of different activities. See R. Higgins, Problems & Process: International Law and How We Use It 93 (1994) (organizations do not act with "'sovereign authority,'" and "to assimilate them to states . . . is not correct"). Rather, many organizations (including four of the five I mentioned above) have specific missions that often require them to engage in what U. S. law may well consider to be commercial activities. See *infra*, at 12.

Nonetheless, under the majority's view, the immunity of

many organizations contracted in scope in 1952, when the State Department modified foreign government immunity to exclude commercial activities. Most organizations could not rely on the treaty provisions quoted above to supply the necessary immunity. That is because, unless the treaty provision granting immunity is "self-executing," *i.e.*, automatically applicable, the immunity will not be effective in U. S. courts until Congress enacts additional legislation to implement it. See *Medellin* v. *Texas*, 552 U. S. 491, 504–505 (2008); but see *id.*, at 546–547 (BREYER, J., dissenting). And many treaties are not self-executing. Thus, in the ordinary case, not even a treaty can guarantee immunity in cases arising from commercial activities.

The UN provides a good example. As noted, the UN Charter required the United States to grant the UN all "necessary" immunities, but it was not self-executing. In 1946, the UN made clear that it needed absolute immunity from suit, including in lawsuits based upon its commercial activities. See Convention on Privileges and Immunities of the United Nations, Art. II, §2, Feb. 13, 1946, 21 U. S. T. 1422, T. I. A. S. No. 6900 (entered into force Apr. 29, 1970); see also App. to S. Exec. Rep. No. 91–17, p. 14 (1970) ("The U. N.'s immunity from legal process extends to matters arising out its commercial dealings . . . "). But, until Congress ratified that comprehensive immunity provision in 1970, no U. S. law provided that immunity *but for* the Immunities Act. *Id.*, at 1. Both the UN and the United States found this circumstance satisfactory because they apparently assumed the Immunities Act extended immunity in cases involving both commercial and noncommercial activities: When Congress eventually (in 1970) ratified the UN's comprehensive immunity provision, the Senate reported that the long delay in ratification "appears to have been the result of the executive branch being content to operate under the provisions of the" Immunities Act. *Id.*, at 2.

In light of this history, how likely is it that Congress, seeking to "satisfy *in full* the requirements of . . . international organizations conducting activities in the United States," S. Rep. No. 861, at 2–3 (emphasis added), would have understood the statute to take from many international organizations with one hand the immunity it had given them with the other? If Congress wished the Act to carry out one of its core purposes—fulfilling the country's international commitments—Congress would not have wanted the statute to change over time, taking on a meaning that would fail to grant not only full, but even partial, immunity to many of those organizations.

B

Congress also intended to facilitate international organizations' ability to pursue their missions in the United States. To illustrate why that purpose is better served by a static interpretation, consider in greater detail the work of the organizations to which Congress wished to provide broad immunity. Put the IMF to the side, for Congress enacted a separate statute providing it with immunity (absent waiver) in all cases. See 22 U. S. C. §286h. But UNRRA, the World Bank, the FAO, and the UN itself all originally depended upon the Immunities Act for the immunity they sought.

Consider, for example, the mission of UNRRA. The United States and other nations created that organization in 1943, as the end of World War II seemed in sight. Its objective was, in the words of President Roosevelt, to "'assure a fair distribution of available supplies among'" those liberated in World War II, and "'to ward off death by starvation or exposure among these peoples.'" 1 G. Woodbridge, UNRRA: The History of the United Nations Relief and Rehabilitation Administration 3 (1950). By the time Congress passed the Immunities Act in 1945, UNRRA had obtained and shipped billions of pounds of food, clothing,

and other relief supplies to children freed from Nazi concentration camps and to others in serious need. 3 *id.*, at 429; see generally L. Nicholas, Cruel World: The Children of Europe in the Nazi Web 442–513 (2005).

These activities involved contracts, often made in the United States, for transportation and for numerous commercial goods. See B. Shephard, The Long Road Home: The Aftermath of the Second World War 54, 57–58 (2012). Indeed, the United States conditioned its participation on UNRRA's spending what amounted to 67% of its budget on purchases of goods and services in the United States. *Id.*, at 57–58; see also Sawyer, Achievements of UNRRA as an International Health Organization, 37 Am. J. Pub. Health 41, 57 (1947) (describing UNRRA training programs for foreign doctors within the United States, which presumably required entering into contracts); *International Refugee Org.* v. *Republic S. S. Corp.*, 189 F. 2d 858, 860 (CA4 1951) (describing successor organization's transportation of displaced persons, presumably also under contract). Would Congress, believing that it had provided the absolute immunity that UNRRA sought and expected, also have intended that the statute be interpreted "dynamically," thereby removing most of the immunity that it had then provided—not only potentially from UNRRA itself but also from other future international organizations with UNRRA-like objectives and tasks?

C

This history makes clear that Congress enacted the Immunities Act as part of an effort to encourage international organizations to locate their headquarters and carry on their missions in the United States. It also makes clear that Congress intended to enact "basic legislation" that would fulfill its broad immunity-based commitments to the UN, UNRRA, and other nascent organizations. S. Rep. No. 861, at 2. And those commitments, of neces-

sity, included immunity from suit in commercial areas, since organizations were buying goods and making contracts in the United States.

To achieve these purposes, Congress enacted legislation that granted necessarily broad immunity. And that fact strongly suggests that Congress would not have wanted the statute to reduce significantly the scope of immunity that international organizations enjoyed, particularly organizations engaged in development finance, refugee assistance, or other tasks that U. S. law could well decide were "commercial" in nature. See *infra*, at 12.

To that extent, an examination of the statute's purpose supports a static, not a dynamic, interpretation of its cross-reference to the immunity of foreign governments. Unlike the purpose of the Civil Rights Act, the purpose here was not to ensure parity of treatment for international organizations and foreign governments. Instead, as the Court of Appeals for the D. C. Circuit pointed out years ago, the statute's reference to the immunities of "foreign governments" was a "shorthand" for the immunities those foreign governments enjoyed at the time the Act was passed. *Atkinson* v. *Inter-American Development Bank*, 156 F. 3d 1335, 1340, 1341 (1998).

III

Now consider the consequences that the majority's reading of the statute will likely produce—consequences that run counter to the statute's basic purposes. Although the UN itself is no longer dependent upon the Immunities Act, many other organizations, such as the FAO and several multilateral development banks, continue to rely upon that Act to secure immunity, for the United States has never ratified treaties nor enacted statutes that might extend the necessary immunity, commercial and noncommercial alike.

A

The "commercial activity" exception to the sovereign immunity of foreign nations is broad. We have said that a foreign state engages in "commercial activity" when it exercises "'powers that can also be exercised by private citizens.'" *Republic of Argentina*, 504 U. S., at 614. Thus, "a contract to buy army boots or even bullets is a 'commercial' activity," even if the government enters into the contract to "fulfil[l] uniquely sovereign objectives." *Ibid.*; see also H. R. Rep. No. 94–1487, p. 16 (1976) ("[A] transaction to obtain goods or services from private parties would not lose its otherwise commercial character because it was entered into in connection with an [Agency for International Development] program").

As a result of the majority's interpretation, many of the international organizations to which the United States belongs will discover that they are now exposed to civil lawsuits based on their (U. S.-law-defined) commercial activity. And because "commercial activity" may well have a broad definition, today's holding will at the very least create uncertainty for organizations involved in finance, such as the World Bank, the Inter-American Development Bank, and the Multilateral Investment Guarantee Agency. The core functions of these organizations are at least arguably "commercial" in nature; the organizations exist to promote international development by investing in foreign companies and projects across the world. See Brief for International Bank for Reconstruction and Development et al. as *Amici Curiae* 1–4; Brief for Member Countries and the Multilateral Investment Guarantee Agency as *Amici Curiae* 13–15. The World Bank, for example, encourages development either by guaranteeing private loans or by providing financing from its own funds if private capital is not available. See Articles of Agreement of the International Bank for Reconstruction and Development, Art. I, Dec. 27, 1945, 60 Stat. 1440, T. I. A. S. No.

1502.

Some of these organizations, including the International Finance Corporation (IFC), themselves believe they do not need broad immunity in commercial areas, and they have waived it. See, *e.g.*, Articles of Agreement of the International Finance Corporation, Art. 6, §3, Dec. 5, 1955, 7 U. S. T. 2214, 264 U. N. T. S. 118 (implemented by 22 U. S. C. §282g); see also 860 F. 3d 703, 706 (CADC 2017). But today's decision will affect them nonetheless. That is because courts have long interpreted their waivers in a manner that protects their core objectives. See, *e.g.*, *Mendaro* v. *World Bank*, 717 F. 2d 610, 614–615 (CADC 1983). (This very case provides a good example. The D. C. Circuit held below that the IFC's waiver provision does not cover petitioners' claims because they "threaten the [IFC's] policy discretion." See 860 F. 3d, at 708.) But today's decision exposes these organizations to potential liability in *all* cases arising from their commercial activities, without regard to the scope of their waivers.

Under the majority's interpretation, that broad exposure to liability is at least a reasonable possibility. And that being so, the interpretation undercuts Congress' original objectives and the expectations that it had when it enacted the Immunities Act in 1945.

B

The majority's opinion will have a further important consequence—one that more clearly contradicts the statute's objectives and overall scheme. It concerns the important goal of weeding out lawsuits that are likely bad or harmful—those likely to produce rules of law that interfere with an international organization's public interest tasks.

To understand its importance, consider again that international organizations, unlike foreign nations, are multilateral, with members from many different nations.

See H. R. Rep. No. 1203, at 1. That multilateralism is threatened if one nation alone, through application of its own liability rules (by nonexpert judges), can shape the policy choices or actions that an international organization believes it must take or refrain from taking. Yet that is the effect of the majority's interpretation. By restricting the immunity that international organizations enjoy, it "opens the door to divided decisions of the courts of different member states," including U. S. courts, "passing judgment on the rules, regulations, and decisions of the international bodies." *Broadbent* v. *Organization of Am. States*, 628 F. 2d 27, 35 (CADC 1980); cf. Singer, Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns, 36 Va. J. Int'l L. 53, 63–64 (1995) (recognizing that "[i]t would be inappropriate for municipal courts to cut deep into the region of autonomous decision-making authority of institutions such as the World Bank").

Many international organizations, fully aware of their moral (if not legal) obligations to prevent harm to others and to compensate individuals when they do cause harm, have sought to fulfill those obligations without compromising their ability to operate effectively. Some, as I have said, waive their immunity in U. S. courts at least in part. And the D. C. Circuit, for nearly 40 years, has interpreted those waivers in a way that protects the organization against interference by any single state. See, *e.g.*, *Mendaro*, 717 F. 2d, at 615. The D. C. Circuit allows a lawsuit to proceed when "insistence on immunity would actually prevent or hinder the organization from conducting its activities." *Id.*, at 617. Thus, a direct beneficiary of a World Bank loan can generally sue the Bank, because "the commercial reliability of the Bank's direct loans . . . would be significantly vitiated" if "beneficiaries were required to accept the Bank's obligations without recourse to judicial process." *Id.*, at 618. Where, however, allowing

a suit would lead to "disruptive interference" with the organization's functions, the waiver does not apply. *Ibid.*

Other organizations have attempted to solve the liability/immunity problem by turning to multilateral, not single-nation, solutions. The UN, for instance, has agreed to "make provisions for appropriate modes of settlement of . . . [d]isputes arising out of contracts or other disputes of a private law character." Convention on Privileges and Immunities of the United Nations, Art. VIII, §29, 21 U. S. T. 1438, T. I. A. S. No. 6900. It generally does so by agreeing to submit commercial disputes to arbitration. See Restatement (Third) of Foreign Relations Law of the United States §467, Reporters' Note 7 (1987). Other organizations, including the IFC, have set up alternative accountability schemes to resolve disputes that might otherwise end up in court. See World Bank, Inspection Panel: About Us (describing World Bank's three-member "independent complaints mechanism" for those "who believe that they have been . . . adversely affected by a World Bank-funded project"), https://inspectionpanel.org/about-us/about-inspection-panel (as last visited Feb. 25, 2019); Compliance Advisor Ombudsman, How We Work: CAO Dispute Resolution (describing IFC and Multilateral Investment Guarantee Agency dispute-resolution process, the main objective of which is to help resolve issues raised about the "social and environmental impacts of IFC/MIGA projects"), www.cao-ombudsman.org/howwework/ombudsman.

These alternatives may sometimes prove inadequate. And, if so, the Immunities Act itself offers a way for America's Executive Branch to set aside an organization's immunity and to allow a lawsuit to proceed in U. S. courts. The Act grants to the President the authority to "withhold," to "withdraw," to "condition," or to "limit" any of the Act's "immunities" in "light of the functions performed by any such international organization." 22 U. S. C. §288.

Were we to interpret the statute statically, then, the default rule would be immunity in suits arising from an organization's commercial activities. But the Executive Branch would have the power to withdraw immunity where immunity is not warranted, as the Act itself provides. And in making that determination, it could consider whether allowing the lawsuit would jeopardize the organization's ability to carry out its public interest tasks. In a word, the Executive Branch, under a static interpretation, would have the authority needed to separate lawsuit sheep from lawsuit goats.

Under the majority's interpretation, by contrast, there is no such flexibility. The Executive does not have the power to tailor immunity by taking into account the risk of a lawsuit's unjustified interference with institutional objectives or other institutional needs. Rather, the majority's holding takes away an international organization's immunity (in cases arising from "commercial" activities) across the board. And without a new statute, there is no way to restore it, in whole or in part. Nothing in the present statute gives the Executive, the courts, or the organization the power to restore immunity, or to tailor any resulting potential liability, where a lawsuit threatens seriously to interfere with an organization's legitimate needs and goals.

Thus, the static interpretation comes equipped with flexibility. It comes equipped with a means to withdraw immunity where justified. But the dynamic interpretation freezes potential liability into law. It withdraws immunity automatically and irretrievably, irrespective of institutional harm. It seems highly unlikely that Congress would have wanted this result.

* * *

At the end of World War II, many in this Nation saw international cooperation through international organiza-

tion as one way both to diminish the risk of conflict and to promote economic development and commercial prosperity. Congress at that time and at the request of many of those organizations enacted the Immunities Act. Given the differences between international organizations and nation states, along with the Act's purposes and the risk of untoward consequences, I would leave the Immunities Act where we found it—as providing for immunity in both commercial and noncommercial suits.

My decision rests primarily not upon linguistic analysis, but upon basic statutory purposes. Linguistic methods alone, however artfully employed, too often can be used to justify opposite conclusions. Purposes, derived from context, informed by history, and tested by recognition of related consequences, will more often lead us to legally sound, workable interpretations—as they have consistently done in the past. These methods of interpretation can help voters hold officials accountable for their decisions and permit citizens of our diverse democracy to live together productively and in peace—basic objectives in America of the rule of law itself.

With respect, I dissent.

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ORIGINAL ARTICLE

Agency law and odious debts

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ABSTRACT

Because of the way that the international lending system works, poor nations have been forced to repay sovereign debts without having a moral obligation to do so. Suppose a corrupt public official borrows money from an international agency, or from private investors, and later on embezzles this money, or uses it to oppress the population. Suppose, further, that the lender is aware of the potential of this situation and still lends. Typically, the international community considers that successor governments have the obligation to repay the funds and the interests associated to them. In fact, this is what they usually end up doing. Public officials are all aware that if they do not honour sovereign debts, they will face all kinds of negative consequences, including exclusion from future markets, loss of reputation and legal sanctions. Owing to this mechanism, entire generations have been burdened with debts fraudulently incurred in their name by governments in the past. These kinds of debts have been known in the legal literature as 'odious'.

In this article, I discuss the conditions defining the bindingness of a debt. I suggest that they can be made explicit by looking at the rules under which the lending system works at the domestic level, and by then extending these rules to the international domain. I argue that, because of their plausibility, these are the rules that should govern international lending from now on. I also discuss the feasibility of extending these rules globally, and consider potential objections to my proposal.

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Because of the way that the international lending system works, nations (usually poor) have been forced to repay sovereign debts without having a moral obligation to do so. Suppose that a corrupt public official borrows money from an international agency or from private investors, and later on embezzles this money or uses it to oppress the

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population. Suppose, further, that the lender is aware of the potential of this situation and still lends. Typically, the international community considers that successor governments have the obligation to repay the funds and the interests associated to them. In fact, this is what they usually end up doing. Public officials are all aware that if they do not honour sovereign debts, they will face all kinds of negative consequences, including exclusion from future markets, loss of reputation, and legal sanctions. Owing to this mechanism, entire generations have been burdened with debts fraudulently incurred in their name by governments in the past. Debts that states do not have the obligation to repay have been labelled 'odious' in legal literature (Sack 1927).[1]

This process is endorsed by international positive law (Thompson 2002, 4; Crawford 2002),[2] which holds as a central tenet that, whenever public officials make decisions in the name of the state, the state is held liable for these decisions. So if public officials sign trade or environmental agreements, or decide to become members of an international organization, citizens are bound by these agreements. Also, if an official asks for a loan in the name of the state, the state will be holistically considered as having the obligation to repay it. Through taxes, each citizen will, therefore, be burdened with this debt (Howse 2007; Murphy 2010, 303).[3] It is clear, however, that, under certain conditions, political decisions *do not* morally bind citizens.

In this article, I discuss the conditions defining the non-bindingness of a debt. The existing literature on the topic is not very clear on exactly what these conditions are. To fill this gap, I develop a framework to analyse the non-bindingness of debts. Specifically, I suggest that the conditions for a debt to be considered as non-binding can be made explicit by looking at the rules under which the lending system works at the domestic level (as specified by agency law) and by subsequently extending these rules to the international domain. Agency law is based on the very compelling idea that nobody can be held responsible for decisions made by agents on their behalf, unless these agents are authorized to do so. Extending this idea to the international domain will require a *philosophical* analysis of the conditions under which actions of public officials count as non-authorized. Ultimately, I argue that, because of their plausibility, these rules should govern international lending from now on. One of the remarkable benefits of this discussion is that it makes evident that some debts *are clearly* odious; even if we accept a minimal, non-demanding threshold of non-bindingness. The article is structured as follows. In 'Scholarship on odious debt', I discuss the relevant literature on the topic and situate my contribution in this debate. In 'Private law principles that regulate domestic lending', I discuss the private law principles that regulate domestic lending, especially as described by agency law, and argue that the crucial principles for debts are those of 'authorization' and 'good faith'. In 'Extending private law principles to sovereign lending', I extend these principles to international lending. In 'Principle of

[1]The term 'odious debt' was used for the first time by the Russian legal scholar Nahum Sack (Sack 1972).

[2]As the Vienna Convention on the Law of Treaties stipulates with reference to international agreements, 'every treaty in force is binding upon the parties to it and must be performed by them in good faith'. http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf . A discussion of the idea that states are liable can be found in Thompson (2002, 4) and in Crawford (2002).

[3]For the point that *states* (regardless of the nature of their government) are bound by decisions of their governments, see Howse (2007, 200) and Murphy (2010, 303). There, Murphy states that '… loans secured by corrupt or, oppresive governments, loans that may have benefitted only those in power at that time, must be paid back, even by the successor government. This fundamental feature of existing international legal practice is the reflection of the international legal personality of states'.

authorization', I discuss what the authorization principle would look like when applied in the international domain. This section discusses possible criteria to classify the actions of public officials as 'non-authorized'. In 'Good faith principle', I discuss what the good faith principle would look like when applied at the international level.

Scholarship on odious debt

The literature on non-binding debts (i.e. odious debts) is vast. The topic has mainly been approached by *legal scholarship*, by *global justice literature*, and by social movements and NGOs (Khalfan, King, and Thomas 2003; Jayachandran, Kremer, and Shafter 2006; Buchheit, Gulati, and Thompson 2006; King 2006; Howse 2007; Adams 1991; Raffer 2007; Toussaint 2016; Acosta and Ugarteche 2008).[4] These contributions, however, do not allow us to reach a definite conclusion on what the conditions for non-bindingness are and, consequently, they do not indicate what a feasible mechanism for solving the issue would look like. We can consider each of them in turn.

Legal scholarship has discussed the original definition of odious debt, possible different interpretations of it, as well of the possibility of implementing them in a real world context.

The first definition of odious debt was proposed by Sack (1927), who stipulated that the conditions for the odiousness of a debt are that: (1) The debt is contracted by a despotic power, (2) for a purpose that is not in the general interests and needs of the state, and (3) the lender knows that the proceeds will not benefit the nation as a whole.[5]

This account has undergone several revisions and interpretations. Toussaint (2016), for example, has argued that Sack's doctrine should be interpreted as claiming that a 'debt is odious if it has been incurred against the interests of the population and the creditors were aware of this at the time',[6] meaning by this that the nature of the regime that borrows (whether democratic or autocratic) is irrelevant, and highlighting the fact that the purpose of the loan is what matters. Toussaint (2016) proposes to improve on Sack's definition by adding that we should also take into account the liability of the creditors, who 'regularly violate the established treaties and other international instruments for the protection of rights'.[7]

Alternatively, Lienau (2014, 8)[8] interpreted Sack's conditions as suggesting that his definition requires some sort of popular consent in order to generate binding obligations; and that binding sovereign obligations must be entered into for the purpose of 'benefitting the underlying people'.[9]

[4]See for example Jayachandran, Kremer, and Shafter (2006), Buchheit, Gulati, and Thompson (2006), King (2006), Howse (2007), Adams (1991), Raffer (2007), Toussaint (2016), and Acosta and Ugarteche (2008). Several NGOs and political movements have also campaigned for odious debts and debt cancellation. Some of them are CATDM (http://www.cadtm.org/); Debt Watch (http://www.odg.cat/), Jubilee (http://advocacyinternational.co.uk/featured-project/jubilee-2000); and OXFAM (https://www.oxfam.org/en/tags/debt-relief).

[5]See Sack (1927, 1).

[6]See Toussaint (2016).

[7]Toussaint (2016) mentions as examples of creditors who act in such a way, referring to the IMF and the World Bank 'who have continuously and deliberately imposed policies on debtor countries that violate human rights; and the Troika, which imposes brutal austerity policies on Greece'.

[8]Lienau (2014).

[9]Lienau (2014, 8).

On the other hand, Jayachandran, Kremer, and Shafter (2006)[10] hold that odious debts should be understood as debts incurred by the government of a nation without either popular consent or a legitimate public purpose, shifting the attention from 'lack of benefit' as a criteria for odiousness to 'lack of legitimate public purpose'.

Finally, Howse (2007, 2) has interpreted Sack as claiming that a debt is odious when it is 'contracted and spent against the interests of the population of a State, without its consent, and with full awareness of the creditor'.[11]

A quick revision of these definitions show that there are many different candidate conditions for odious debts. However, each of them have specific problems. Toussaint's suggestion that the most relevant condition is the purpose for which the money was used seems to be on the right track, but he is not very specific about what counts as an odious-generating purpose or how exactly we should define it. Lienau, on the other hand, mentions 'consent' as the relevant standard, but what exactly consent should apply to (e.g. to the nature of the regime, the specific loan, etc.) and what counts as valid consent remains unclear. Kremer et al.'s claim that we should focus on 'legitimate public purposes' seems to make sense, but they do not provide a detailed account of what a legitimate public purpose might be. Finally, other definitions, such as Howse's and Lienau's, mention as the relevant standards the 'absence of benefit', or the loan being 'against the interest of the population'. However, as I will argue, these conditions seem neither necessary nor sufficient for the definition of what makes a debt 'odious'.[12] Here I will show that the central condition for non-bindingness is how money is spent, and specifically when it is spent in ways that are incompatible with the role of public officials.

Rather than producing a thorough examination of these conditions, *legal scholars* have also focused their attention on the legal status of odious debts and on issues of *implementation*. That is, they have been concerned with whether or not institutions should be modified so that odious debts are eliminated or prevented, and how exactly institutions should be changed. In this vein, Cheng (2007) has been quite skeptical about the relevance of odious debts in international law, as they do not exist under any treaties, nor do they exist in practice.[13] States are bound by their obligations, so they should honour their debts, he says. However, other scholars have proposed concrete reforms. Toussaint (2016), for instance, has argued that 'a sovereign state that discovers that it has an odious debt can and should repudiate it unilaterally. The first steps towards this goal would be to suspend payments and to conduct an audit with the participation of the citizens'.[14]. Also, Acosta and Ugarteche (2008) have proposed the creation of a permanent independent arbitration tribunal, possibly under the auspices of the United Nations, to hear cases of generalized repayment difficulties or disputes.[15] A key feature of both models is that independent arbiters would be empowered to judge

[10]See Jayachandran, Kremer, and Shafter (2006).
[11]See Howse (2007, p2).
[12]Other possible variations or interpretations are that odious debts are 'debts incurred by the government of a nation without either *popular consent* or a *legitimate public purpose*' (see Jayachandran, Kremer, and Shafter 2006), or that odious debts imply 'Absence of consent, absence of benefit, creditor awareness' (Khalfan et al. 2003, 2). Khalfan also defends this definition in http://www.choike.org/documentos/odious_debt_presentation.pdf, page 2 onwards.
[13]Cheng (2007).
[14]See Toussaint (2016).
[15]See Acosta and Ugarteche (2008).

instances of illegitimate debt and to declare those debts null and void. On the other hand, Raffer (2007) has put forward several objections against the odious debt doctrine, as defined so far;[16] but he still believes that some sovereign debts can be considered illegal on the grounds that they:

> violat[e] the law, basic legal principles or that are legally null and void: debts incurred in violation of national laws, of international law, such as in breach of IFI-statutes and general universally accepted legal principles, especially debts, whose servicing violates human rights (p. 7).[17]

Also, in order to deal with these illegal debts, he proposes that a neutral court or panel decide whether international financial institutions have violated their own statuses by, for example, providing criminal loans (i.e. loans to government who have committed gross human rights violations) (Raffer 2007, 14).[18] Finally, Jayachandran, Kremer, and Shafter (2006) have made an interesting proposal for implementation, which basically suggests that lending to autocratic regimes should be blocked.

These proposals for implementation are all worth exploring. However, they should be considered ex-post analysis, and not ex-ante, in the sense that they propose what to do with a debt *once it has been established that it is odious*, instead of proposing how to implement institutional reform aimed at *preventing* odious debts from now on. The latter approach seems to be the most useful for investors and financial institutions to guide their decisions in the future. The principles that I propose in my article should be useful to structure principles for lending *from now on*. Thus, in contrast with most of the literature on implementation, I propose an ex-ante approach that remedies this shortcoming in existing literature. The only proposal which seems to be made from the ex-ante perspective is the one that Jayachandran et al. have put forward. However, their account is based on the assumption that only dictators can incur odious debts. As I will later show, this assumption is misleading.

The topic of non-binding (or odious) debts has also been approached by *global justice* literature. Pogge (2001, 2008), for instance, approaches the topic, but he does so from a wrong perspective. In his view, we should discuss the issue of debts in terms of the *effects* they cause on the quality of government and world poverty.[19] Thus, for Pogge, the issue can be settled by relying on empirical discussions: whenever loans aggravate poverty, they should be excluded.[20] The borrowing privilege (that is, the fact that the international community grants autocratic governments the right to borrow) is a crucial example of this. Because of the existence of the borrowing privilege, Pogge says, millions of people have become impoverished or their situation has worsened, and that is what makes it unjust. Had this privilege not existed, or if we implement some (minor) modifications to the rules that govern lending, the poor would be better off. Thus, Pogge says that '[…] the existing world order is itself a crucial causal factor in the prevalence of corruption and oppression in the poor countries'.

The borrowing privilege we confer upon a group in power includes the power to impose internationally valid legal obligations upon the country at large. Any successor

[16]See Raffer (2007, 234–235).
[17]See Raffer, Kunibert, http://www.choike.org/documentos/kunibert_raffer_external_debt.pdf. Esp. page 7.
[18]See Raffer, Kunibert. http://www.choike.org/documentos/kunibert_raffer_external_debt.pdf, page 14.
[19]See, for example, Pogge (2001) or Pogge (2008).
[20]For a discussion about this point, see (Cohen 2010).

government that refuses to honour debts incurred by an ever so corrupt, brutal, undemocratic, unconstitutional, repressive, unpopular predecessor will be severely punished by the banks and governments of other countries. At minimum it will lose its own borrowing privilege by being excluded from the international financial markets. Such refusals are, therefore, quite rare, as governments, even when newly-elected after a dramatic break with the past, are compelled to pay the debts of their ever so awful predecessors (Pogge 2003, 10).[21]

Moreover, he mentions three specific effects of the borrowing privilege: that it facilitates cheap borrowing by destructive rulers, that it undermines the capacity of successor governments to implement necessary reforms, and that it strengthens incentives towards coup attempts. In a different text, he says that the borrowing privilege 'provide strong incentives to potential predators (military officers, most frequently) to take power by force' and to oppress their people and divert state revenues into their own pockets' (Pogge 2005, 49);[22] and in another one that the borrowing privilege is 'an unmitigated disaster for the global poor who are being dispossessed through loan and resource agreements over which they have no say and from which they do not benefit.' (Pogge 2007).[23] As we can see, Pogge clearly connects the borrowing privilege with its effect, in order to condemn it.[24,25]

Here, I propose a different strategy. Instead of discussing the issue of debts in terms of their impact on poverty, I will discuss the conditions under which they are not binding for states, regardless of such distributional consequences. In other words, my account will not ground the claim that a debt is not binding on the fact that it *causes* poverty, but will rather base the non-bindingness of a debt on other considerations, which I shall discuss later on. Incidentally, my account will also assume that the relative wealth of the parties is *irrelevant* to establish the non-bindingness of a debt. That is, the fact that the borrowing state is poor or wealthy, or that the lender is small or big, will have no bearing on the issue of odious debts. As I will show later, any kind of state and lender can generate odious debts; in the same way that any kind of citizen, whether poor or rich, can be defrauded by someone who borrows in her name.

Another global justice scholar who has addressed debts from a normative standpoint is Barry and Herman (2007, 60).[26] Barry argues that a central issue regarding justice in debts is that the individual agents who are empowered to agree to the contract and those who benefit from it are often different; and that those who are bound by the contract are not always given adequate consideration. However, in this discussion, it is still quite unclear whether the immorality of debts resides in the fact that the agents who borrow and the agents who are bound are different, or that those who are bound

[21]See Pogge (2003), 'Assisting the Global Poor', in http://www.princeton.edu/rpds/seminars/pdfs/pogge_assistingpoor.pdf, page 10.
[22]See Pogge (2005, 49).
[23]See Pogge (2005).
[24]In most of his writings, Pogge discusses the ethics of lending in terms of the consequences it generates. However, he occasionally deviates from this perspective and seems to argue that the borrowing privilege is unjust, on the grounds that the government is a *de facto* one, and, therefore, not authorized to borrow. Something along those lines is suggested in the warehouse analogy that he makes. See Pogge (2005, 737). In this article I only address his outcome-based approach.
[25]Pogge´s view is also represented in Pogge (2005). For the view that Pogge connects debts with consequences, see Steinhoff (2012).
[26]See Barry and Herman (2007, 60).

by it do not really *benefit* from the loan, or that the loan was incurred by 'oppressive elites' or 'dictators', or that future citizens do not consent, or that the loan 'harms' the country, or a combination of these.[27] This indeterminacy with respect to the conditions of fairness and unfairness points to an urgent need for clarification. Gosseries (2007) has also briefly addressed the topic of odious debts in a chapter,[28] but, as he says, his essay is not concerned 'specifically with odious debt', (p 101),[29] but rather mentions them as a starting point for another discussion.

Private law principles that regulate domestic lending

In order to understand the injustice of odious debts, we should identify the rules under which lending should operate. Given the considerable stakes – basically, the viability of the whole international lending system – these rules should be both compelling and plausible. Otherwise, it will be difficult to convince relevant agents to implement them. These rules already exist, as they can be found in private agency law, and they regulate lending between agents domestically. What we should do is extend those rules globally, and give an account of how they would work.[30]

We can make these rules explicit through the analysis of a specific example. A C.E.O. of a corporation borrows money from a bank in the name of the company for which he works. The C.E.O. uses the money he obtains from the bank to decorate her or his daughter's office. That is, he uses the money for purposes which are *clearly* incompatible with her or his role as C.E.O. Moreover, the C.E.O. acts in ways that are visibly suspicious, suggesting in many different forms, before borrowing, that he will spend those funds to decorate her or his daughter's office. After a while, the bank attempts to recover the loan and interest payments, but the corporation in whose name the loan was incurred is the party that the bank considers liable, not the C.E.O. who borrowed the money. The injustice of this situation is obvious. The C.E.O. was acting on her or his own initiative, and was not allowed by the corporation to borrow for the purposes for which he borrowed. It seems clear that, in this case, the debt should not be considered binding on the corporation, and that the C.E.O. who actually incurred the loan is the one who should be liable for it. This would be so, even if the rogue has dropped out of sight or has declared personal bankruptcy so that nothing can be recovered from them.

Cases like these have a clear resolution in *agency law*. Agency law can be defined as a consensual relation created by contract or by law where one party, the *principal*, grants authority to another party, the *agent*, to act on behalf of and under the control of the

[27]The benefit standard is suggested by Barry. See Barry and Herman (2007, 60).
[28]See Gosseries (2007).
[29]See Gosseries (2007, 101). In his brief discussion on odious debts, Gosseries states that since 'only a democratic government can be properly regarded as having a mandate from the people, only a democratic government can be said to validly bind the people it represents'. He, thus, mentions in passing an important condition under which a debt is odious (the autocratic government condition). Later in this article, I show that it is a mistake to defend such a condition.
[30]In this article I will not discuss how private law deals with the problem of lending to poor people. This discussion is very interesting and can be related to debt cancellation debates. However, in my view, poverty does not necessarily generate a strong reason for non-repayment, as the fact that someone is poor is not a sufficient condition to dissolve an obligation to repay a loan, and does not automatically make the debt immoral either. The strategy I pursue, in contrast, seems a straightforward and compelling way of making the case for non-repayment.

principal to deal with a third party. An agency relationship is fiduciary in nature, and the actions and words of an agent exchanged with a third party bind the principal.[31] In the case of the C.E.O., the *principal* would be the corporation, and the *agent* would be the C.E.O. The C.E.O. is authorized by the corporation to act on its behalf, and the decisions of the C.E.O. bind the corporation. Now, according to agency law, the agent will *exceed* her or his authority if s/he makes decisions that are incompatible with her or his role as agent. This is because the authority of the agent is not unrestricted. According to agency law,

> the scope of an agent's authority, whether apparent or actual, is considered in determining an agent's liability for her or his actions. An agent is not personally liable to a third party for a contract the agent has entered into as a representative of the principal so long as the agent acted within the scope of her or his authority and signed the contract as agent for the principal. If the agent exceeded her or his authority by entering into the contract, however, the agent is financially responsible to the principal for violating her or his fiduciary duty.[32]

In the case of the corrupt C.E.O., the C.E.O. was authorized by the corporation to act on its behalf (so the C.E.O. was an authorized agent), but s/he *exceeded* her or his authority (or failed to act within her or his authority) by using borrowed money to decorate her or his daughter's office.

Moreover, in agency law, if a lender ignores visible indications that an authorized agent will exceed their mandate, and still lends, they will not be entitled to claim repayment of the debt from the principal (provided, of course, that the borrower ends up in fact using these funds for purposes that exceeded their mandate).[33] The lender, after all, had the opportunity to check whether or not the agent was exceeding her or his authority, and decided to ignore indications that the agent was going to act corruptly. Also, even if the lender *did* check diligently whether the agent was exceeding her or his authority, and still lent, he would still not be entitled to claim repayment from the third party either. Since the borrower was the one who defrauded the lender, the person in whose name the loan was taken out is not a party to the transaction. The loan, in other words, was incurred at the lender's risk.

So far, I have described a case where the agent is *authorized* to act as an agent but *exceeds* her or his mandate. The picture is even clearer when the C.E.O. is not even an authorized agent in the first place (that is, the principal did not authorize him to act on her or his behalf). Suppose that the C.E.O. *claims* to be the corporation's agent, but that the corporation does not even know the C.E.O., or never authorized her or him to be the agent. The fake C.E.O., then, decides to borrow money in the name of the corporation, and subsequently decides to use the money to buy a birthday present for their daughter. The corporation, clearly, cannot and should not be held liable for the loan. In this case, someone acted fraudulently in its name.

[31] A full definition of the concept of agency law can be found here: http://legal-dictionary.thefreedictionary.com/agency. See also the Restatement (Third) of Agency in the US.

[32] http://legal-dictionary.thefreedictionary.com/agency.

[33] Sources in Corporate Law include 'Strip Clean Floor Refinishing v. N.Y. Dist. Council No. 9, 333 F. Supp. 385, 396 (E.D.N.Y. 1971; and Gen. Overseas Films, Ltd. v. Robin Int'l, Inc., 542 F. Supp. 684, 690 (S.D.N.Y. 1982)' ('Because the circumstances surrounding the transaction were such as to put Haggiag on notice of the need to inquire further into Kraft's power and good faith, Anaconda cannot be bound').

From these two cases we can see that private law defines two conditions under which an agent does *not* bind the party s/he represents (the 'principal').[34] Under these conditions, one might say that the principal is not 'on the hook'. We can call the first one the *authorization* condition and the second one the *good faith condition*. Under the authorization condition, the principal is not legally bound by actions of the agent when the agent is either not authorized to act in their name; or when the agent is authorized to act in their name but exceeds their authority (that is, he borrows for purposes for which he was not authorized). In agency law, however, if the agent is authorized and exceeds their authority, the lender can still hold the principal liable for the debt. This happens when the agent acted with apparent authority (that is, when it was not clear, and could not have been clear for the lender, that the agent was overstepping their authority). Thus, in order for the principal to be 'off the hook', a second condition should be introduced: *the loan could not have been made in good faith*. That is, lenders cannot plausibly argue that the agent had apparent authority if they knew, or could have known, that the agent was not authorized.

A further consideration needs to be introduced. In agency law, even if the agent has no actual authority, the principal may still be liable if it *ratifies* the agent's acts in her or his name.[35] By 'ratifying', I mean here a voluntary act by which the principal may explicitly, or by remaining silent, manifest that s/he is willing to accept the decisions made by the 'agent' in his name. If the agent does something that the principal is aware of, and the principal does not say anything, or explicitly agrees, the principal will be bound. As I will show later on, the notion of ratification will be important in my account of odious debts.

The conditions of agency law described so far coincide with the basic intuitions shared by most of us. The idea that we cannot be made responsible for a decision made by others in our name (unless we have authorized it) is so intuitively plausible and reasonable that people hardly reject it. However, and despite its plausibility, these conditions are absolutely absent at the international level. As stated earlier, international law considers *states* (and not individual members within it) to be liable for their debts.[36] Thus, international law ends up burdening states, even when their public officials exceed their mandate. As a consequence, states have been burdened for generations with debts fraudulently incurred in their name by all kinds of corrupt and brutal dictators and rulers. What we should do is apply to international lending the same set of principles that govern private law. The authorization principle (along with an account of what counts as exceeding the authority of public officials) and the good faith principles are the ones that most clearly and persuasively identify the reasons why sovereign debts are non-binding. This distinction highlights the fact that what crucially underlies the problem of odious debt is that someone who is entitled to make decisions on behalf of a third party exceeds her or his authority. I suggest that these rules should be used as minimal standards. All lending that fails to meet these standards will not be binding for states; rather, it would be classified as personal debts incurred by rulers.

[34]These two conditions can be found here: http://legal-dictionary.thefreedictionary.com/agency.
[35]See RESTATEMENT (THIRD) OF AGENCY 4.01–4.03 (2006).
[36]For this point, see the definition of *Pacta sunt servanda* above and Crawford (2002).

The idea of drawing a parallel between agency law and odious debts has been briefly discussed by a few legal scholars. However, these discussions have a conceptual deficit: they assume that the criteria to consider that a public official had exceeded their authority (or acted in a non-authorized way) was already established, and proceed with the analysis without putting this assumption into question.[37]

Extending private law principles to sovereign lending

To extend the principles of agency law to the international domain, it is necessary to specify who the relevant actors are.[38] In my account, public officials are the *agents* of the state, as they are authorized to act on behalf of the state. The 'state', then, would be the principal, as public officials act on its behalf. And the third party would be 'the lenders', who in the case of sovereign debts would basically be other states, private investors (such as bondholders), and international financial institutions, such as the IMF and the World Bank.

Once we have stipulated this parallel, and consistently with the categories defined by private law; we should extend the two main principles that govern agency law in private law: the *authorization principle*, and the *good faith principle*. In accordance with the first one, a public official exceeds her or his authority when s/he uses borrowed funds for purposes which are clearly incompatible with her or his role as a public official.

In accordance with the second principle, if lenders knew, or should have known, that the first condition was not satisfied (that is, if there was something visibly spurious about the loan), and still decided to lend, they will not be entitled to recover funds from the state to which they are lending, if the money is in fact misused. The loan, in other words, will be incurred at the lenders' risk. When both of these principles are violated, a sovereign debt should be considered odious.

It can be argued here that violating the first principle *only* would suffice to generate a non-binding debt. If a public official embezzles all the money s/he borrows, arguably the state should not be burdened with the debt. This would be so, even if the lender lent in good faith. Thus, the second condition (the good faith condition) does not seem to be necessary. This might be true, and I am sympathetic to that point. However, in order to make the case for odious debts as convincing and clear as possible, I will set aside the issue of whether the second condition is also necessary, and argue that, when *both* conditions are violated, the debt will definitely be odious. Given that each of these principles are so important, and that they can potentially be challenged by corrupt

[37] See, Buchheit, et al. (2006) for example, supposing to be the case that when a public official, acting as an agent, fails to benefit the population, it is overstepping its authority. This claim, as I will show later, is misleading, as failing to benefit the population does not necessarily mean that the agent is acting beyond the scope of authority, in the same way that it would not mean for a C.E.O. to act beyond his authority that he eventually fails to benefit the corporation for which he works. Jeff King (see King 2006), on the other hand, mentions the notion of public officials acting ultra vires, but does not define what ultra vires consists of. DeMott (2007) discusses Mitu Gulati et al.'s idea of extending agency law to odious debts, but neither De Mott nor Mitu Gulati et al. explain when exactly officials fail to bind the state. This is a philosophical issue that they simply do not engage with. As a consequence of this conceptual deficit, there is not a clear idea of how to extend and implement the core ideas of agency law to the international level in the current legal literature.

[38] An attempt to apply the principles of agency law to the political realm has also been made by Jeremy Waldron. See J. Waldron 'Accountability: Fundamental to Democracy', in http://www.law.nyu.edu/sites/default/files/upload_documents/Accountability.pdf.

officials, creditors and other relevant agents, we need to provide compelling versions of each of them. That is what I will do next.

Principle of authorization

This principle requires that we lay out the conditions under which spending by public officials *cannot* possibly count as being authorized by the population. I will argue here that a public official's action cannot possibly be authorized to be carried out in the name of the state if (a) public officials do not even have authority to rule in the first place, and, additionally, act in ways that are clearly incompatible with their role as public officials – in private law, this would be the parallel to a C.E.O. who takes over a company through unclear procedures, and who subsequently acts in ways that are clearly incompatible with their role as C.E.O.; or if (b) the government *does* have authority to rule – say, because it was democratically elected in free and fair elections – but *exceeds* that authority.

Cases where public officials act as agents of a country to which they do not even belong – parallel to the case of a rogue customer who, out of the blue, asks for a loan in the name of someone who does not even know them – will not be discussed here, as they are exceptional or non-existing in real life. Cases of *benevolent* autocratic officials will not be discussed either. That is, cases of public officials who are ruling *de facto*, but who use borrowed funds for purposes that are clearly compatible with their role as public officials (for example, they build good functioning schools and hospitals) will also be excluded from the discussion. Such cases are not clearly instances of odious debts, and international law has, in fact, considered *de facto* rulers as capable of binding the state.[39] That autocratic rulers can in principle bind the state does not seem unreasonable. If we had no such rule, then every court or tribunal could question the constitutionality of some ruler's ascent to power and refuse to enforce their treaties and transactions, no non-democratic country could contract a binding debt, and much of the world would be locked out of development-related lending and presumably investment and treaties as well. The implications would be enormous. Some might argue here that the concept of 'benevolent autocracy' is contradictory in itself, because autocracies are by definition corrupt and, therefore, loans attached to them will always be odious. However, we should keep in mind that even autocratic governments can eventually make good decisions about how to use public funds. This might be rare, but it is not impossible. The crucial point is that an autocracy should be defined as such on the grounds that it came to power through force, or that it is constituted by an authoritarian institutional structure. Once this autocratic government is in power, it can eventually make good decisions. So we should not conclude that *all* lending to autocratic governments necessarily generates odious debt.

Cases like (a) correspond to cases where the public official of a state rules *de facto*. Additionally, such public official acts in ways that are visibly suspicious. The fact that the official rules *de facto* and that they act in ways that are visibly suspicious are usually related. It is a well-known fact that autocratic governments are prone to illicit

[39]See, for example, the case of dictator Tinoco in Costa Rica in 1923, where Judge Taft ruled that Tinoco was a *de facto* government capable of binding the State. Tinoco Arbitration (Great Britain v. Costa Rica) (1923). 18 Am. J. Int'l L.: 147.

behaviour, and so lenders are usually aware of the fact that, if they lend to such governments, funds will very likely be misused. Loans to many heads of state of African countries, such as Zimbabwe, Eritrea, and Equatorial Guinea, satisfy this condition, as it is publicly available information that these heads of state are corrupt and,[40] additionally, that these states rank poorly in terms of the personal freedoms that their citizens enjoy.[41] It is possible that, occasionally, autocratic rulers act in accordance with perfectly acceptable purposes, that lenders know about these purposes, and that the population ruled by the state supports these rulers' actions. Rulers, for instance, can build dams when needed, or improve the traffic system. In these cases we can arguably claim that a loan can be binding.[42] In order for a debt to be odious, the money needs to actually be spent towards non-acceptable purposes.

Cases like (b) apply to democratic countries; that is, to countries whose governments are authorized to rule, having been democratically elected by the population, and, additionally, who will clearly and visibly exceed their authority.

As we can see, under both (a) and (b), a debt becomes odious when the public official oversteps their authority. Now, in order to expand the applicability of agency law to sovereign lending, we need to determine exactly what 'exceeding' or 'overstepping' authority means in the international context. This account will lead us to a philosophical discussion: a discussion of the conditions under which the actions of public officials would be non-authorized.

What are the things that public officials are *not* authorized to do? In other words, what are the actions that count as being clearly incompatible with their role as public officials? We can consider three possible candidate answers, two of which will not be valid: (a) the benefit standard, (b) the disagreement standard, and (c) the role of public officials standard.

The 'benefit' standard

A possible candidate standard is that public officials are not authorized to make decisions that do not generate a *benefit* for the population. According to this standard, whenever public officials spend money on X, and X does not benefit the population in any clear way, the actions of officials are not binding for the population. Suppose that an official decides to spend all of the available public funds to build roads that go nowhere. Clearly, this would not benefit the population. So, in this view, borrowing for the purposes of building these roads would not bind the state. A version of the view that lack of benefit is what makes a debt odious has been defended by Buchheit, et al. (2006), who claim for instance that 'a debt becomes odious in the eyes of the citizens of a country, however, in part because the proceeds of a borrowing do not benefit those

[40]Transparency International classifies these countries as three of the most corrupt countries in the world. See more details in the Corruption Perceptions Index; http://www.transparency.org/cpi2015.

[41]See, for example, the Freedom House Report as evidence of this, here: https://freedomhouse.org/report-types/freedom-world. Although these reports are controversial, the point I am simply trying to make is that, given their existence, and the fact that they are publicly available, lenders cannot plausibly argue that they 'did not know' that heads of state were arguably corrupt. Interestingly enough, the legitimacy of the debt of Zimbabwe has been challenged precisely on the grounds that it is odious. http://cadtm.org/Zimbabwe-the-case-for-a-debt-audit.

[42]Suppose, for instance, that an autocratic government borrows funds for the purposes of building a dam, that it is clear about the purposes of the loan, and actually builds the damn. Since people really benefit from it, and lenders lent in good faith, the lenders' claim of repayment seems compelling.

people; the benefits flow to the governing regime that incurred the debt;'[43] and, earlier in the text, that in order for a debt to be odious 'the debt must be incurred by a despot … and it *must not benefit* the state as a whole …'.[44]

However, *benefit* is neither a sufficient nor a necessary condition for an action to count as non-authorized. There are many possible political actions that count as non-beneficial but that, nonetheless, are still binding for the population; and, conversely, there are many possible political actions that are beneficial but not binding. Consider the case of a failed but perfectly legitimate diplomatic mission to a foreign nation, or the case of a just defensive war. These actions do not bring about any benefit to the population. However, there is nothing wrong with public officials deciding to carry out these actions. In principle, they are authorized to go on diplomatic missions, even if these eventually fail, and they are authorized to go to war under certain conditions, even if they do not bring about any tangible benefit. Consider, on the other hand, the case of a public official who receives illicit funds from a foreign corporation, and uses a portion of these funds to build roads that people *do* need. This official's actions are beneficial for the population, but it is highly dubious that her or his decision to build this road can be considered to be an authorized one. What we can see from these examples is that 'benefit' or 'lack of benefit' is not an adequate standard to determine whether a public official acted in accordance with authorized purposes.[45] Needless to say, a government that *always* fails to benefit the population can hardly be acting in a legitimate way. In fact, the idea that people are better off with a government than without one has been at the heart of social contract theories since Hobbes (1996), and it is the main reason why people voluntarily decide to delegate authority in the first place. However, the fact that people are in general better off under a government does not mean that public officials are required to generate a benefit for the population with *every single* decision they make, or that, *every time* they fail to benefit the population, they no longer bind it. Thus, the statement that a specific loan is odious when the government spends the money from that loan for purposes that are not beneficial for the people is misleading. The practical implications of this conclusion are quite radical. Many political campaigns, legal articles, and popular movements demand debt cancellation on the grounds that debts incurred by governments in the past did not *benefit* the people (for example, in Greece or Spain, during the 2009 financial crisis). However, since 'benefit' cannot be used as a valid benchmark, these demands are groundless for our current purposes.

The 'disagreement' standard

A possible alternative standard we can use to determine whether an official has acted in accordance with non-authorized purposes is that the population, or a portion of it,

[43] See Buchheit, et al. (2006, 1244).
[44] See Buchheit, et al. (2006, 1218). Gulati is just an example of this view. Most of the legal literature on odious debts has been based on the assumption that 'benefit' is a necessary component of the definition of odious debts.
[45] An alternative version of the benefit standard would be that, when public officials spend money on X, and X does not generate an expected benefit, the actions of public officials are not binding for the population. However, we encounter a similar problem with this version of the standard. Often, officials do not know what exactly will happen as a consequence of their action (that is, whether or not it will generate a net benefit), but they are still authorized to carry it out; and often officials expect a benefit out of their actions, but the action is not an authorized one. A defensive war can be an example of the former, and building a statue of the political leader of the country in the private garden of one of the officials can be an example of the latter (in this case, the benefit would be that jobs would be created, and the community would receive an additional income).

disagrees with the legitimacy of the purposes for which the loan is used. Suppose a public official decides that the most convenient policy for a society in times of crisis is to bail out private banks through transfers of public funds. Undoubtedly, such a decision will be met with much resistance. According to the 'disagreement' standard, the decision's unpopularity makes it not binding. The problem with using this standard is that it would basically imply that *all* decisions made by a public official would be non-binding, as it is clearly the case that all public decisions are always contested by at least a portion of the population in democratic and pluralist societies. This standard, in other words, would not be demanding enough, as all political decisions would count as non-authorized under it, and this is implausible. The ineffectiveness of this standard also has implications on the debate on debts as it has been structured so far. Many people claim that officials have overstepped their authority by making 'unpopular' decisions such as borrowing money from banks at high interest rates, or by benefitting a specific social class while disadvantaging another. The fact that these decisions are unpopular, however, does not seem to be a sufficient condition for them to count as non-authorized. In principle, a decision can be unpopular but authorized. Reducing the salaries of public employees will certainly be unpopular, but a government is authorized to make this rather harsh decision in order to avoid a deeper financial crisis. So another condition seems to be required for such decisions to count as non-authorized.

The role of public officials' standard

Here I will argue that, in order for a decision made by a public official to count as non-authorized, that decision should be *clearly incompatible* with the role that public officials are supposed to have. By 'incompatible', I do not simply mean here that the decision lacks effective support from the population, or that it does not generate any clear immediate benefit, but rather that we cannot reasonably argue that the population would delegate authority for those specific purposes in the first place. There is a crucial difference between bailing out companies, or waging wars for the purpose of defending the population; and using public funds for private purposes or to oppress the population. The former can always be supported with reasonable arguments, such as the need to preserve economic stability, security, or other such priorities. For the latter, however, we cannot possibly and plausibly find a reasonable argument that can support delegating authority for those purposes. I will further discuss the clearest cases (i.e. human rights violations and corruption) in the next section. Thus, the role of consent is important in this standard. A debt is *not* odious when people decide to express their lack of consent by removing their government, as De Mott (2007) seems to suggest.[46] This, indeed, might be impractical in many cases. The crucial point is that the debt is odious when people could not have consented to the specific use of the loan, under any reasonable interpretation of the role of public authority.

One might argue here that the view that public officials are agents who can eventually overstep their authority applies only to some societies (particularly liberal ones). However, as Buchheit, Gulati, and Thompson (2006) have noticed,[47] agency law applies in other (non-liberal) jurisdictions as well. *World Duty Free Co.* v. *Republic of*

[46]See DeMott (2007, Section D).
[47]See Buchheit, Gulati, and Thompson (2006).

Kenya is illustrative.[48] In this case, a businessman bribed President Moi to obtain a contract with the Republic of Kenya. The businessman, in his defense, argued that this bribe had not been paid to the agent of the state, but to the President, who *was the state*. In his words, he had paid the bribe to the 'remaining "Big Men" of Africa, who, under the one-party State Constitution was entitled to say, like Louis XIV, that *he was the state*.'[49] The defender's strategy, thus, appealed implicitly to the idea that the payment was not really a bribe, because the president was the state and, consequently, he was entitled to decide what to do with the money. The arbitral panel did not accept the plaintiff's argument and argued that President Moi was 'no more than an agent for the state, no matter what his self-conception might have been' (Buchheit, Gulati, and Thompson 2006, 185).[50] The underlying idea in this statement was also that, as in agency law, a ruler is not the state and cannot use public funds as s/he pleases. The only exception that we can find to the idea that authority has limits has been defended by De Vitoria (1991), who has claimed both that there was an absolute obligation to obey superiors because they were superiors, but also that citizens were fully responsible for the deeds of their rulers. So, if a ruler foolishly went to war, in his words, 'the whole commonwealth may be punished for the sins of its monarch' (De Vitoria 1991, Section 12, question 1, article 9).[51] However De Vitoria, of course, is a pre-modern thinker; thus, a person whom nobody is likely to defend these days.

As stated earlier, the case for odious debts is even more compelling when a second condition is introduced: the good faith condition. Next, I will discuss this principle in detail.

Good faith principle

As in private law, if loans are made in *good faith* – i.e. in a situation in which lenders are completely unaware of the purposes of the loan, and could not have possibly known about them – to public officials who are authorized to borrow, and who showed no indication that funds were going to be misdirected; and the funds are subsequently stolen or used for corrupt purposes, creditors will still plausibly have a claim of restitution against the state. In fact, since it was impossible for them to foresee the use of those funds, it would be unfair to make creditors responsible for illegitimate uses of funds. This point is sound; after all, why would lenders be responsible for something they could not have avoided, or even predicted? It has to be possible for lenders to exercise due diligence, and to determine ex-ante whether a government has a fraudulent purpose in mind.[52]

The claim that some loans are odious when funds are used for non-authorized purposes is, thus, much more convincing when a *second* condition is introduced: debts are odious when loans are also *not* made in good faith. That they are not made in 'good faith' basically means that the lender knew, or should have known, that funds

[48]See World Duty Free Co. v. Republic of Kenya (ICSID Case No. Arb/00/7, 4 October 2006). This case is explained in more detail in Buchheit, Gulati, and Thompson (2006, 1239).
[49]Buchheit, Gulati, and Thompson (2006, 1239).
[50]Buchheit, Gulati, and Thompson (2006, 1239).
[51]See De Vitoria (1991, Section 12, question 1, article 9).
[52]The issue of creditors' awareness has been included in the discussion by many legal scholars, including Sack.

were being or could have been plausibly misdirected away from public purposes. This seems reasonable: it is hard to argue that a successor government should be liable for the dishonest or criminal act of two others. So, when a lender lends to a notoriously corrupt government, say Mozambique, even if there is nothing particularly suspicious about that specific transaction, the loan will count as not having been made in good faith. It is clearly the case that lending to these governments should put the lender on notice of possible subsequent misuses of funds. Lending to these governments is like buying a stolen watch from a very suspicious person in the street – the purchase could hardly count as a good faith one.

There are many possible cases of public officials lacking actual and apparent authority. Here I will mention just two. These are significant enough to make the case of odious debts compelling.

These two possible cases are human rights violations and straightforward corruption. There might be other cases as well or even grey areas (i.e. cases that are hard to settle).[53] Because of their plausibility, they will have the advantage of being widely accepted by many people and, consequently, proposals for reform of international law and institutions would be easier to implement. I will now discuss each of them in some detail, focusing on how, in these situations, the simultaneous consideration of the principles of authorization and good faith can allow for specific debts to be qualified as non-binding, and therefore, odious.

Human rights

Public officials act in non-authorized ways when they systematically violate a broad group of rights of a large proportion of citizens. What exactly the population's rights are is, of course, up for debate. However, there is strong consensus about what the core human rights are among different theories of justice, in human rights conventions of the existing system of international law, and for the United Nations. These include the right to life (that is, the right not to be unjustly killed), the right to physical security (which includes the right to bodily integrity, not to be tortured, the right not to be subject to arbitrary arrest, detention or imprisonment), the right against enslavement and involuntary servitude, and the right of association.[54] Borrowed funds that directly contribute to massively violating these rights cannot be binding for the state. If, say, a government uses borrowed funds to buy chemical weapons to tyrannize some of its citizens, the authorization principle will have been violated.

A potential objection we face here is that the population might approve of these violations, on the grounds that, although unpleasant, they are necessary to improve the economic situation of the country.[55] A possible response here can appeal to the notion of *accountability*. If the population *knows* about the purposes for which public officials

[53]If a public official decides to increase the defense budget and reduce the education budget, certainly a big portion of the population will complain. However, this decision will not count as one that cannot possibly be authorized by the population (i.e. it will not be a violation of (i) above). Something similar can be said about disputes regarding whether it is acceptable to use public funds to support private companies during times of recession (e.g. bailouts). Certainly a big portion of the population would oppose these policies. However, they do not count as policies that cannot possibly be authorized. Cases that *would* count as not possibly being authorized by the population are cases in which public officials *clearly* exceed their mandate by acting in ways that, if cognizant of the facts, the population would not accept under any circumstance.

[54]For a detailed discussion of the basic human rights that international law should recognize, see Buchanan (2007).

[55]This argument has been typically used, for example, to defend the Chilean dictatorship in the 1970s and 1980s.

are borrowing, is able to impose sanctions or to openly show their disagreement, and decides not to take action, the objection might be a plausible one. In private law terminology, we might say that the principal is *ratifying* the action of its agent. However, if the population knows about these purposes, and shows clear signs of disapproval, or cannot possibly even show disapproval of them (say, because they are too oppressed by their own government, or because the government is acting secretly), the argument that human rights violations have support among the population – especially among those who are victims – will no longer work. It is virtually impossible to demonstrate that people who are tortured by their own government might have authorized the government to act for such purposes. A different issue consists in establishing whether or not the human rights' violations actually occurred, and who was responsible for them.[56]

Corruption

A second related way in which lenders fail to satisfy the 'good faith' condition is when they lend to corrupt governments. By 'corrupt', I mean here that the government engages in a known pattern of 'abuse of public office for private gain'.[57] Public officials can receive salaries and benefits in return for their service, but they cannot receive any other benefit on top of those benefits, such as bribes and gifts in return for favours. Neither can they transfer public funds to their personal accounts, or use their power or influence to favour friends and allies. As in the case of human rights, there are grey areas here. Public officials can eventually benefit themselves but obtain support from a large portion of the population, they can assign their family members key positions of power in efficiently run companies, or they can spy on political opponents for security purposes. However, the fact that there are secondary benefits or potential justifications for these actions does not imply that they are not corrupt in the first place. We can, thus, state that, when a public official uses public office to benefit themselves, or to benefit some particular person (in addition to the benefit or treatment that any of them are already supposed to receive, for publicly known and agreed upon reasons), that public official is overstepping their authority. Cases of corruption include bribing, nepotism, and embezzling public funds, money laundering, illicit funds and others.

As in the case of human rights violations, someone might argue that if people *ratify* corrupt uses of funds (that is, they do not say anything against them, or they explicitly support them) the corrupt action will count as an authorized one. However, it is virtually impossible to show that people can ratify corrupt uses of funds, as this would imply that people have authorized public officials to become richer at their expense, which is implausible.

Notions of human rights and corruption can be derived from theories of social contract, such as those proposed by Hobbes, Locke, and Kant.[58] From the point of view of these theories, what makes us liable for decisions made by our governments is that

[56]We should note here that the intentions that public officials allegedly have when making decisions, or the arguments they use to justify their behaviour, are irrelevant to determine the actual impact on citizens' rights. Public officials are usually deft at vindicating their policies, or at finding excuses when they act unjustly. Even the most egregious violation of human rights has historically been defended by corrupt governments with some sort of imaginative argument.

[57]For a complete discussion of this definition of corruption see Kolstad (2012).

[58]See, for example, Hobbes (1996) or Immanuel Kant: Practical Philosophy (1996).

they are authorized by us to interpret and defend our rights, as long as they do so impartially (that is, as long as they do not obviously favour a group or one of the right-holders). Persons have basic rights, and governments are in a better position to interpret them and enforce them than we – the people – are. This is because our own judgement is partial, biased, or limited, and the understanding that we have of our rights normally conflicts with or is different from the understanding that others have. We, therefore, need an arbitrator's judgement that can provide a unitary interpretation of our rights. By endorsing a central authority, we obtain a unitary interpretation of our basic rights.

In these accounts, however, we are not liable for the private deeds of public officials. State authority has limits, and those limits are set by foundations of public authority. These accounts might not be compelling for everybody. However, they are a familiar line of thought in political philosophy, and they offer a possible way of justifying limits to state authority.[59]

The human rights and corruption standards apply to both autocratic and democratic governments. Lending without restrictions to *autocratic* regimes with a bad record of corruption and of human rights' violations cannot be considered to be a 'good faith' loan. Lenders can, or should be 'on notice' that these governments might be exceeding their authority. Lending funds to those kinds of governments is parallel to the domestic example of lending funds to a well-known crook who borrows in the name of a neighbour for purposes that are totally unclear. It is important to note here that lending money to these governments would not automatically make the debt odious, as autocratic governments, although not authorized to rule, can in principle use funds for perfectly acceptable public purposes. However, lenders should be aware that, since these kinds of governments are prone to corrupt uses of funds, they will likely use the funds incurred in that specific transaction for illegitimate purposes.

Something similar could be said about corrupt *democratic* governments. A public official of a democratic country might ask for funds for purposes such as building dams or bridges for a suspiciously high price, or for building a private airport for her or his family. If lenders are aware of this situation, or if there are clear indications that this could happen, and they still lend, their entitlement to recover funds from successor governments ought to become much weaker. This is because lending money to an organization or state when it is not clear whether or not its representatives are acting within their mandate is something that lenders do at their own risk. The risks involved when lending are two-fold. First, there is a risk of default; that is, that the borrower will not repay the debt. Second – and this is the kind of risk that is most relevant for the topic of odious debts – there is the risk of corruption; that is, the risk that the borrower is overstepping its authority as an authorized agent. The risk involved here is that the lender might not be able (and will not be entitled) to recover the funds from the party incurring the loan. In order to avoid this, lenders should verify the purposes for which the client is borrowing. If they fail to do this, and it turns out that the client steals the

[59]Such accounts have been provided by, for example, Stilz (2011) and Parrish (2009). The distinction between private and public purposes is clearly explained in Ripstein (2010, 193). Ripstein states that acting on behalf of another person or group of persons has a familiar kind of moral structure, namely that, when you act for somebody else, and not yourself, you cannot use your office for personal gain. A public official is legally empowered to make arrangements for others and is, therefore, prohibited from using his or her own offices for private purposes.

money, or uses it for purposes that exceed her or his authority, a third party cannot plausibly be held liable for the debt, for s/he was not even a party in the transaction.

In sum, loans fail to pass the 'good faith' test when the *purposes* for which the loans are incurred are, or should be, suspicious to lenders. This condition applies to both democratic and autocratic regimes. Lenders cannot claim innocence when officials borrow for purposes that suggest that funds might be misused. Although these officials might generally be authorized to borrow in the name of the state, they cannot overstep their authority by using the funds for corrupt purposes. Therefore, such loans should not be binding on the state.[60]

So now we know why loans incurred by Dictator Marcos in Philippines, among others, can be considered odious. The two basic principles I have proposed have both been clearly violated. Officials have violated the principle of authority by not being authorized to rule, and by using funds from loans for corrupt purposes (i.e. basically, to enrich themselves). On the other hand, loans cannot have been made in good faith, as it was publicly known that Marcos was an autocratic ruler *and* that the circumstances surrounding the loans were spurious. A consistent application of these two principles would yield, I suspect, the impressive result that massive amounts of debts in the world are, in fact, not binding.

Conclusion

There is a clear injustice in the current international financial system. The injustice is that most debtor countries are being forced to repay national debts that they do not have the moral obligation to repay. Following an old legal concept, we can call these debts 'odious'. I have suggested in this article that the nature of this injustice can be clarified by applying on a global scale some of the standards that are normally applied for domestic lending. An important benefit of doing this is that it clearly shows how a large part of the world´s population has been saddled with debts that were fraudulently incurred in their name. Here I have not suggested a possible solution to the problem of odious debts. The main institutional aspects of this solution, I believe, would be to organize international lending around the principles that we consider valid domestically. This would probably entail creating institutions that would put lenders on notice of possible misuses of funds, so that they cannot claim to have made the loan innocently; and that could declare debts as non-binding after loans are in fact misused. The injustice of odious debts is massive and should not be ignored. Surprisingly, however, philosophers have not said much about this issue. In this article, I have attempted to fill this gap.

[60]A possible objection to the claim that debts are odious when lenders intended them for private purposes is that proving 'knowledge' of such intentions is difficult. This objection fails, however, in all cases. Some governments or policies are notably and obviously corrupt, and to claim ignorance of such purposes is simply implausible. What follows, in any case, is that international bodies have an interest in creating institutions that make such abuses transparent to lenders so that they have no excuse; if they continued to lend, they would become, in effect, co-conspirators in the embezzlement. Such institutions should not block all loans to autocratic regimes for the mere reason that they are autocratic. Even if autocratic governments occasionally spend funds for legitimate public purposes, the standards of liability should certainly be set very high. Such institutions are currently non-existent, and should be created.

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PEOPLE OF DEVELOPING COUNTRIES CAN SUE THE WORLD BANK AND THE IMF IN US COURTS

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This is a quick exposé on whether or not one can sue the Bretton Woods Institutions (BWI), the World Bank, and or the IMF for any corruption in a giving country when their client countries or members are not holding those in government accountable when public money borrowed from the BWI is stolen with the active participation or

indirect involvement of local government. Historically, the International Monetary Fund (IMF) and the World Bank were created in July 1944 at an international conference in the United States (in Bretton Woods, New Hampshire) that established a framework for economic cooperation aimed at creating a more stable and prosperous global economy. While this goal remains central to both institutions, their work constantly evolves in response to economic developments and challenges. The IMF promotes global macroeconomic and financial stability and provides policy advice and capacity development support to help countries build and maintain strong economies. On the other hand, the World Bank Group works with developing countries to reduce poverty and increase shared prosperity, while the International Monetary Fund serves to stabilize the international monetary system and acts as a monitor of the world's currencies[1].

Recent lawsuits against the World Bank and the IMF: In 2019, the U.S. Supreme Court issued a 7-1 decision in *Jam v. International Finance Corporation*, ruling for the first time that international financial institutions, including various branches of the bank and other U.S.-based organizations like the Inter-American Development Bank, can be subject to lawsuits in cases where their investments in foreign **development projects are alleged to have caused harm to local communities**. This decision overturned a decades-old presumption dating to the founding of the World Bank in 1945 — that the IFC, a Washington, D.C.-based branch of the World Bank Group that finances private-sector projects in developing countries, and other bank-affiliated organizations are fully immune from such suits[2] [3].

My opinion at the time of this decision was to applaud the SCOTUS' decision and there was no potential long-term damage to the World Bank and the IMF in contrast to others. Further, in 2021, the World Bank faced a data-rigging scandal that forced it to discontinue its "Doing Business" investment climate rankings. The scandal was difficult to repair and has raised questions over whether the institutions' influential research is subject to shareholder influence. Regardless of whether IMF chief Kristalina Georgieva was to blame for changes to World Bank data in 2017 that supposedly benefited China, the scandal has dented the research reputations of both institutions, former staff, government officials, and outside experts say[4].

The following, are possible reasons for suing the World Bank and the IMF: alleged harm caused to local communities by their investments in foreign development

projects[5] [6].

However, it is important to note that the IMF and the World Bank share a common goal of raising living standards in their member countries, and their approaches to achieving this shared goal are complementary[7].

What is the process of suing, the process of suing the World Bank and the IMF: Suing the World Bank and the IMF in Federal Court would involve filing a lawsuit against them and going through the legal process. It is important to consult with legal experts to understand the specific requirements and procedures involved in such a lawsuit:

-Alleged harm caused to local communities by their investments in foreign development projects[8];

-Disagreements over policy advice and capacity development support provided by the IMF;

-Corruption and lack of good governance in member countries, which undermines public trust in government and threatens economic development[9] .

-Disputes over loans and balance of payments difficulties[10].

-Other legal issues related to the operations of the institutions[11].

Furthermore, there have been other legal issues related to the operations of the institutions, such as disagreements over policy advice and capacity development support provided by the IMF, disputes over loans and balance of payments difficulties, and corruption and lack of good governance in member countries, which undermines public trust in government and threatens economic development[12].

Farmers, fishermen and others who say the coal-fired Tata Mundra Power Plant in Gujarat, India has ruined the environment and their livelihoods cannot sue the U.S.-based international organization that financed its construction in 2008, a federal appeals court held Tuesday in a case that the U.S. Supreme Court revived in 2019.

However, in 2021, the U.S. Court of Appeals for the District of Columbia Circuit affirmed last year's ruling for International Finance Corp on remand. The appeals court found that IFC, represented by White & Case and Sidley Austin, has immunity

from suit because the plaintiffs' claims "are not based upon activity carried on in the United States."[13]

"Even crediting the allegation that the Plant would not have been built without IFC's funding, the operation of the Plant is what actually injured appellants, and the manner of its construction and operation is the crux of their complaint," Circuit Judge Judith Rogers wrote. "The gravamen of appellants' lawsuit is, therefore, conduct that occurred in India, not in the United States." Conversely, Richard Herz of EarthRights International, who argued the appeal for fisherman Budha Ismail Jam and his neighbors, said the D.C. Circuit should have focused solely on the IFC's decision to disburse funds without enforcing the loan agreement's environmental provisions. Instead, the court focused on the actions of Coastal Gujarat Power Limited, which constructed and operates Tata Mundra. Based in Washington, D.C., the IFC is the private-lending arm of the World Bank Group. In this case, it provided $450 million in loans to help construct Tata Mundra. Jam filed suit in federal court in Washington in 2015, saying the IFC's failure to enforce the lending agreement's environmental provisions has had a devastating effect on marine life and air quality. The lower federal district court dismissed the suit in 2016 and the D.C. Circuit affirmed in 2017, relying on the "virtually absolute" immunity that IFC was presumed to have under the International Organizations Immunities Act (IOIA)[14].

In analyzing this *Jam v. International Finance Corporation, First*, the majority confirmed that the "Privileges and Immunities accorded by the IOIA are only default rules," and suggested that "[i]f the work of a given international organization would be impaired by restrictive immunity, the organization's charter can always specify a different level of immunity."[15] The majority noted that "[t]he charters of many international organizations do just that," and observed that "the IFC's own charter does not state that the IFC is absolutely immune from suit."[16]

Second, the majority suggested that the lending activities of IOs like the IFC may not fall within the commercial activity exception.[17] The majority also indicated that even if the activity at issue is deemed to be commercial under the Foreign Sovereign Immunity Act (FSIA), there may not be a sufficient nexus or link between the activity and the U.S., or the case may not be based upon that activity but rather non-commercial conduct[18]. Justice Breyer was less optimistic, pointing out in a dissent that the constituent documents of many IOs do not have the force of law in the U.S.,

and thus these organizations "continue to rely upon [the IOIA] to secure immunity," rather than their charters or articles of agreement[19]. Justice Breyer also explained that the definition of "commercial activity" under the FSIA is broad, and this will "at the very least create uncertainty for organizations involved in finance," given that the core functions of these organizations "are at least arguably 'commercial' in nature."[20]

In *Rodriguez v. Pan American Health Organization*, a more recent decision applying *Jam*, a different judge in the D.C. district held that PAHO, a specialized international health agency for the Americas, was not immune from suit under the IOIA given the FSIA's commercial activity exception[21].

The *Rodriguez* plaintiffs were Cuban doctors who allege that they were coerced by the Cuban government into participating in a medical mission in Brazil and that the Cuban government withheld most of their wages while they were abroad. According to the complaint, PAHO facilitated this misconduct, including by arranging payment for the work performed by the plaintiffs, most of which PAHO remitted to Cuba and some of which it kept.

The district court concluded that the gravamen of one of the plaintiffs' claims—that PAHO knowingly profited from forced labor—was based on the allegation that PAHO "mov[ed] […] money, for a fee, between Cuba and Brazil," and that this qualified as a commercial activity under the FSIA "and thus the IOIA."[22] The district court held there was a sufficient nexus between PAHO's commercial activity and the U.S., given that the Director-General approved the agreements committing PAHO to its role as a financial intermediary at PAHO's headquarters in Washington, D.C., and the money passed through PAHO's bank account there.[23] PAHO also argued that it was otherwise entitled to immunity under the U.N. Charter and the WHO Constitution, both of which contain so-called "functional" immunity provisions.[24] But an IO's charter or other constituent documents, like its articles of agreement, may only have binding legal effect in the U.S. if they are part of or referenced in a treaty of which the U.S. is a member, and the relevant treaty provisions are either self-executing or have been enacted into law by Congress. However, the district court focused on the text and drafting history of the immunity provisions contained in the U.N. Charter and the WHO Constitution, and concluded that they are not self-executing, and thus do not have domestic legal effect in the

U.S.[25] and as a result, it held that neither immunity provision renders PAHO immune from suit.[26] In 2022, the federal Appeals Court of DC in *Rodriguez v. Pan American Health Organization*, 29 F. 4th 706 - Court of Appeals, Dist. of Columbia Circuit 2022, affirmed the district court's judgment denying PAHO's motion to dismiss the 18 U.S.C. § 1589(b) claim and remand for further proceedings consistent with this opinion.

In conclusion, the US Supreme Court in *Jam* settled a fundamental question regarding the scope of immunity for IOs—answering in the negative whether they are entitled to absolute immunity under the IOIA. Further, the US Supreme Court clarified that lower federal courts "can always specify a different level of immunity" than the statute, but which may not be binding in U.S. courts. Conversely and finally, you (people of developing countries) can sue the Bretton Woods Institutions before a US court on the basis of some of the aforementioned grounds.

[1] See https://www.imf.org/en/About/Factsheets/Sheets/2022/IMF-World-Bank-New

[2] See **https://www.npr.org/sections/goatsandsoda/2019/03/07/699437482/supreme-court-rules-that-world-bank-can-be-sued**

How Public Interest Litigation Led to Invalidation of Illegal Mozambican Debt

By:

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August 4, 2020

The Mozambican case of odious debt is an illustration of several similar cases around the world whereby consultants from multinational corporations identify development countries with something of value, such as minerals, and persuade the authorities of these countries to secretly take on huge development loans with banks. In most cases, the money never reaches the countries. Rather, the money is transferred directly from the banks to contractors and the countries are then left with massive debts. Resources and companies from developing countries are given as collaterals for these loans. Therefore, the resources that countries should use to invest in development are transferred to service these odious debts. In summary, this is what happened in Mozambique.

In 2013, two London-based banks, Credit Suisse and Russian VTB lent $2 billion to three state-owned enterprises (SOE) that did not exist at the time. These

companies—Ematum, Proindicus, and Mozambique Asset Management ("MAM")—were created to facilitate the fraud and never generated any profit. These entities were owned by the Mozambican security and intelligence services. Credit Suisse agreed to make available up to $850 million for Ematum. For Proindicus, a loan of $623 million was arranged jointly by Credit Suisse and VTB. Both banks additionally financed MAM with a $535 million loan. The three loans were not approved by the Parliament of Mozambique, thus violating both the Mozambican Budget Law and the Constitution of Mozambique.

This is a complex case involving three different loans across multiple jurisdictions. As the scale of these loans became clear, in 2016, the International Monetary Fund (IMF) suspended its programme with Mozambique in line with its disclosure policy. Other donors followed suit, and all 14 donors who provided direct support to the state budget halted their disbursements. The country found itself facing a severe budget deficit. The loans have thus led to an economic and social crisis in Mozambique, with the local currency falling by 50% against the dollar and cuts being introduced to government spending. Consequently, the loans have drastically affected the already fragile provision of basic services, including health, education, water and sanitation.

Voidable Contracts

Pressure from different actors, such as civil society, development partners and the media, led the Attorney General in Mozambique to commission an audit on the three loans in 2017. According to the Kroll Audit Report, among several other detected irregularities, the banks lent the money knowing that the loans had not received parliamentary approval as required under the Mozambican Constitution. Furthermore, the banks did not carry out due diligence on the SOEs or on the guarantees provided by the government. The loans were given to three state-owned companies which had no revenue and no contracts in place to generate any future profits. The ships and equipment being supplied were massively overpriced and there had been no competitive bidding for the contract – the whole idea was presented by the contractor and the banks rather than being solicited by the Mozambican Government. Also, the money went directly from the banks in London to the contractor, Privinvest, in the United

Arab Emirates, rather than to the SOEs in Mozambique. All of these irregularities were in collusion with Mozambican Government authorities.

In addition, the process followed by the arranging banks was not compliant with various legal and international standards, including the U.S. Foreign Corrupt Practices Act; U.K. Bribery Act; Mozambican Anti-Bribery Law; OECD Convention on Combating Bribery of Foreign Public Officials in International Business; and the FATF Recommendations which set an international standard on anti-corruption for countries to implement through measures adapted to their particular circumstances. This fraud was also in violation of the U.N. Convention Against Corruption; 2015 G20 High Level Principles on Private Sector Transparency and Integrity; and 2017 G20 High Level Principles on the Liability of Legal Persons for Corruption.

International and domestic law make contracts by corruption and bribery voidable. However, the complication with the Mozambican case is that the government took too long to declare all the loans void and null. There are indications that a pending legal action in London might provide some relief, but the legal strategy would have to consider various aspects including the political economy of debts resolution, the laws governing underlying contracts, and the cost of voiding the contracts. It is unlikely that the contracts can be voided within a short-term period in the U.K. jurisdiction.

Indictments and Arrests

In 2019, as part of the U.S. investigation into the loans, three former employees of Credit Suisse were arrested in London, and a former employee of the United Arab Emirates company Privinvest, which supplied boats as part of the loan deal, was arrested in New York. The former Mozambican Finance Minister, Mr. Manuel Chang, was previously arrested in December 2018 in South Africa on charges of conspiracy to violate anti-bribery laws, money laundering and securities fraud on an Interpol warrant. Immediately after his arrest, Mozambique filed a request to extradite Mr. Chang to Mozambique. The U.S. indictment provides compelling evidence of the bribes and kickbacks that were paid as part of the loan deals. The indictment also presents evidence that Credit Suisse failed to prevent this fraud from happening. The bank clearly did

not have adequate procedures in place to prevent the dubious transactions.

The pressure from advocates, Mozambican citizens and these arrests by the U.S. prompted the Mozambican government to finally take action. The Attorney General has indicted and arrested 19 people on charges of abuse of power, abuse of trust, and swindling and money laundering. These individuals include the former head of intelligence and the son of former President of Mozambique Armando Guebuza. The Mozambican indictment outlines a clear case of criminal conduct by various parties and the full extent of corruption and fraud conducted by various partners involved, providing evidence for challenging the loans.

Litigations and Actions

We, the N'weti Organization, launched two applications in the Mozambican Constitutional Court to have the three loans declared illegal as they complied with neither the Mozambican budget laws nor the Constitution. The petitions were signed by 2000 citizens requesting the court to rule the debts illegal. In response to our filling, the Constitutional Court of Mozambique declared the three loans null and void. The top court ruled that all acts inherent to the contracted loans were illegal and therefore null.

The decision by the Constitutional Court, as well as the advocacy campaign and opposing voices from the Mozambican citizens, has triggered action from relevant authorities. For example, the General Prosecutors Office filed a court case in the High Court in London against Credit Suisse, VTB and Privinvest – the corporation behind these frauds. Another court case was filed by the Central Bank of Mozambique against the same defendants last month also in London.

The General Prosecutor of Mozambique built on our legal argument requesting the cancelation of the loans to the Constitutional Court. The Mozambican state claimed that the then-Minister of Finance, Mr. Manuel Chang, did not have the authority to sign the sovereign guarantees because the Mozambican Parliament had not approved the loans. Through this case, Mozambique sought: (1) A declaration that it is not liable to pay any of the debt on one of the three deals, namely the $623 million loan to Proindicus; (2) Compensation for the losses due

to past or future debt payments concerning the loan (and the restructured loans in the case of the Ematum bond); (3) Compensation for all fees and expenses incurred in the restructuring of the Ematum bond; and (4) Compensation for macroeconomic losses resulting from the financial crisis and loss of donor funding which followed the revelations about the loans in 2016.

In December 2019, Jean Boustani, the architect of the illegal debts, was acquitted of the charges by a jury following a federal court trial in Brooklyn, U.S. It is common cause that at least $200 million was paid for bribes, $200 million was paid as fees for arrangers, and more than $700 million is unaccounted for according to the Kroll Audit report. We have campaigned for over three years against the "illegal debt" and have consistently argued that the beneficiaries of these debts, namely corrupt officials in Maputo, together with employees of Privinvest and international banks (Credit Suisse and VTB), must be held accountable for the debts. The debt crisis caused great harm to an already weakened Mozambican society and economy, and further triggered a macroeconomic and social crisis in the country. We argue that the people of Mozambique should not have to pay these debts that they had no say over and no benefit from.

In 2018 in South Africa, the former Ministry of Finance, Mr. Manuel Chang, who illegally signed off the state guarantees for these loans was arrested on his way to Dubai. He remains in prison in South Africa for more than a year awaiting a decision by the South Africa Minister of Justice on a dispute from the U.S. and the Mozambican Government over his extradition. In representation of the Mozambican civil society, we have intervened in this case by exposing to the High Court of South Africa, to the Constitutional Court and also to the Appeals Court that Mr. Chang (1) enjoys immunity; (2) there is no indictment launched in Mozambique; therefore, justice will not be served in Mozambique. He enjoys immunity as of the time of his arrest because he was a member of parliament.

More recently in Switzerland, the Swiss Money Laundering Reporting Office responded to a 2018 request by the Mozambican General Attorney for mutual legal assistance. The authorities in Switzerland finally started an investigation in January this year.

Transparency of Loans to Governments: The Transparency Lending Covenant

The Mozambican illegal debt raised one fundamental question: How to stop governments from borrowing behind their peoples' backs. The assumption behind this question is that the public has the right to know about their nations' debts. The recently approved Transparent Lending Covenant (TLC) by the G20 in Japan in June 2019 does not address this problem. The TLC is a response triggered by the Mozambican illegal debts, among other similar cases, which prompted discussion within the G20 on the need for new rules to make loans to governments transparent.

The TLC is a set of voluntary Principles for Debt Transparency by the Institute of International Finance (IIF) and are applied only to lending from the private sector, not from states where lenders are invited to voluntarily disclose loans they make to low-income governments or state firms in a publicly accessible registry. The ideal structure would be a public debt registry searchable by the lender and borrowing government and is accessible to media, civil society and other people. The information should be disclosed within 30 days of contract signature and should include the value of the loan; fees, charges and interest; the law governing the debt obligations; any available information on the use of proceeds; the payment schedule; and information on whether there is any security or collateral attached to the loan, and if so, on what terms. Although the endorsement of the TLC might have some weight with the private sector, the policy is voluntary. Lenders are still reluctant to share information they consider commercially sensitive.

My view is that the transparency of debt information is beneficial to everyone. It gives lenders more certainty about the basis upon which they are lending, it gives borrowers lower interest rates, and it allows citizens to subject lending and borrowing by their governments to more scrutiny, including through holding public debt audits into borrowing and lending decisions. The more transparency there is over government debts, the better decisions lenders and investors can make. Transparency ensures all stakeholders have a clear idea of the countries' debt burden, which decreases the risk attached to lending and could, therefore, enable countries to secure lower interest rates.

Transparency is also a key step towards loans being used responsibly and to prevent public resources being wasted, diverted or stolen. Without transparency, it is not possible for civil society, media and parliaments to hold governments accountable on how much is being borrowed, the terms of contracts, what loans are being spent on, how they will be repaid and on what timeframe.

The Importance of this Decision and How it Could Catalyze Similar Cases in Africa

The people have the right to know about debt being taken on by governments in their name.

1. African countries should commit to accountable debt contracting processes, where Parliaments approves all borrowing plans. Such plans should be agreed upon through an open process before contracts are signed so that civil society and the media can scrutinize them and the decision-making process. Such scrutiny is vital to ensure loans to governments are used productively towards Sustainable Development Goals.
2. African countries need to push for changes in the policy framework for borrowing and lending. Most international loans are made under New York or British Law — so tweaking the rules in these two jurisdictions would be a good start.
3. We need policies that establish that lenders should only lend if a transparent and accountable government debt contracting process is in place, including scrutiny by citizens, CSOs, oversight bodies of all government and information about borrowing plans, before contracts are signed.
4. In addition, lenders should only lend if they can and will disclose the existence of a loan within 30 days of contract signature, do so on a globally accessible registry, and include key information about the loan.

Final Remarks

Available information suggests that illegal loans were conceptualized elsewhere, with various parties in more than three jurisdictions targeting Maputo officials who consented to the projects knowing that they are in contravention of Mozambican and international laws. While it is appropriate to hold Mozambican government officials accountable for their role in the crisis, it is imprudent to absolve the main actors and architects of the illegal loans of their responsibility. I believe that a perfect overlap between domestic and global corruption created an ideal environment for the Mozambican debt scandal. Additionally, it is clear that international banks were acutely aware that limited penalties would be applicable to them in this case, suggesting that the rewards of breaking global standards, policies and procedures far exceeded fees that could be applicable for their role and non-compliance with international financial regulations.

It is more than clear that these debts have human costs, and litigation in various jurisdictions might not yield desired results for the people. I think that political and legal challenges were presented in this case. Impediments to a successful legal outcome include (1) the conduct of the Mozambican government that has failed to provide clear communication on the three loans; (2) Mozambique's failure to timely declare the three loans null and void; (3) the fact that "odious debts" have never been successfully challenged in a court of law before; (4) the crimes having occurred in various jurisdictions, all of which might not cooperate on resolving the underlying crisis; and finally (5) the absence of a globally accepted sovereign debt resolution framework.

We need a combination of domestic and global reforms that can address glaring weaknesses in the international financial system. Such weaknesses are a threat to social, political, economic and even environmental sustainability, affecting billions of people living in emerging and developing countries. Failure to reign in large international banks can set the global economy up for the next global crisis. It is in our collective interest to ensure that we mitigate against such risks.

A Final Note on the Strategy of the FMO: A Model for Other Countries?

The Budget Monitoring Forum (*Forum de Monitoria do Orçamento*, FMO) is a coalition comprising of Mozambican civil society organizations working on transparency and accountability in public finance management that has engaged the Mozambican government, development partners, governments, and members of parliaments in several jurisdictions to seek a sustainable solution to the Mozambican debt crisis. FMO's work on public sector accountability and fiscal transparency are informed by our collective understanding of the centrality of public sector governance to collective futures of the Mozambican people. This report summarizes FMO' activities and results from its advocacy and policy influence work on the illegal debts issue in 2019.

The FMO's vision for its advocacy efforts was to contribute to restoring Mozambique's public debt sustainability by increasing the costs of the illegal debts on responsible parties and their key stakeholders, including those holding responsible parties accountable, thereby contributing to sustainable development for Mozambican people. The FMO advocacy strategy for the illegal debt campaign was anchored in the following approach: The key strategies included:

Strategy 1. Awareness building about the sovereign debt crisis in Mozambique – using a dynamic communication strategy to systematically disseminate information on the crisis locally and globally.

Strategy 2. Advocacy for debt cancellation in Mozambique and in all the relevant jurisdictions – using research findings and partners to approach decision makers across various jurisdictions.

Strategy 3. Litigation against responsible parties – pursuing various legal means to nullify the loans, hold responsible parties to account and repatriate the funds.

Strategy 4. Campaigning for better global policies and standards – sustained global advocacy for improved global standards and policies to prevent future debt crisis, especially in low income countries.

A public campaign has the possibility of distributing the social costs of the illegal debt crisis beyond just a few individuals. As such, the primary target groups of this strategy were decision makers including financial sector regulators, investigative agencies, judicial and legislative arms of governments in Mozambique, the United Kingdom (U.K.), U.S., Switzerland, Netherlands and Norway. Although France was initially included as a primary target country, the FMO decided to exclude it from the 2019 advocacy efforts due to concerns regarding risks and security of the leading members of the platform. These are some of the countries through which proceeds from the crimes were distributed and/or which have regulatory or oversight responsibility for the international banks.

View online: How Public Interest Litigation Led to Invalidation of Illegal Mozambican Debt

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Mozambican Illegal Debts: Testing the Odious Debt Doctrine

Mauro Megliani

Mozambican Illegal Debts: Testing the Odious Debt Doctrine

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ABSTRACT

In June 2019, the Constitutional Council of Mozambique delivered a judgment declaring a financial transaction arranged by the government in violation of the parliamentary prerogatives in budgetary matters unconstitutional. This was only the tip of an iceberg consisting of a series of transactions tainted with corruption. In the face of this illegality, many antidebt campaigners have invoked the application of the odious debt doctrine to block the enforcement of contractual claims and the availability of restitutionary remedies. Under the odious debt doctrine, a debt is odious if, in the awareness of the creditors, it is contracted without the consent of and not for the benefit of the population. The operation of the odious debt doctrine presupposes an inquiry into its legal status. Lacking a proper normative characterization, the doctrine is to be understood more as a matter of policy than as a matter of law. As a result, its ideal systematic placement would be under the umbrella of transnational public policy. Transnational public policy establishes universal principles to serve the common interests of mankind. The key point, then, is to ascertain whether and to what extent the values enshrined into the odious debt doctrine may belong to the realm of the transnational public policy. In this context, the controversy on the validity of the Mozambican debt can become the touchstone for testing the legal status and operation of the odious debt doctrine.

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I. INTRODUCTION

In June 2019, the Constitutional Council of Mozambique declared a financial transaction made in contravention of constitutional norms related to the national budget invalid.[1] The transaction concerned a loan of $850 million contracted by Ematum, a Mozambican state-owned fishing company, with Credit Suisse and guaranteed by the Mozambican government.

The judgment of the Mozambican Constitutional Council was just the tip of the iceberg of a complicated financial scheme articulated in three separate transactions to state-owned enterprises arranged by two banks: the Russian VTB Capital PLC and the Swiss Credit Suisse.[2] In addition to the Ematum loan, there were two other loans to state-owned enterprises: a $622 million loan to ProIndicus to perform coastal surveillance (from Credit Suisse) and a $535 million loan to the

1. República de Moçambique Conselho Constitucional [Republic of Mozambique Constitutional Council], June 3, 2019, Acórdão n° 5/CC/2019 (Mozam.) [hereinafter Constitutional Council Judgment].

2. Rodrigo Olivares-Caminal, *Why Does Mozambique Need to Pay Its Non-Odious Debt?*, FIN. TIMES ALPHAVILLE (April 13, 2019), https://ftalphaville.ft.com/2019/04/04/1554350405000/Why-does-Mozambique-need-to-pay-its-non-odious-debt-/ [https://perma.cc/SA6H-E3M2] (arch-ived Sept. 21, 2020).

Mozambique Asset Management company (MAM) to build and maintain shipyards (from VTB).[3] All these loans were backed by guarantees from the Mozambican government. Of the three loans, only the one made to Ematum was publicly disclosed and subsequently converted into loan participation notes (LPNs). These LPNs were, in turn, legally extinguished in April 2016 through an exchange for $727 million of eurobonds issued by the Mozambican government.[4]

Following the disclosure by the Mozambican government of the existence of these debts, the International Monetary Fund (IMF) and bilateral donors suspended their financial support to Mozambique. As a result, the local currency depreciated by about 65 percent within six months and economic growth plummeted to 3.8 percent in 2016 from 6.6 percent the previous year.[5] In this context, the Mozambican government announced its intention to restructure all its external commercial debt.[6] Since then, no payment on this debt has been made, causing the country's credit profile to be downgraded and the cost of financing to rise.[7]

Making matters even more complicated, in 2016 and in 2017 the country's administrative court (*Tribunal Administrativo*) declared the state guarantees of the Ematum, ProIndicus, and MAM loans illegal for violating the Constitution and budgetary laws.[8] A special commission within Parliament arrived at a similar conclusion, and an independent audit report was subsequently published highlighting numerous irregularities in borrowing and using funds.[9] In December

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3. *See id.*; *see also* ALED WILLIAMS, THE MOZAMBIQUE HIDDEN LOANS CASE: AN OPPORTUNITY FOR DONORS TO DEMONSTRATE ANTI-CORRUPTION COMMITMENT 1 (2018) (citing tuna fishing and maritime security as supposed reason for loans).

4. *See* Olivares-Caminal, *supra* note 2.

5. *See id.*; *see also* Press Release, IMF, IMF Executive Board Concludes 2017 Article IV Consultation with the Republic of Mozambique, Press Release No. 18/77 (Mar. 7, 2018), https://www.imf.org/en/News/Articles/2018/03/07/pr1877-imf-executive-board-concludes-2017-article-iv-consultation-with-the-republic-of-mozambique [https://perma.cc/R2AC-FULM] (archived Aug. 28, 2020).

6. The government emphasized that "while the external commercial debt represented only 13 per cent of total external debt, it accounted for over 40 per cent of debt service," Olivares-Caminal, *supra* note 2.

7. *Id.*

8. *Moçambique Pode Agora Recusar Pagar a Dívida Oculta, Dizem os Analistas, e Ganharia com Isso*, CIP 2 (2019), https://cipmoz.org/wp-content/uploads/2019/02/CIP_-Mozambique-can-now-refuse.pdf [https://perma.cc/V4A2-AEHT] (archived Sept. 14, 2020).

9. *See* ASSEMBLEIA DA REPUBLICA VIII LEGISLATURA, RELATÓRIO DA COMISSÃO PARLAMENTAR DE INQUÉRITO PARA AVERIGUAR A SITUAÇÃO DA DÍVIDA PÚBLICA 36-7 (Nov. 30, 2016), https://reflekt.ch/wp-content/uploads/2019/09/2016_Bericht-Parlamentarische-Untersuchungskommission-Moçambique-port.pdf [https://perma.cc/YHU4-SKWH] (archived Nov. 20, 2020); *see also* KROLL ASSOCS. U.K. LTD., INDEPENDENT AUDIT RELATED TO LOANS CONTRACTED BY PROINDICUS S.A., EMATUM S.A. AND MOZAMBIQUE ASSET MANAGEMENT S.A. (June 23, 2017), https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.

2018, several charges for indictment were brought before the District Court for the Eastern District of New York against multiple individuals, including a former Mozambican minister, for having allegedly conspired to defraud investors through numerous material misrepresentations and omissions.[10] Further, Mozambique brought a lawsuit against Credit Suisse and VTB in the English High Court alleging the invalidity of the secret loans.[11]

The judgment rendered by the Constitutional Council in June 2019 must be seen in this framework. It was based on a claim filed by the Budget Monitoring Forum, the Platform of Civil Society Organizations, and another two thousand citizens to declare the Ematum transaction unconstitutional. This request was based on Article 179(2)(p) of the Mozambican Constitution,[12] under which Parliament has the exclusive competence to authorize the contraction of loans and other financial transactions and fix the upper limits of state guarantees. The Ematum transaction, instead, was arranged by the government and merely approved by the Mozambican Parliament by means of an *ex post* resolution.

The Mozambican Parliament opposed the claim of the applicants, arguing that the resolution was a political act and, thereby, was not justiciable before the Constitutional Council. The Constitutional Council, however, rejected this argument emphasizing that the government had acted in violation of the constitutional competence of Parliament in budgetary matters (Article 179) and had not inscribed the transaction in the state budget in violation of Law Number 9/2002.[13] In this way, the Constitutional Council put the violation not so much on the side of Parliament, but rather on the side of the government. On these bases, the Constitutional Council declared null the assumption of the loans and the provision of the guarantees, relying not only on constitutional norms, but also on some articles of

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uk.technology.mozambique/files/files/2017-06-23_Project%20Montague%20%20In dependent%20Audit%20Executive%20Summary%20English%20(REDACTED%20FOR %20PUBLISHING).pdf [https://perma.cc/CC5X-29CS] (archived Aug. 28, 2020).

10. Indictment, United States v. Boustani, 356 F. Supp. 3d 246 (E.D.N.Y. 2019) (No. CR 18 681). For a comment, see Press Release, U.S. Attorney's Office E. Dist. N.Y., Three Former Mozambican Government Officials and Five Business Executives Indicted in Alleged $2 Billion Fraud and Money Laundering Scheme That Victimized U.S. Investors, DEP'T JUST. (Mar. 7, 2019), https://www.justice.gov/usao-edny/pr/three-former-mozambican-government-officials-and-five-business-executives-indicted [https://perma.cc/SVK6-DFL8] (archived Aug. 28, 2020).

11. *Mozambique Sues in UK to Cancel Debt in Secret Loan Case*, JUBILEE DEBT CAMPAIGN (Jan. 20, 2020), https://jubileedebt.org.uk/press-release/mozambique-sues-in-uk-court-to-cancel-debt-in-secret-loan-case [https://perma.cc/Z2G3-K6H9] (archived Aug. 28, 2020).

12. CONST. OF THE REPUBLIC OF MOZAMBIQUE Nov. 16, 2004.

13. In this respect, the Government also violated the ordinary laws that discipline the inscription of expenditures in the budgetary law. Constitutional Council Judgment, *supra* note 1, at 17.

the *Código Civil.*[14] To complete the picture, in May 2020 the same Constitutional Council declared the nullity of the MAM and ProIndicus loans and the related guarantees.[15] The impact of these declarations of nullity by the Constitutional Council on the financial transactions is still to be appreciated in full.

Against this background, the purpose of this work is to ascertain whether and to what an extent the much invoked, but scarcely applied, odious debt doctrine may play a role in the lawsuits related to the Mozambican loan transactions. Part I analyzes the national norms coming into play before domestic courts, with particular reference to two issues: the effects on the loan and guarantee agreements of the declarations of invalidity rendered by the Mozambican Constitutional Council; and the availability of the restitutionary remedies in relation to the enforceability of contracts tainted with corruption. As the application of national laws may result in piecemeal decisions, a solution can be to have recourse to a uniform benchmark like the odious debt doctrine. Part II effectuates a reconstruction of the odious debt doctrine to understand what legal status it possesses and concludes that it would be reasonable to qualify the doctrine under transnational public policy. Part III explores the notion of transnational public policy and its applicability in relation to international contracts before domestic fora. In this context, the Mozambican transactions may become a benchmark to test the scope of the odious debt doctrine beyond the traditional arena of state succession.

II. LEGAL PROBLEMS

The three Mozambican financial transactions present certain specificities. The ProIndicus and MAM loans were arranged under a cloak of secrecy as their proceeds were used to acquire military equipment for the security services and the Ministry of Defense. By contrast, contracting the Ematum financing was not hidden: the existence of the Ematum LPNs was discussed in various IMF country reports, had been included in the country's public debt statistics, and these notes were publicly traded and included in JPMorgan's emerging market bond index.[16] When the LPNs were extinguished and replaced with sovereign eurobonds, they were fully disclosed and approved by

14. The Constitutional Council made reference to the combined provisions of Articles 294 (nullity of transactions infringing mandatory rules of law), 286 (nullity demanded at any time by the interested party and declared *ex officio* by the seized court), and 289 (retroactive effect of nullity and retrogression of what has been given). *Id.* at 17—18.

15. República de Moçambique Conselho Constitucional [Republic of Mozambique Constitutional Council], May 8, 2020, Acórdão n° 7/CC/2020 (Mozam.).

16. Olivares-Caminal, *supra* note 2.

the Mozambican Parliament. Nevertheless, for various reasons, all these loans and guarantees may be challenged in court.

A. *The Internal Validity of the Transactions*

Both the judgments of the Mozambican Constitutional Council and the decision of the Mozambican administrative court cast doubt on the authority of the Mozambican government to provide guarantees. Broadly speaking, the question of the capacity of a government to enter into financial transactions does not depend on the law governing the transaction, but on the internal law of the state. In the last century, the act of borrowing was viewed as an expression of sovereignty on the same footing as the printing of currency.[17] Currently, Parliamentary authorization has lost its sovereign characterization and can be considered a step in the borrowing process.[18] The capacity of a government to bind the state must be appreciated in two regards: the authority of the government to enter into a financial transaction and the formal requirement to do so.[19]

Under the financial practice, when the borrower or the guarantor is a sovereign state or a state-controlled entity, the loan or guarantee agreement is completed by a condition precedent under which the transaction cannot become operative until the government has provided documentary evidence that the transaction is valid and enforceable and that it has the power and the authority to enter into the agreement.[20] Generally, the declaration on the validity of the transaction is encapsulated in the representations and warranties made by the borrower.[21] Its inclusion in the conditions precedent also emphasizes that the transaction cannot be carried out until the borrower gives evidence of what it has represented and warranted. Normally, the documentation of the borrower is completed by a legal

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17. Luis M. Drago, *State Loans in Their Relation with International Policy*, 1 AM. J. INT'L L. 692, 695–696 (1907). The internal invalidity of the loan transactions was often used as a means to repudiate the loans. This is what occurred in the second half of the nineteenth century in relation to the debt contracted by certain US southern states; in particular, North Carolina and South Carolina. In both cases, the debts were incurred in plain violation of the state constitution and were later repudiated. REGINALD C. MCGRANE, FOREIGN BONDHOLDERS AND AMERICAN STATE DEBTS 334–54 (1935).

18. Georges van Hecke, *Problèmes Juridiques des Emprunts Internationaux*, XVIII BIBLIOTHECA VISSERIANA 1, 20 (1964).

19. Charles Cheney Hyde, *The Negotiation of External Loans with Foreign Governments*, 16 AM. J. INT'L L. 523, 525–26 (1922).

20. ANDREW MCKNIGHT, THE LAW OF INTERNATIONAL FINANCE 112 (2008).

21. RAVI C. TENNEKOON, THE LAW & REGULATION OF INTERNATIONAL FINANCE 71 (1991).

opinion made by a lawyer belonging to the jurisdiction of the borrower that the transaction at hand is valid and binding.[22]

This practice is now reinforced by the United Nations Conference on Trade and Development (UNCTAD) Principles on Promoting Responsible Sovereign Lending and Borrowing. [23] Pursuant to Principle Number 3, lenders have a specific responsibility to determine whether the financial transaction has been duly authorized and is valid and enforceable under the relevant jurisdictions. If these conditions are not met, the lenders should refrain from concluding the agreement. However, the rule that loans to public borrowers are always invalid unless properly authorized does not amount to a general principle of law. At most, it may be qualified as an emerging principle that reflects a good and reasonable practice. By contrast, it is an accepted general principle of law that, for a contract to be valid, the borrower needs to have at least *prima facie* authority, while the lender must not behave in bad faith in this respect.[24]

1. Ostensible Authority

The ostensible authority of the agent to bind his principal must be appreciated in the light of the law applicable to the contract that, in the case of the Mozambican guarantees, corresponds to English law.[25] Under English law, the doctrine of apparent authority stipulates that when a "person by words or conduct represents to a third party that

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22. G.A. PENN, A.M. SHEA & A. ARORA, 2 BANKING LAW: THE LAW AND PRACTICE OF INTERNATIONAL BANKING 101–03 (1987).

23. U.N. Conference on Trade & Development, Principles on Promoting Responsible Sovereign Lending and Borrowing 6 (Jan. 10, 2012), https://unctad.org/system/files/official-document/gdsddf2012misc1_en.pdf [https://perma.cc/ZP9W-XLM6] (archived Dec. 19, 2020) [hereinafter UNCTAD, *Principles on Promoting*]. The Principles constitute the outcome of the UNCTAD Project on Promoting Responsible Sovereign Lending and Borrowing. *See id.* at 3–4.

24. Matthias Goldmann, Responsible Sovereign Lending and Borrowing: The View from Domestic Jurisdictions 18–19 (Feb. 2012), https://unctad.org/en/PublicationsLibrary/gdsddf2012misc3_en.pdf [https://perma.cc/H4XW-EVSU] (archived Sept. 21, 2020).

25. ASSEMBLEIA DA REPUBLICA VIII LEGISLATURA, *supra* note 9, at 36–37. The matter does not fall within the purview of the Rome I Regulation that excludes from its scope the "question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or incorporate, to a third party" (art. 1(2)(g)), with the result that the criterion to determine the applicable law is left to common law. Regulation of the European Parliament and of the Council Regulation (EC) 593/2008 of 7 June 2008 on the Law Applicable to Contractual Obligations (Rome I), 2008 O.J. (L 177) 6 [hereinafter Rome I Regulation]. In regard to this, common law establishes that the issue whether an agent is able to bind the principal to contract with a third party is governed by the law applicable to the contract. *See* DICEY, MORRIS & COLLINS, 2 THE CONFLICT OF LAWS 2122 *et seq.* (Lord Collins of Mapesbury ed., 14th ed. 2012).

another has authority to act on his behalf, he may be bound by the acts of that other as if he had in fact authorised them."[26]

The doctrine of ostensible authority was applied by the Queen's Bench in a case concerning the failure to pay certain Ukraine bonds held by Russia.[27] One of the arguments raised by Ukraine to justify the default was that the Minister of Finance, who signed the loan agreement, lacked the proper authorization to do so.[28] On the one hand, the loan agreement disregarded the budgetary limits contained in the annual budget law that could be amended only in force of an act of Parliament. On the other hand, the Council of Ministers did not follow all of the procedural rules for borrowing. All in all, this has brought the capacity of Ukraine to enter into a valid loan agreement with Russia into question. The Queen's Bench dismissed this defense giving a different view of the capacity to borrow and ostensible authority. In terms of the capacity of Ukraine to borrow, the court espoused the argument that was laid down by the trustee of the bonded loan, under which restrictions on state activity cannot be presumed.[29] In doing so, the court did not pay much attention to the fact that the trustee was referring to the Lotus case (*France v. Turkey*) that dealt with an interstate dispute, while in the case at hand the dispute was with the trustee.[30] In terms of the ostensible authority to sign the contract by the Ukraine government, the court held that the issue was to be assessed under English law that was the law governing the transaction. In this context, the court emphasized that the transaction documents clearly recorded that Ukraine was represented by the Minister of Finance acting upon the instructions of the Cabinet of

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26. Francis M.B. Reynolds, *Agency*, *in* 2 CHITTY ON CONTRACTS 1, 35–36 (Hugo G. Beale ed., 31st ed. 2012).

27. Following the deflagration of the USSR, Ukraine adopted a policy of close relations with the EU that culminated in a proposal to enter into an Association Agreement with the EU (2013). Russia vigorously opposed this possibility and in the end the Ukraine government was obliged to renounce to the EU agreement. In exchange for that renunciation, Russia granted financial support to Ukraine in the form of $15 billion. The first tranche of the loan consisted of $3 billion, secured by Ukrainian bonds issued under a trust deed governed by English law. Following the Russian annexation of Crimea and the intestine war, the Ukraine government decided to stop servicing the bonds. In the face of a default, the trustee—instructed by Russia—applied to the English High Court for a summary judgement in relation to the payment on the bonds. Law Debenture Tr. Corp. v. Ukraine [2017] EWHC 655 (QB), [2017] 1 CLC 298, [298], [304]–[06], [341]–[46] (Eng.).

28. *Id.* at [330].

29. *Id.* at [336].

30. The trustee referred to RUSTEL SILVESTRE J. MARTHA, THE FINANCIAL OBLIGATION IN INTERNATIONAL LAW 203 (2015), which considers the tenet enunciated in the Lotus Case applicable to the field of international financial law, under which the rules of law binding upon states derive from their own free will as expressed in conventions or by usages generally accepted as reflecting principles of law and restrictions cannot be presumed. *Id.* at [328–31]; *see* S.S. Lotus (Fr. v. Turk.), Judgement, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7).

Ministers. Moreover, there were previous instances of signature by the Minister of Finance of bond issuances under the same trust. Hence, the ostensible authority of the Minister of Finance to sign this type of document was plainly established.[31]

The ruling of the Queen's Bench constitutes a precedent in relation to the validity of the Mozambican guarantees, especially since English courts are the competent forum and English law is the applicable law. Also, in this case, the key point is the ostensible or usual authority by the government to sign financial agreements in the name of and on behalf of the Mozambican state. This point is to be appreciated in the light of the criteria laid down in the decision mentioned above. In this case, the Minister of Finance signed the documents upon instructions of the government and the signature regarded all the guarantee agreements. Moreover, the Ematum transaction was endorsed by a resolution of the Mozambican Parliament. The elements of an ostensible authority may be found.

2. Overriding Mandatory Rules

The doctrine of ostensible authority generally preserves the whole transaction from being affected by the internal invalidity of the loan. Nevertheless, the issue of the internal validity might still come into play in the form of an overriding mandatory rule of Mozambique.

Under Article 9(1) of the Rome I Regulation, [32] overriding mandatory rules are those provisions, the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social, or economic organization, to be applied irrespective of the law applicable to the contract.[33] This notion must be appreciated in three respects. First, not all of the mandatory provisions of a foreign state can qualify themselves as overriding mandatory provisions and prevail over the mandatory rules of the forum.[34] Second, respect for these provisions must be crucial to preserve a public interest that involves the political, economic, and social organization of a country.

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31. *Law Debenture Tr. Corp.* [2017] 1 CLC at [336]–[37].

32. Rome I Regulation, *supra* note 25.

33. This notion reflects the judgment rendered by the European Court of Justice in *Arblade* under which "[t]he fact that national rules are categorised as public-order legislation does not mean that they are exempt from compliance with the provisions of the Treaty. . .. The considerations underlying such national legislation can be taken into account by Community law only in terms of the exceptions to Community freedoms expressly provided for by the Treaty and, where appropriate, on the ground that they constitute overriding reasons relating to the public interest." Joined Cases C-369/96 & C-376/96, Criminal Proceedings Against Jean-Claude Arblade, 1999 E.C.R. I-8453, ¶ 31.

34. Overriding mandatory rules of the applicable law take precedence over the mandatory rules of the forum. *See* Andrea Bonomi, *Art. 9: Overriding Mandatory Provisions*, *in* 2 EUROPEAN COMMENTARIES ON PRIVATE INTERNATIONAL LAW: ROME I REGULATION - COMMENTARY 599, 620 (Ulrich Magnus & Peter Mankowski eds., 2017).

Antitrust regulations, embargoes and economic sanctions, regulations of the stock exchange, and exchange controls fall into this category.[35] Third, these provisions must have an overriding effect, which means they are to be applied regardless of the normal rules on conflict-of-laws.

Under the Rome I Regulation, overriding mandatory rules of a third country may come into play indirectly on the basis of the *lex fori* and directly as part of the law of the third country.[36] With reference to the *lex fori*, the overriding mandatory rules of a third country would come into play not so much *per se*, but under the public policy of the forum (Article 9(2)).[37] With reference to the law of a third country, the application of overriding mandatory rules is subjected to many conditions (Article 9(3)). First of all, the overriding mandatory provisions can be applied only if they render the performance of the contract unlawful. Second, the mandatory provisions must belong to the country where the obligations arising out of the contract have to be or have been performed. However, even though these conditions are met, the seized court enjoys a wide range of discretion in deciding whether or not to apply the overriding mandatory rules in question. In this process, the seized court is called to consider the nature and purpose of the overriding mandatory provisions and the consequences of their application or nonapplication.[38] This assessment involves striking a balance between all the interests at stake: those of the parties, those of the forum, those of the state of the overriding mandatory rules, and those of the state of the law governing the contract.[39]

Against this background, the Mozambican constitutional norms on the internal invalidity of the loan can be easily categorized as overriding mandatory rules, as they partake of the political, social, and economic order of the state. These constitutional norms can come into play indirectly under the *lex fori* to the extent that it prohibits the enforcement of contracts that involve the performance of an illegal act pursuant to the laws of a friendly foreign state. It is up to the English

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35. *Id.* at 621.

36. On this distinction see Adeline Chong, *The Public Policy and Mandatory Rules of Third Countries in International Contracts*, 2 J. PRIV. INT'L L. 27, 40–47 (2006).

37. In Regazzoni v. K.C. Sethia [1958] A.C. 301 (HL), the foreign mandatory rule was not applied *per se*, but because it was against English public policy to enforce contracts that involved the performance of an illegal act according to the laws of a friendly foreign state. *See* Chong, *supra* note 36, at 41–42 (discussing *Regazzoni v. K.C. Sethia*).

38. Jonathan Harris, *Mandatory Rules and Public Policy Under the Rome I Regulation*, *in* ROME I REGULATION: THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS IN EUROPE 269, 325–30 (Franco Ferrari & Stefan Leible eds., 2009).

39. This is a sort of comity doctrine assessment. To the extent that the interests of the state of the overriding mandatory rules are deemed to prevail, the foreign act is enforced provided that this is consistent with the laws and policies of the forum. *See* Joel R. Paul, *Comity in International Law*, 32 HARV. INT'L L. J. 1, 43–44 (1991).

judge to operate such an appreciation that would displace the rules on ostensible authority. These constitutional norms can also come into play directly under the law of a third country, provided that a series of conditions are met. The first condition is that these norms must belong to the state where the contractual obligations are to be performed and are capable of making the performance unlawful. In the present case, the loan transactions have been performed in Mozambique and are illegal under the law of Mozambique, as emphasized by the Mozambican Constitutional Council. The second condition is that the seized forum is required to make an evaluation of all the interests at stake, in particular of the consequences of the application of the Mozambican overriding mandatory rules. In this regard, however, the English judge might conclude that the necessity of preserving the binding nature of the loan contracts and the orderly functioning of financial markets for sovereign debt constitute prevailing interests of the forum.[40]

3. Novation

Even though Mozambican constitutional norms should apply, and the invalidity would affect the performance of the transactions, it is questionable whether and to what extent this invalidity would affect the bonded loan issued by the Mozambican government. This is particularly true with reference to Ematum, because the Ematum loan underwent a restructuring process.[41] From a substantive standpoint, a restructuring operation consists of a debt conversion under which the old debt is exchanged for bonds of minor nominal value issued by the same debtor. The forerunner of these restructuring operations was the auction organized by Mexico in 1988, at which holders of syndicated debts tendered their credits in exchange for Mexican bonds secured by twenty-year zero-coupon US Treasury bonds held in escrow at the Federal Reserve Bank of New York.[42] From a formal standpoint, this operation amounts to an objective novation. Novation is a civilian institute that permits the extinction of the original obligation and its replacement with another between the same or new parties (or some of them).[43] In this context, the bonds issued under the restructuring of the Ematum loan amount to a completely new obligation with different terms and conditions and a new debtor (here, the Republic of

40. Such an outcome would be consistent with the fact that London is one of the major financial centers.

41. *See supra* Part I.

42. Michael Chamberlin, Michael Gruson & Paul Weltchek, *Sovereign Debt Exchanges*, 1988 U. ILL. L. REV. 415, 450–51.

43. Andrew S. Burrows, *Assignment*, *in* 1 CHITTY ON CONTRACTS 1495, 1515–16 (Hugo G. Beale ed., 31st ed. 2012).

Mozambique).[44] Hence, the Mozambican bonded loan should not be affected by the invalidity of the Ematum loan transaction that has been wholly extinguished.[45] Nevertheless, a recent amendment to the French Civil Code may question this assumption. New Article 1331 of the French Civil Code provides that, if the obligations are not valid, their novation does not produce any effect.[46] In this connection, it is worth considering that the ways of extinguishing the obligations are governed by the law governing the original contract,[47] in this case English law. Although French law is not the governing law, it may nonetheless constitute a benchmark for a common law judge to understand a civilian notion like novation.

B. *Corruption and Enforceability of Contracts*

There is a strong claim that the Mozambican financial transactions were tainted, though at different degrees, with corruption.[48] It is certainly true that globalization, including financial globalization, is often combined with transnational bribery.[49] This is a harmful phenomenon that produces economic, systemic, and social damages[50] and is capable of threatening the rule of law, property rights, and the enforcement of contracts, and of contributing to undermining the legitimacy of a tainted government.[51] Since it is a transnational phenomenon touching on economic connecting points, corruption has progressively become the object of international conventions, the most far-reaching of which is the (2003) UN

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44. Olivares-Caminal, *supra* note 2.

45. *See id. But see* JEFF KING, THE DOCTRINE OF ODIOUS DEBT IN INTERNATIONAL LAW 188 (2016).

46. New Art. 1331 of the French Civil Code was introduced by Ordonnance No 131-2016. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 1331 (Fr.). In this way, French law has acknowledged the old rule "*ce qui est nul ne peut être susceptible d'aucun effet*" laid down by Robert Joseph Pothier in his *Traités des Obligations*, *in* 1 OEUVRES DE POTHIER, sect. 589 (ed. 1824).

47. *See* Rome I Regulation *supra* note 25, Art. 12(1)(d); *see also* DICEY, MORRIS & COLLINS, *supra* note 25, at 1860.

48. *Cf. supra* Part I (discussing the irregularities and covert nature of some of the loans).

49. According to the World Economic forum statistics, the global cost of corruption is at least $2.6 trillion, or 5 percent of the global gross domestic product (GDP), and, according to the World Bank, businesses and individuals pay more than $1 trillion in bribes every year. *See* Press Release, Security Council, Global Cost of Corruption at Least 5 Per Cent of World Gross Domestic Product, Secretary-General Tells Security Council, Citing World Economic Forum Data, U.N. Press Release SC/13493 (Sep. 10, 2018).

50. *See* Philip M. Nichols, *Regulating Transnational Bribery in Times of Globalisations and Fragmentation*, 24 YALE J. INT'L L. 257, 270–279 (1999).

51. *See* Christiana Ochoa, *From Odious Debt to Odious Finance: Avoiding the Externalities of a Functional Odious Debt Doctrine*, 49 HARV. J. INT'L L. 109, 144 (2008).

Convention Against Corruption.[52] Article 16 of the UN Convention imposes the criminalization of active bribery by foreign public officials and invites the signatory states to criminalize the passive bribery of these public officials. The UN Convention, in addressing the consequences of an act of corruption, enables the signatory states to consider corruption a relevant factor in legal proceedings to annul or rescind contracts, withdraw a concession or other similar instrument, or take any other remedial action (Article 34).[53] This option implies that the enforceability of a contract tainted with corruption is still mainly left to the norms of the domestic legal orders.

Under the English doctrine of illegality and public policy, "no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act."[54] This doctrine is essentially a procedural rule that precludes the enforcement of a contract and the provision of other remedies.[55] Broadly speaking, a contract is illegal when it contravenes the law in terms of formation and performance.[56] Illegality may concern not only the contract to which it is directly related, but also collateral transactions connected to this contract.[57] Against this background, if an upstream corruptive activity could be proved, the downstream Mozambican financial transactions would follow its fate.[58]

1. Restitutionary Remedies

Even though the doctrine of illegality would bar the enforceability of a contract, it could still be possible to recover money under the law of restitution that is meant to reverse unjust enrichment. The core of this branch of law consists of the fact that no one can be enriched at

52. G.A. Res. 58/4 (Oct. 31, 2003).

53. Juan Bautista Justo, *UNCTAD's Principles on Public Debt and the United Nations Convention against Corruption: Links and Common Strategies*, *in* SOVEREIGN FINANCING AND INTERNATIONAL LAW, 189, 206–07 (Carlos Esposito, Yeufen Li, Juan Pablo Bohoslavsky eds., 2013).

54. The courts follow this route "not for the sake of the defendant, but because they will not lend their aid to such a plaintiff"; moreover, "where both are equally in fault, potior est condicio defendentis," Holman v. Johnson [1775] 1 Cowp. 341, 343 (Lord Mansfield) (Eng.).

55. *See* Dan D. Prentice, *Illegality and Public Policy*, *in* 1 CHITTY ON CONTRACTS 1223, 1228 (Hugo G. Beale ed., 31st ed. 2012). The rule goes back to Evert v. Williams (1725) where the Court of Exchequer refused to enforce a contract meant to share the profits of armed robbery between two highwaymen. The text of the judgment is lost, but it is possible to read an account in the Law Quarterly Review. *See* 9 L. Q. REV. 197 (1893).

56. *See* Prentice, *supra* note 55, at 1229–30.

57. *See id.* at 1325–26; A discussion of connected transactions can be found in *Nayyar v. Denton Wilde Sapte*. *See* [2009] EWHC 3218 (QB) (Eng.).

58. It is also a general principle of law that contracts resulting from acts of corruption are void. *See* Goldmann, *supra* note 24, at 34.

the expense of another without a justification.[59] In civil law systems, unjustified enrichment is usually categorized as a *quasi ex contractu* obligation, while in common law systems it is the basis of the law of restitution.[60]

However, restitution cannot be granted if doing so would have the same effect as enforcing unenforceable contracts.[61] In these cases, no court will give assistance to either party for restitution. This implies that the illegality of a contract may operate not only to bar the enforcement of that contract, but also to disqualify the claimant's right to restitution of the benefits transferred under the contract.[62]

With regard to this, the UK Supreme Court in *Patel v. Mirza* laid down some criteria that should guide the judge in deciding whether and to what extent the public interest would be harmed in enforcing a claim to recover money under an illegal agreement.[63] The case concerned the provision of money to trade in shares under an insider dealing scheme. The illegal activity did not take place, and the plaintiff brought a lawsuit to have his money back based, *inter alia*, on unjust enrichment. Lord Toulson, delivering the opinion with which the majority agreed, highlighted that illegality may provide a defense to civil claims of every sort. In civil claims, there are two discernible policies underlying the doctrine of illegality: first, a person should not be allowed to profit from his wrongdoing; second, the law should be coherent and not self-defeating, "condoning illegality by giving with the left hand what it takes with the right hand."[64] As a matter of principle, a person should not be debarred from recovering what was transferred under an unlawful consideration, unless some public interest is seriously harmed. In this context, three criteria may come into consideration. First, it is necessary to consider the underlying purpose of the provision that has been infringed and whether this purpose can be reinforced by the denial of the claim; second, it is necessary to consider other public policies on which the denial of the claim may have

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59. According to Lord Mansfield "the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money." Moses v. Macferlan (1760) 2 Burr 1005, 1012 (Eng.). In other words, the defendant has been enriched, this enrichment occurred at the expense of the plaintiff, and it is unjust to permit him to retain this benefit. *See* ROBERT GOFF & GARETH JONES, THE LAW OF RESTITUTION 14–16 (1st ed. 1966).

60. *See* Paolo Gallo, *Unjust Enrichment: A Comparative Analysis*, 40 AM. J. COMP. L. 431, 436 (1992); Daniel P. O'Connell, *Unjust Enrichment*, 5 AM. J. COMP. L. 2, 2–3, 14 (1956).

61. *See* RICHARD A. BUCKLEY, ILLEGALITY AND PUBLIC POLICY 265 (2nd ed. 2009).

62. *See* William J. Swalding, *The Role of Illegality in the English Law of Enrichment*, *in* UNJUSTIFIED ENRICHMENT: KEY ISSUES IN COMPARATIVE PERSPECTIVES 289, 298 (David Johnston & Reinhard Zimmerman eds., 2002).

63. *See* Patel v. Mirza [2016] UKSC 42 [120] (appeal taken from EWCA (Civ)); *see also* Andrew Burrows, *Illegality after Patel v. Mirza*, 70 CURRENT LEGAL PROBS. 55, 59 (2017).

64. *Patel*, [2016] UKSC 42 at [99].

an impact; and, third, it is necessary to consider whether the denial of the claim would be a proportionate sanction, considering that punishment is a matter for the criminal court.[65] Although the effective acknowledgment of these criteria in lower courts is still uncertain,[66] Lord Toulson warned that there may be rare cases where the enforcement of claims based on unjust enrichment might be considered as "undermining the integrity of the justice system."[67]

The issue of proportionality has been also acknowledged in the US legal system, where the *Restatement 2d of Contracts* stipulates that a party has no claim in restitution for the performance he has made under or in return of a promise that is unenforceable for public policy, unless this would involve a disproportionate forfeiture. [68] The disproportion of the forfeiture must be appreciated in the light of the public interest involved and the extent of the contravention: "if the claimant has threatened grave social harm, no forfeiture will be disproportionate."[69]

Once corruption is proved in relation to the Mozambican transactions, the availability of a restitutionary remedy must be tested in the light of the three criteria laid down in *Patel v. Mizra.* In terms of underlying purpose of the infringed prohibition, the aim is to ensure market integrity and fair competition among lenders. In terms of additional public policy, the denial of the claim would lead lenders to reinforce internal mechanisms of audit and compliance. In terms of proportionate response, the issue will be evaluated in light of the consequences of the fraudulent activity. Nevertheless, even though these three criteria should be cumulatively satisfied, the final warning of Lord Toulson to bar the defense only in "rare cases" could tip the scales in favor of granting the remedy.

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65. *See id.* at [120].

66. *See* Matthias Goldmann, *The Law and Political Economy of the Mozambique's Odious Debt, in* HOW TO AVOID THE REPETITION OF "ODIOUS" DEBTS? 6 (2019).

67. Patel, [2016] UKSC 42 at [121] (Toulson, LJ). However, the granting of the restitutionary remedies cannot amount to a stultification of the law. *See* GOFF & JONES: THE LAW OF UNJUST ENRICHMENT 897–900 (Charles Mitchell, Paul Mitchell & Stephen Watterson eds., 9th ed. 2016).

68. RESTATEMENT (SECOND) OF CONTRACTS § 197 (AM. LAW INST. 1981). Sections 198 and 199 provide some temperaments to this rule when a party has not engaged in serious misconduct and he has withdrawn from the transaction before the purpose had been implemented, when allowing the claim would put an end to a continuing situation in contrast with the public interest, or when a party was excusably ignorant of the facts or of a legislation of minor importance or he was not equally involved in the promise. *See id.* §§ 198–99.

69. *Id.* § 197 cmt. b.

2. Unclean Hands

The *Restatement 3d of Restitution and Unjust Enrichment*, reformulating the rules of the *Restatement 2d of Contracts*, has stipulated that there is no claim when the allowance of restitution would defeat the policy of the law that makes the agreement unenforceable.[70] In this context, two competing policies come into play: the policy against unjust enrichment and the policy prohibiting the underlying transaction. If these policies are incompatible, the public policy against the enforcement of the transaction prevails over the private claims based on unjust enrichment. In these cases, the restitutionary remedy can also be denied on the basis of the inequitable conduct of the claimant that is the source of the asserted liability: "he who comes into equity must come with clean hands."[71]

A meaningful application of the defense of "unclean hands" is given in *Adler v. Nigeria* where the plaintiff became involved in a series of false transactions in which he should have received some money under over-invoiced contracts with Nigeria.[72] Under the fraudulent scheme, Adler, the plaintiff, provided $5 million to the Nigerian officials in exchange for transactions worth $60 million. As that fraudulent scheme broke down, Adler did not receive anything and sued Nigeria before the federal courts of California to reclaim the sums given to the Nigerian officials. On appeal, the court rejected the argument submitted by the plaintiff that denying the remedy would involve an unjust enrichment to Nigerian officials. The court underscored that, although the fraudulent scheme was concocted by Nigerian officials, Adler had freely joined it. In this context, granting the remedy when the bribe had not reached the hoped-for result would encourage individuals like the plaintiff to take part into these schemes.[73]

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70. RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 31 (AM. LAW INST. 2011).

71. The defense of the "unclean hands" comes from a maxim elaborated by the English Barrister Richard Francis in his book MAXIMS OF EQUITY (1728): "he who hath committed iniquity shall not have equity." RICHARD FRANCIS, MAXIMS OF EQUITY 5 (1728). Later, it was acknowledged by the United States Supreme Court. *See generally* Talbot v. Jansen, 3 U.S. 133 (1795). The defense has the purpose of preserving the integrity of the judicial system that would be undermined by the allowing a claimant with unclean hands to recover. *See* T. Leigh Aneson, *Announcing the "Clean Hands" Doctrine*, 51 U.C. DAVIS L. REV. 1827, 1841 (2018).

72. *See generally* Adler v. Federal Republic of Nigeria, 219 F.3d 869 (9th Cir. 2000).

73. In substance, the Federal Court weighted the competing policies of discouraging frauds like that suffered by Adler and of discouraging individuals like Adler from participating in such an operation and considered the latter prevailing. *See id.* at 877.

In light of the decision rendered in the Adler case, the policy of discouraging fraudulent operations seems to prevail over the policy of avoiding unjust enrichment. Once corruption can be proved, the same rationale could plainly apply to the Mozambican loans with even more strength: in this case, the fraudulent operation was accomplished.

III. THE ODIOUS DEBT DOCTRINE

The multifaceted question of the validity of the Mozambican financial transactions will be decided in domestic courts on the basis of domestic laws. This involves a fragmentation in the outcomes of the lawsuits. To correct this flaw, at least partially, the solution is to have recourse to a uniform legal benchmark. In the absence of a proper international convention on the phenomenon of sovereign debt, this benchmark might be provided by the so-called "odious debt doctrine." In this context, the key point is to ascertain the legal status of this doctrine.

A. *The Emergence of the Doctrine*

In the 1920s, the Russian "*émigré*" Alexander Sack elaborated a doctrine under which odious debt constituted an exception to the rule of the passage of public debt in cases of state succession and of government succession. To qualify itself as odious, a debt must be contracted by a despotic regime, not in the interest of the nation, but as a means to strengthen its power and in the lenders' awareness of all that ("*a su des créanciers*").[74]

In terms of state succession, the general rule is that local debt (i.e., debt contracted by a territorial entity of the state) and localized debt (i.e., debt contracted by the central government for local projects or areas) pass to the successor state, while in relation to national debt (i.e., debt contracted by governments for general purposes) the picture is more complicated. In the case of absorption or merger, the absorbing or newly created state shall assume the debt of the extinguished state. In the case of secession or separation, however, where the predecessor state continues its existence, the national debt will remain with the predecessor state, even though the successor state may assume a portion of the debt on an equitable basis.[75] In the view of Sack, an

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74. *See* ALEXANDER N. SACK, LES EFFETS DES TRANSFORMATIONS DES ETATS SUR LES DETTES PUBLIQUES 157–184 (1927). For a comment on the evolution of this concept, see ROBERT HOWSE, THE CONCEPT OF ODIOUS DEBT IN PUBLIC INTERNATIONAL LAW 2 (2007), https://unctad.org/en/docs/osgdp20074_en.pdf [https://perma.cc/5VP2-C2YP] (archived Aug 23, 2020).

75. MALCOLM N. SHAW, INTERNATIONAL LAW 996–98 (6th ed. 2008).

exception to this rule concerns debts that are odious to the population or to the successor state.[76]

With reference to debts odious to the population, a first example concerns the controversy surrounding the Cuban debt following the Spanish–American War (1898). Towards the end of the nineteenth century, the Spanish Crown had contracted bonded debt secured by certain fiscal revenues of Cuba, the proceeds of which were used to suppress the struggle for the independence of the island.[77] During the peace negotiations following the defeat of Spain, the US delegation successfully pleaded the argument of the nonpassage of those debts, arguing that they were not contracted in the interest of the population.[78] Although the peace treaty reflected the position of the United States, the traditional rule of the passage of the debt to the annexing state was formally maintained through an *escamotage*, under which Cuba was not ceded but abandoned by the Spanish Crown.[79] By the same token, the Treaty of Versailles (1919) stipulated that the debt incurred by Germany and Prussia for the forced colonization of Polish lands should not have passed to Poland (Article 255).[80] For similar reasons, after the "*Anschluss*" of Austria (1938), the German Reich refused to assume the Austrian bonded loans organized by the League of Nations, as the guarantee agreement that backed those loans contained a clause concerning the independence of Austria from other nations that was considered against the interest of the Austrian people.[81] With reference to debt odious to the successor state, a first

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76. SACK, *supra* note 74, at 158–71.

77. *See* ERNST FEILCHENFELD, PUBLIC DEBT AND STATE SUCCESSION 329–43 (1931).

78. Although it was aware of the fact that not all the debt had been contracted for "odious" purposes, see *id.* at 339–40, the American delegation insisted that "[t]he decrees of the Spanish government itself show that these debts were incurred in the fruitless endeavors of government to suppress the aspirations of the Cuban people for greater liberty and freer government." 1 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW 377 (1906).

79. The Treaty of Peace between Spain and the United States (signed December 10, 1898) established that Cuba was "relinquished" and not "ceded" to the United States. *See* Treaty of Paris art. I, Dec. 10, 1898, Spain-U.S., 187 C.T.S. 101 ("Spain relinquishes all claim of sovereignty over and title to Cuba."). This is in contrast to the case of Puerto Rico, which was explicitly the object of cession (art. II). *See* SACK, *supra* note 74, at 143–44. In this way, the debt did not pass either to the United States, as the possession of the island was acquired *a non domino*, or to Cuba, as it was already occupied by US troops and so deprived of sovereignty. *See* FRANTZ DESPAGNET, COURS DE DROIT INTERNATIONAL PUBLIC 125 (1910).

80. The Treaty of Peace with Germany was concluded at Versailles on 28 June 1919. *See* Treaty of Versailles, Jun. 28, 1919, 225 C.T.S. 189; SACK, *supra* note 74, at 159–60.

81. Although the financial arrangements were made with the purpose of meeting the objective necessities of the population, the guarantor states had a clear political intent. *See* James L. Foorman & Michael E. Jehle, *Effects of State Succession and Government Succession on Commercial Bank Loans to Sovereign Borrowers*, 1982 U. ILL.

example concerns the debts contracted by the Boer Republics to finance warfare against the United Kingdom (1899–1902). At the time of the annexation of the defeated Boer Republics, Great Britain declared its unwillingness to recognize those obligations, arguing that debt incurred by the enemy could not pass to the victorious power.[82] A similar approach had already been acknowledged in the Fourteenth Amendment to the US Constitution, which excludes the debt incurred by the Confederate States to finance their rebellion (1861–1867) from the rule of maintenance.[83]

In terms of government succession, the general rule is that a change of government does not affect the obligations contracted by the previous government.[84] The exception depicted by Sack concerns the so-called *dettes de regime*. They are debts contracted by a despotic regime not for the benefit of the population, but to strengthen its power.[85] This type of debt may be regarded as a personal debt of the government, as found by Chief Justice Taft in the Tinoco arbitration,[86]

L. REV. 1, 21–22. In force of Art. 88 of the Treaty of Peace between the Allied Powers and Austria (signed 10 September 1919), the defeated country was deprived of the power to alienate its independence without the consent of the Council of the League of Nations. *See* Treaty of Saint-Germain art. 88, Sep. 10, 1919, 226 C.T.S. 36. This undertaking was solemnly restated by Austria in connection with the two League Loans: explicitly in Protocol No. I for Economic and Financial Assistance to Austria and implicitly in the Austrian Protocol. *See* Protocol No. I for Economic and Financial Assistance to Austria, Oct. 4, 1922, XII L.N.T.S. 387; Austrian Protocol, July 15, 1932, CXXXV L.N.T.S. 285.

82. *See* JOHN WESTLAKE, INTERNATIONAL LAW, PART I: PEACE 78 (1904) (noting a traditional understanding that a successor is not liable for loans that a predecessor took out for the purposes of funding war). In doing so, the UK government was not invoking a rule of law but rather a rule of expediency. *See* ARTHUR B. KEITH, THE THEORY OF STATE SUCCESSION, WITH SPECIAL REFERENCE TO ENGLISH AND COLONIAL LAW 65 (1907). In effect, under the Agreement between Great Britain and the Orange Free State and the South African Republic as to the Terms of Surrender of the Boer Forces in the Field (signed May 31, 1902), the notes issued as a war loan would have been regarded as evidence of war losses of the original holders as long as they were issued for valuable considerations (art. 10). *See* Peace of Vereeniging, May 31, 1902, 191 C.T.S. 234. The official position of His Majesty's government was acknowledged by Lord Alverstone. *See* West Rand Gold Mining Co. Ltd. v. The King [1905] 2 KB 391, 401–06.

83. U.S. CONST. amend. XIV, § 4; *see* Lee C. Buchheit, G. Mitu Gulati & Robert B. Thompson, *The Dilemma of Odious Debts*, 56 DUKE L. J. 1201, 1213, n. 29 (2007).

84. "Public debts, whether due to or from the revolutionised State, are neither cancelled nor affected by any change in the constitution or internal Government of a State." HENRY W. HALLECK, HALLECK'S INTERNATIONAL LAW 76 (Sir Sherston Baker ed., 1878). Following the French Revolution, the Constitution of 1791 established that *"[s]ous aucun prétexte, les fonds nécessaires à l'aquittement de la dette nationale . . . ne pourront être ni refusés ni suspendus."* 1791 CONST. tit. V, art. 2 (Fr.).

85. SACK, *supra* note 74, at 157, justified this position by arguing that creditors in this case *"ont commis un acte ostile à l'égard du peuple; ils ne peuvent donc pas compter que la nation affranchie d'un pouvoir despotique assume le dettes 'odieuses', qui sont des dettes personelles de ce pouvoir."*

86. "The bank knew that this money was to be used by the retiring president . . . for his personal support after he had taken refuge in a foreign country. It could not hold his own government for the money paid to him for this purpose." Aguilar-Armory & Royal

or as a personal debt of a particular class of citizens, as highlighted by the Soviet institute of international law with particular reference to the debts incurred by the Czarist regime.[87] In more recent times, the doctrine was advanced by the People's Republic of China in an *aide-mémorie*,[88] which was submitted in a lawsuit before the Northern District Court of Alabama regarding the payments on defaulted bonds issued in 1911 by the Chinese Imperial government.[89]

The Jubilee 2000 campaign has led many antidebt activists to invoke the application of the odious debt doctrine beyond the narrow boundaries of state succession and government succession. As a further step, they have systematically put odious debt under the wider category of illegitimate debt that includes debt against national law, debt against public policy, and unfair or objectionable debt.[90] The category of illegitimate debt would cover loans to oppressive regimes (Argentina and South Africa), loans bearing usurious interest (Latin American countries), loans for bad projects (Tanzania, Nigeria, and Indonesia), loans for self-enriching regimes (The Philippines), and loans to unreliable governments (Zaire).[91] The motivation behind the creation of the category of illegitimate debt and the subsumption of odious debt under it is that an odious/illegitimate debt should not be repaid.[92] Nevertheless, the flaw in this argumentation is that the odious debt doctrine and the wider illegitimate debt doctrine lack proper legal underpinnings.[93]

Bank of Canada (Gr. Brit. v. Costa Rica), 1 R.I.A.A. 369, 394 (1923); *see also infra* Part IV.E.

87. *See* Evgeny A. Korovin, *Soviet Treaties and International Law*, 22 AM. J. INT'L L. 753, 762–63 (1928) (discussing the characterization of the October Revolution as a radical change of government); Boris Mirkine-Guetzevitch, *La Doctrine Sovietique du Droit International*, 32 REVUE GÉNÉRAL DE DROIT INTERNATIONAL PUBLIQUE 313, 320–321 (1925). However, most of the Czarist debt was contracted for development purposes. *See* HAROLD G. MOULTON & LEO PASVOLSKY, WORLD WAR DEBT SETTLEMENTS 60 (1929).

88. On the general assumption that "it is a long-established principle of international law that odious debts are not to be succeeded to," the aide memoire argued that, in China, a radical change of régime took place and that the railways bearer bonds constituted a means through which the previous government strengthened its oppression of the Chinese people. *See* People's Republic of China, Aide Memoire of the Ministry of Foreign Affairs, 22 I.L.M. 81 (1983). It concluded that "[t]his position of the Chinese Government fully conforms to the principles of international law and has a sound basis in jurisprudence." *See id.*

89. The point was dismissed implicitly by the United States District Court for the Northern District of Alabama on the assumption of the irrelevance of political changes for the continuity of the states in international law. *See* Jackson v. People's Republic of China, 550 F. Supp. 869, 872 (N.D. Ala. 1982).

90. *See* Joseph Hanlon, *Defining "Illegitimate Debt": When Creditors Should Be Liable for Improper Loans*, *in* SOVEREIGN DEBT AT THE CROSSROADS 109, 109–11 (Chris Jochnick & Fraser A. Preston eds., 2006).

91. *See id.* at 118–25.

92. *See* Christoph G. Paulus, *The Evolution of the "Concept of Odious Debt"*, 68 HEIDELBERG J. INT'L L. 391, 393–94 (2008).

93. Buchheit, Gulati & Thompson, *supra* note 83, at 1228–30.

With reference to the odious debt, currently the odiousness of a debt should be appreciated against three criteria, that are a reformulation of those previously identified by Sack and enfranchise the doctrine from the arena of state/government succession. These criteria are the absence of consent by the population, the absence of benefit for the population, and the awareness of this on the part of the creditors. [94] In terms of the absence of consent, a democratic government is presumed to have the consent of the population to govern a country and thereby also the consent to raise loans. By contrast, a nondemocratic government is not presumed to have consent to govern a country and, implicitly, to borrow. Nevertheless, in both cases this is a rebuttable presumption. On the one hand, a nonelected government may also enjoy some general consent within the population and some specific consent in relation to particular loans. On the other hand, it is questionable that under a democratic government a loan should reflect the consent of the population only because constitutional requirements have been satisfied. In this respect, the formalistic criterion of the validity of the loan is not sufficient: it is necessary to consider the benefit to the population.[95] In terms of the absence of benefit, it is necessary to draw a distinction between loans for general purposes and loans for specific purposes. While the odiousness can be easily established for loans related to specific projects, the beneficial impact of loans contracted for general purposes on the population must be ascertained from time to time. Under a dictatorial regime, loans for general purposes may be odious as far as they can serve to reinforce an illegitimate government, while loans for specific projects that are objectively beneficial for the population are nevertheless odious because they free funds that can be used for odious purposes.[96] In terms of creditors' awareness, the key point is whether it is necessary to have an actual knowledge or whether a reckless ignorance suffices. Both cases presuppose that creditors are burdened with the responsibility to make inquiry into the purpose of the loans.[97]

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94. SABINE MICHALOWSKY, UNCONSTITUTIONAL REGIMES AND THE VALIDITY OF SOVEREIGN DEBT 49–59 (2007).

95. *See id.* at 51.

96. *See* Juan Pablo Bohoslavsky & Veerle Opgenhaffen, *The Past and Present of Corporate Complicity: Financing the Argentinean Dictatorship*, 23 HARV. HUM. RTS. J. 157, 174 (2010). Nevertheless, "To demonstrate that the loan contributed to the violation is essential, as there would be no reason to regard a loan as invalid because of an *ius cogens* violation committed by one of the parties, the borrowing state, unless this violation bears a relation to the contract." MICHALOWSKI, *supra* note 94, at 82.

97. MICHALOWSKY, *supra* note 94, at 58. This is feasible as far as a loan is related to a specific project, as explained in Principle No. 5 of the UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing. *See* UNCTAD, *Principles on Promoting*, *supra* note 23, at 7. Broadly speaking, creditors should have evidence that the proceedings are used for the benefit of the population in all international development agreements. *See* Günter Frankenberg & Rolf Knieper, *Legal Problems of*

This picture should be completed by a sanction mechanism in force of which, once debts have been designated as odious/illegitimate by a specific institution, municipal courts should not enforce the loan contracts and international financial institutions should deny further financing to debtors that decide to repay those debts.[98] To avoid all these problems, a proposal has been formulated regarding the creation of a framework for accountable sovereign debt financing articulated into an *ex ante* component and an *ex post* component. The first component should focus on the initial assessment and continuous monitoring of the loan, while the second component should focus on the establishment of a tribunal to assess compliance with the *ex ante* obligations.[99]

B. *The Doctrine and its Qualification.*

In the view of its supporters, the odious debt doctrine should invalidate a loan and neutralize the enforcement of the underlying claims. All this presupposes that the doctrine is normatively characterized. The flaw is that an intense doctrinal debate is not enough to turn policy into law.[100] Hence, the legal status of the doctrine is still an open question and deserves a thorough analysis.

1. The Doctrine as International Law

A first approach consists of qualifying the doctrine as an international law norm. With respect to customary law, Article 38 of

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the Overindebtedness of Developing Countries: The Current Relevance in the Doctrine of Odious Debt, 12 INT'L J. SOC. L. 415, 434 (1984).

98. Anna Gelpern, *What Iraq and Argentina Might Learn from Each Other*, 6 CHI. J. INT'L L. 391, 413 (2005).

99. The *ex ante* component is based on the registration of sovereign contracts by foreign lenders/investors on a dedicated website to signal the purposed benefits to the population and the international community. In this way, lenders are called upon to disclose their engagements with the sovereign counterpart, to require as a condition precedent that the debtor should indicate the use of the funds, to conduct an audit on the debtor government and the impact of the contract, and to monitor periodically the execution of the contract. The *ex post* component is based on the establishment of a tribunal to assess whether or not *ex ante* obligations have been fulfilled. The tribunal will be composed of independent individuals and shall adjudicate claims filed even by private persons not party to the transaction. The weak points of this proposal are the voluntary nature of the registration and the effects of the findings of the tribunal. *See* YVONNE WONG, SOVEREIGN FINANCE AND THE POVERTY OF NATIONS 134–65 (2012). The idea to establish an international tribunal to assess the odiousness of a debt had been already envisaged by SACK, *supra* note 74, at 163.

100. *See* Emily F. Mancina, *Sinners in the Hands of an Angry God: Resurrecting the Odious Debt Doctrine in International Law*, 36 GEO. WASH. INT'L L. REV. 1239, 1252–53 (2004) ("To assert, or even prove, that odious debt is bad for the Third World is not tantamount to a logical integration of the principle into international law.").

the ICJ Statute stipulates that it amounts to "a general practice accepted as law."[101] In relation to the material element, the ICJ has ruled that there must be a constant and uniform usage practiced by states,[102] while in relation to the psychological element two approaches have emerged. First, the existence of this element may be inferred from the very general practice, the literature, or previous judgments.[103] Second, the existence of this element must effectively be proved.[104] However, with reference to the phenomenon of state succession, since 1945, practice has not recorded significant instances of nonpassing debt on the basis of the odious debt doctrine.[105] There is an exception, perhaps, of the debts relating to the Dutch administration of Indonesia (1949) and the French administration of Algeria (1962).[106]

With respect to treaty law, the issue arose within the draft articles on succession of states in respect of state debt.[107] In his Report on the nontransferability of odious debt, Professor Bedjaoui singled out two definitions of odious debt: debt contracted by the antecessor state to serve purposes contrary to the major interests of either the successor state or the transferred territory; and debt contracted for purposes not in conformity with international law and, in particular, with the principles of the United Nations.[108] With specific reference to this second point, Professor Bedjaoui emphasized that, in terms of ethics, the odiousness of a debt must be appreciated in relation to human rights and the right to self-determination, on the one hand, and to the unlawful recourse to war, on the other.[109] Once it has been established

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101. *See, e.g.*, SHAW, *supra* note 75, at 72–93.

102. Asylum (Colom. v. Peru), Judgment, 1950 I.C.J. 266, at 276–77 (Nov. 20).

103. *See* Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can./U.S.), Judgment, 1984 I.C.J. 246, ¶ 90 (Oct. 12).

104. *See* North Sea Continental Shelf (Ger./Neth.), Judgment, 1969 I.C.J. 3, at 32–41 (Feb. 20).

105. *See* Andrew Yianni & David Tinkler, *Is There A Recognized Legal Doctrine of Odious Debt?*, 32 N.C. J. INT'L L. & COM. REG. 749, 766-67 (2007) (The lack of invocation was surprising considering the post-colonization process and the disaggregation of the Soviet Union and the Federation of Yugoslavia).

106. KING, *supra* note 45, at 80–82.

107. *See* Vienna Convention on Succession to State Property, Archives and Debts, pt. 4, Apr. 8, 1983, 22 I.L.M. 306; *1983 Vienna Convention on the Succession of States in Respect of State Property*, CENTRE FOR INTERNATIONAL LAW, https://cil.nus.edu.sg/databasecil/1983-vienna-convention-on-the-succession-of-States-in-respect-of-State-property-archives-debt (last visited Sept. 6, 2020) [https://perma.cc/XG37-AYSY] (archived Sept. 6, 2020) (demonstrating that the Convention has never entered into force due to its lack of signatory parties).

108. Mohammed Bedjaoui (Special Rapporteur), *Ninth Report on Succession of States in Matters Other than Treaties*, [1977] 2 Y.B. Int'l L. Comm'n. 45, U.N. Doc. A/CN.4/301 [hereinafter Bedjaoui, *Ninth Report*].

109. Bedjaoui made specific reference to debt incurred to purchase arms to violate human rights through genocide and racial discrimination, to debt incurred to subjugate peoples and colonize their territories, and to debt incurred to finance a war of aggression. *Id.* at 69.

that a debt is odious, the natural consequence is its nonpassage to the successor state. Regarding to this, Professor Bedjaoui distinguished between war debt and subjugation debt. War debt comprised the debt incurred by the Boer Republic to fight Britain and the debt contracted by the German Empire after the outbreak of World War I; subjugation debt comprised the Spanish debt secured by Cuban revenues and the German debt incurred for the colonization of Polish lands.[110] However, the proposal of Bedjaoui was not acknowledged in the final text of the 1983 Vienna Convention; Article 33 simply stipulates that "state debt" means any financial obligation of a predecessor state arising in conformity with international law toward another state, an international organization, or any other subject of international law. Nevertheless, the clause "in conformity with international law" would leave some room of maneuvering for the odious debt doctrine.[111]

The odious debt doctrine was raised before the Iran–United States Claims Tribunal[112] in relation to the enforceability of a contract concerning the provision of military equipment to Iran.[113] The Tribunal rejected the submission that supply would not have been beneficial to Iran as when the contract was made the country was not involved in war activities. Further, the Tribunal found that the odious debt doctrine was not applicable to the case as it could be invoked only in situations of state succession and not of *change de régime*.[114] Apart from any other consideration, the key point was that, in the view of the Tribunal, the odious debt doctrine could play a role in relation to state succession but not to government succession.

2. The Doctrine as a Doctrine

Under a doctrinal perspective, two primary issues arise. The former concerns the position of Sack's doctrine within the international law scholarship, and the latter concerns the status of the odious debt doctrine as an international law doctrine.

With respect to the position of Sack's doctrine within the international law scholarship, it is worth highlighting that, before the late 1990s, Sack's work was not much regarded among the international law scholars. In his much-praised book on public debt

110. *Id.* at 72–74.

111. *See* REX J. ZEDALIS, CLAIMS AGAINST IRAQI OIL AND GAS 42–43 (2010).

112. *See generally* CHARLES N. BROWER & JASON D. BRUESCHKE, THE IRAN–UNITED STATES CLAIMS TRIBUNAL 3–10 (1998).

113. U.S. v. Islamic Republic of Iran, 32 Iran-U.S. Cl. Trib. Rep. 162 (1996).

114. *Id.* at 176 ("The Tribunal does not take any stance in the doctrinal debate on the concept of 'odious debt' in international law. In any event, the Tribunal will limit itself to stating that the said concept belongs to the realm of the law of State succession. The revolutionary changes in Iran fall under the heading of State continuity, not State succession.").

and debt succession, Professor Ernst Feilchenfeld reported two instances of odious debt that justified an exemption from the rule of maintenance: the Spanish debt incurred for taming insurgencies in Cuba and the German debt incurred for the colonization of lands held by Polish owners. [115] Both these diversions from the rule of maintenance had already been reported in Sack's book, but Professor Feilchenfeld did not feel it necessary to refer to the Russian *émigré* as an authority to reinforce his position. Along the same lines, Professor Mohammed Bedjaoui did not mention Sack's work when discussing the doctrine of odious debt in his Report on the Succession of States in Matters other than Treaties.[116] This exclusion is surprising as Sack's work was referred to in the book by Professor Daniel O'Connell on state succession in relation to the description of odious debt. [117] Nevertheless, Sack's exclusion from the Bedjaoui Report may be explained by the fact that, in his work on public debt and state succession, Feilchenfeld did not refer to Sack as an international lawyer, but as an international financial lawyer.[118] In effect, in his time the Russian *émigré* was praised more by economists than by lawyers.[119] The fortune of Sack's work changed when in an article written on the eve of the First Mexican Debt Crisis (1983) Professor Michael Hoeflich indicated Sack as a leading scholar in the field of public debt succession.[120] Sack's odious debt doctrine was resumed and further developed by the debt abolitionist Patricia Adams[121] and has since become topical among antidebt activists, especially in connection with the Jubilee campaign and the Iraqi debt reduction.[122] What is still lacking is a thorough acknowledgement of it by international lawyers.[123]

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115. *See* FEILCHENFELD, *supra* note 77, at 329 *et seq.*, 450 *et seq.*

116. Bedjaoui, *Ninth Report*, *supra* note 108, at 67–74.

117. DANIEL P. O'CONNELL, STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW 458–59 (C.J. Hamson & R.Y. Jennings eds., 1967).

118. *See* FEILCHENFELD, *supra* note 77, at 574–75, 590–92; *see also* SACK, *supra* note 74, at 133–34 (In fact, with reference to state debt succession, Sack underscored that "*Le principe de la succession des dettes publiques est donc un principe, non de droit international public réglant les rapports entre Etats, mais de droit financier et de droit public general*"; prophetically he added that "*la succession de dettes publiques semble être une institution de droit supra-étatique (überstaatliches Recht) qu'il appartient à l'avenir de formuler et d'établir d'une façon definitive*").

119. *See* Sarah Ludington & Mitu Gulati, *A Convenient Untruth: Fact and Fantasy in the Doctrine of Odious Debt*, 48 VA. J. INT'L L. 595, 624–28 (2008).

120. *See* Michael Hoeflich, *Through a Glass Darkly: Reflections on the History of Public International Law on Public Debt in Connection with State Succession*, 1982 U. ILL. L. REV. 39, 45.

121. *See* PATRICIA ADAMS, ODIOUS DEBTS: LOOSE LENDING, CORRUPTION, AND THE THIRD WORLD ENVIRONMENTAL LEGACY 164–67 (1991).

122. *See* Ludington & Gulati, *supra* note 119, at 603–04.

123. *See* KING, *supra* note 45, at 27–28; Margot E. Salomon & Robert Howse, *Odious Debt, Adverse Democracy and the Democratic Ideal*, *in* SOVEREIGN DEBT AND

With respect to the status of the odious debt doctrine in international law, the issue is whether and to what extent the doctrine, as such, has become source of law. Article 38 of the ICJ Statute enumerates legal scholarship among the sources of international law. In detail, it stipulates that the teachings of the most highly qualified publicists of the various nations constitute a subsidiary means for the determination of the rules of law.[124] The mention of academic writings has a double meaning. On the one hand, it plays the role of filling the lacunae embedded in international law that is a legal system without a law-making process comparable to that of national states.[125] On the other hand, it reflects the fact that international law has its origin in the writings of celebrated scholars—the so-called founders of modern international law.[126] With the rise of legal positivism the influence of scholars' writings as a source of international law declined in favor of custom and treaty where states are the actors of the law-making process.[127] Although in some ambit of international law, scholars' writings occasionally still have an influence on the formation of the law,[128] currently they are mainly referred to in arbitral tribunals and in national courts to reinforce argumentation.[129] As an international law doctrine, the odious debt doctrine should be pled before international courts and tribunals.[130] However, because of its unclear legal contours and its capacity to impair the rule of keeping to agreements, the doctrine might be confined to cases where the court or the tribunal are called on to decide *ex aequo et bono*.[131]

HUMAN RIGHTS 425, 436 (Ilias Bantekas & Cephas Lumina eds., 2018). *Contra* WONG, *supra* note 99, at 16–18.

124. *See* Statute of the International Court of Justice art. 38, ¶ 4; *see also* Perm. Ct. Arb. Arbitration Rules art. 35, ¶ 1(a)(iv).

125. International law has no single body capable of producing laws and a machinery of compulsory jurisdiction to enforce it. This reflects the anarchic status of world affairs and the conflict between states. *See* SHAW, *supra* note 75, at 70.

126. The number counts first all Hugo Grotius, author of the celebrated DE JURE BELLI AC PACIS (1625), but also Albericus Gentili, Franciscus de Vitoria, Franciscus Suarez, Johannes Althusius, and Samuel von Pufendorf, to name a few. *See* ARTHUR NUSSBAUM, A CONCISE HISTORY OF THE LAW OF NATIONS 58–177 (1947).

127. SHAW, *supra* note 75, at 112–13.

128. This is the case, for example, with GILBERT GIDEL, LE DROIT INTERNATIONAL PUBLIC DE LA MER (1932), which exerted a great influence on the development of the concept of "contiguous zone" within the law of the sea.

129. They are used more rarely in the ICJ judgments and opinions to avoid problematic selection of citations. IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 24–25 (7th ed. 2008).

130. The only arbitral tribunal before which the odious debt defense was unsuccessfully raised was the United States-Iran Claims Tribunals in the case U.S. v. Islamic Republic of Iran, 32 Iran-U.S. Cl. Trib. Rep. 162 (1996).

131. Under the ICJ the application of the *ex aequo et bono* rule is an exceptional event and depends on the explicit provision of the parties. *See generally* Free Zones of the Upper Savoy (Fr. v. Switz.), Judgment, 1930 P.C.I.J. (ser. A) No. 24, at 10 (Dec. 6).

3. The Doctrine as Soft Law

The present international law picture contains an objective lacuna in terms of rules applicable to the phenomenon of sovereign debt: there are neither international conventions regulating this subject[132] nor established rules in this field.[133] To fill this gap, certain international agencies have produced some pieces of soft law.

In January 2012, the United Nations Conference on Trade and Development (UNCTAD) adopted the Principles on Promoting Responsible Sovereign Lending and Borrowing. [134] This adoption implemented a Resolution by the UN General Assembly stressing the importance of responsible financing in which both public and private creditors and sovereign debtors share responsibility for preventing unsustainable debt situations.[135] The UNCTAD Principles have not been formally incorporated into a binding instrument for two reasons: first, this choice is consistent with the soft law characterization of international financial law;[136] second, the purpose of the Principles is not so much to establish rights and obligations, but rather to identify basic rules and best practices. This second reason reflects the dynamic and flexible nature of the Principles[137] and their nonuniform legal status. [138] Although some incremental acknowledgement of these

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132. *But see* Vienna Convention on Succession to State Property, Archives and Debts, *supra* note 107, at 306.

133. This gap may be filled by having recourse to Art. 96 of the UN Charter under which the General Assembly may request from the ICJ an opinion on any issue of international law, including sovereign debt. So far, such a step has not been taken. Although not formally binding, the interpretative activity of the court may contribute to promote the progressive development of international law. *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep., 136, 213 (Higgins, J.). A set of rules may nevertheless be doctrinally inferred. *See* MAURO MEGLIANI, SOVEREIGN DEBT: GENESIS, RESTRUCTURING, LITIGATION 430-61 (2015).

134. *Supra* note 23.

135. G.A. Res. 65/144, ¶ 3 (Dec. 20, 2010). However, the UN General Assembly could have adopted a Declaration on Principles of Sovereign Debt, but such a step would have required a nearly unanimous consent that lacked and still lacks. *Cf.* HENRY G. SCHERMERS & NIELS M. BLOKKER, INTERNATIONAL INSTITUTIONAL LAW 789-90 (5th rev. ed. 2011).

136. Chris Brummer, *Why Soft Law Dominates International Finance—and not Trade*, 13 J. INT'L ECON. L. 623–24 (2011).

137. *See* Juan Pablo Bohoslavsky & Carlos Esposito, *Principles Matter: The Legal Status of the Principles on Responsible Sovereign Financing*, *in* SOVEREIGN FINANCING AND INTERNATIONAL LAW, *supra* note 53, at 73, 86.

138. The Principles have been derived by analogy from domestic legal systems. Only a few reflect customary law (corruption, necessity), while the rest of them may be classified as general principles of law (agency, authorization, bindingness), emerging principles (assessment of a borrower's capacity, lender's due diligence), guiding principles (audits, disclosure of information), or structural principles (avoiding overborrowing). *See* Goldmann, *supra* note 24, at 8.

Principles in restructuring and litigation may be recorded, it is too early to qualify them as proper body of legal rules.[139]

The UNCTAD Principles do not make specific reference to the odious debt doctrine. This absence is consistent with the fact that they aim to be an objective benchmark for responsible sovereign financing. This aim would be undermined by the acknowledgment of the odious debt doctrine, the status of which is still unclear. However, a closer analysis of the Principles may lead to a different conclusion. Under Principle Number 1, lenders are called to recognize that government officials responsible for a financial transaction are acting in the name and on the behalf of the population and hence must refrain from corrupting them to breach that duty. Moreover, under Principle Number 2, lenders are required to inform the borrowers of the risks and benefits of the financial transaction. Further, under Principle Number 5, lenders financing a specific project are responsible for making an *ex ante* investigation of its impact. All this indicates that the three updated elements of the doctrine are in some way embedded in these Principles.

By contrast, the updated elements of Sack's doctrine are straightforwardly acknowledged in the Human Rights Council (HRC) Guiding Principles on Foreign Debt and Human Rights.[140] The Guiding Principles, *inter alia*, push for the establishment of an international debt workout mechanism to restructure unsustainable debts and resolve debt disputes in a fair, transparent, efficient, and timely manner (¶ 84).[141] This mechanism should have the mandate to rule on the "odiousness" or "illegitimacy" of particular external debts. The criteria to be used in assessing the odiousness or illegitimacy of a debt should be defined by national legislation on the basis of the following elements: the absence of consent by the debtor state's

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139. *See, e.g.*, Juan Pablo Bohoslavsky & Matthias Goldmann, *An Incremental Approach to Sovereign Debt Restructuring: Sovereign Debt Sustainability as a Principle of Public International Law*, 41 YALE J. INT'L L. ONLINE 13, 38–42 (2016) (noting that these principles "complement, rather than replace, existing mechanisms").

140. The HRC Guiding Principles are centered on the primacy of human rights, in particular economic, social and cultural rights, and on their non-retrogression in relation to state indebtedness. *See* Human Rights Council Res. 20/23, U.N. Doc. A/HRC/20/23, at 11–16 (Apr. 10, 2011).

141. *Id.* at 20, ¶ 84. The input for the establishment of a debt workout mechanism reflects the failure of many proposals for the creation of a machinery for sovereign debt restructuring, from the IMF Sovereign Debt Restructuring Mechanism to the IIF Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Markets. *See* MEGLIANI, *supra* note 133, at 569–79. The HRC Guiding Principles stress the necessity of filling this lacuna. The UNCTAD is currently working to a Debt Workout Mechanism to be designed by a Working Group. *Sovereign Debt Workout Mechanism*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, https://unctad.org/en/Pages/GDS/Sovereign-Debt-Portal/Sovereign-Debt-Workout-Mechanism.aspx (last visited Sept. 6, 2020) [https://perma.cc/K23C-E2UH] (archived Sept. 6, 2020).

population, the absence of benefit to the debtor state's population, and the creditors' awareness of this (¶ 86d).[142] However, this reference must be correctly appreciated in the light of the nature, aim, and scope of the HRC Guiding Principles. In fact, the Guiding Principles are more political in character than the UNCTAD Principles; they neither pursue the creation of new rights or obligations under international law, nor do they replace other mechanisms designed to address aspects of the sovereign debt problem. Rather, their normative contribution consists of identifying existing basic human rights standards applicable to sovereign debt and related policies, as well as in elaborating the implications of these standards (¶ 17).

4. The Doctrine as a Matter of Politics

The odious debt doctrine has been used as a political argument—with different outcomes—in the dynamics of debt restructuring. Some cases can be inferred from the practice.

At the beginning of the new century Argentina was on the edge of an economic crisis. Economic growth was stagnant, and the cost of borrowing increased. To meet these imbalances, Argentina requested the assistance of the IMF against the implementation of a huge package of fiscal reforms.[143] However, the cure was not able to defeat the disease. In late 2001, the economic and political situation precipitated, and, in December 2001, Argentina declared default on its debt estimated at $180 billion. Bonded debt, which amounted to nearly half the outstanding debt, was technically difficult to restructure as it was articulated in 152 series of bonds, governed by eight different laws, and held by over 700,000 holders around the world. [144] The restructuring of the Argentine debt was characterized by a sharp unilateralism both in form and in substance. First, the debtor did not

142. According to the commentary, debt restructuring mechanisms should have the authority to adjudicate claims of invalid or illegitimate debts. The rationale is that the people of a debtor country should not be required to repay loans from which they have not benefitted. In alternative, there has to be some form of auditing of the external debts at the commencement of any restructuring process to ensure that only valid and legitimate external debts will be included in the restructuring plan and, in that context, repaid. Human Rights Council Res. 20/23, *supra* note 140, at 20, ¶ 86(d).

143. Conditions on which the disbursement of the resources depends are attached to the letter of intent signed by the minister of finance of the requesting state. Formally, it is a unilateral act of the government; substantively, it is the outcome of intense negotiations between the staff of the government and the staff of the IMF. This implies that in case of non-compliance with the conditions, a breach of obligation does not arise, even though the drawing of resources ceases. *See* ANDREAS F. LOWENFELD, INTERNATIONAL ECONOMIC LAW 614–15 (2008).

144. José García-Hamilton Jr., Rodrigo Olivares-Caminal & Octavio M. Zenarruza, *The Required Threshold to Restructure Sovereign Debt*, 27 LOY. L.A. INT'L & COMP. L. REV. 249, 256–57 (2005).

encourage the formation of negotiating committees and refused to have contacts with those formed at the initiative of some bondholders;[145] second, the debtor formalized a "take-it-or-leave-it" proposal of restructuring, which involved huge losses for creditors. In September 2003, Argentina launched a first restructuring proposal providing for the cancellation of 75 percent over the nominal value of the outstanding debt without any recognition of the accrued interest. Facing strong opposition by the holders, Argentina reconsidered the proposal and, in January 2005, launched the final exchange offer involving a reduction of 75 percent over the nominal value of the outstanding debt but with a partial recognition of the accrued interest.[146] This unilateral approach has many explanations. Among them is the argument that the debt had been incurred by the dictatorship and thereby was illegitimate and worthy of repudiation.[147]

Another situation where the odious debt doctrine came into play was the restructuring of the Iraqi debt. Following the Iraq War and the overthrowal of Saddam Hussein (2003), the issue of debt relief arose not out of a sense of humanity or justice, but because of the necessity to relieve the new Iraq from a heavy burden and so buttress the democratic process. Although the Iraqi government grounded its request for debt restructuring on the incapacity to repay the debt, the US Administration and many debt-abolitionist associations claimed the debt was to be reduced as it was incurred to finance the war against Iran and the lavish way of life of Saddam Hussein and his entourage.[148] In this context, the US Administration exerted a significant pressure over its allies for a substantial relief of the Iraqi bilateral debt that amounted to $120 billion.[149] This reduction took place mainly within the machinery of the Paris Club,[150] where the Iraqi debt enjoyed

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145. Arturo C. Porzecanski, *From Rogue Creditors to Rogue Debtors: Implications of Argentina's Default*, 6 CHI. J. INT'L L. 311, 323–24 (2005).

146. This massive debt reduction has few precedents in the recent financial history and those few involved poor countries, smaller sums, and bank creditors. RODRIGO OLIVARES-CAMINAL, LEGAL ASPECTS OF SOVEREIGN DEBT RESTRUCTURING 256–59 (2009); *see* Porzecanski, *supra* note 145, at 325.

147. To tell the truth, most of the debt was contracted or restructured under the democratic presidency. *See* Gelpern, *supra* note 98, at 408; MICHALOWSKY, *supra* note 94, at 91-92.

148. Detlev F. Vagts, *Sovereign Bankruptcy: In Re Germany (1953), In Re Iraq (2004)*, 98 AM. J. INT'L L. 302, 303 (2004).

149. Half of the debt was due to Arab nations. *See* Ross P. Buckley, *Iraq's Sovereign Debt and Its Curious Global Implications*, *in* BEYOND THE IRAQ WAR: THE PROMISES, PITFALLS AND PERILS 141, 141–42 (Michael Heazle & Iyanatul Islam eds., 2006).

150. The Paris Club (www.parisclub.org) is the general forum for the restructuring at multilateral level of bilateral debt owed to industrialized countries. It is an international conference that has undergone a process of institutionalization: the elements of institutionalization can be identified in the Secretariat (composed of staff provided by the French Treasury), the methodological sessions, and *tours d'horizon*. The final act of the Paris Club negotiations is the agreed minutes, the typical final act of an

generous treatment. In this context, the Iraqi debt should have been rescheduled under the so-called Classical Terms that involve rescheduling at market rate.[151] Instead, this debt benefitted from an *ad hoc* treatment implying a cancellation of nearly $30 billion thanks to diplomatic activism by the United States.[152] The United States' pressure for a significant debt relief was not confined to Paris Club participants; it extended to those bilateral creditors that did not participate in the Club workouts as well as to commercial creditors.[153] Although it is unclear to what extent the odious debt doctrine played an effective role in the debt restructuring process, it is certainly true that it entered the public debate as a political argument for a significant debt reduction.[154]

The odious debt doctrine was also evoked in connection with the restructuring of the Ecuadorian debt. During his campaign for the presidential election, candidate Rafael Correa promised not to pay some of the country's external debts, but rather to spend the sums intended for payment on public sector projects. He affirmed that Ecuador would be justified in doing so because the bonded debt represented obligations that had been illegally incurred by previous oppressive regimes and was therefore unfair and illegitimate.[155] Once elected in 2007, President Correa kept his promise and created a Public Debt Audit Commission to evaluate the country's obligations incurred between 1976 and 2006.[156] The Commission took into consideration

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international conference, which are not published. The Paris Club in its activity follows six principles: solidarity, consensus, information sharing, case-by-case, conditionality, and comparability of treatment. *See* Mauro Megliani, *Paris Club*, *in* MAX PLANCK ENCYCLOPEDIAS OF INT'L L., https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2176?rskey=x1hvc4&result=1&prd=MPIL (last updated July 2015) [https://perma.cc/GL6L-Q7JU] (archived Aug. 25, 2020).

151. *See Classic Terms*, PARIS CLUB, https://clubdeparis.org/en/communications/page/classic-terms [https://perma.cc/3FMJ-JF3D] (arch-ived Aug. 25, 2020) (calling the classic terms the "standard terms" for countries seeking assistance from the Paris Club).

152. See Buckley, *supra* note 149, at 146–47 (explaining how vigorous diplomatic efforts by the United States led creditor countries to forgive 80 percent of Iraqi sovereign debt).

153. For a detailed description of the Iraqi sovereign debt saga, see WONG, *supra* note 99, at 52–64.

154. According to Jai Damle, the most compelling argument for a sharp debt reduction was based not so much on the odious debt doctrine but rather on the stagnancy of the Iraqi economy and the instability of the Middle-East, as it was necessary to avoid setting a precedent in this field. *See* Jai Damle, *The Odious Debt Doctrine After Iraq*, 70 L. & CONTEMP. PROBS. 139, 148, 150–51 (2007).

155. Adam Feibelman, *Ecuador's Sovereign Default: A Pyrrhic Victory for Odious Debt?*, 25 J. INT'L BANKING L. & REG. 357, 358 (2010).

156. WONG, *supra* note 99, at 93–94. The Commission was composed of academic and anti-debt activists in some way connected to the European Network on Debt and Development (EURODAD). *Id.*

various aspects of Ecuador's external obligations. It found that the proceeds of various borrowings and restructurings had been used to unfairly benefit certain internal and external subjects. The international bonds were found to be invalid because the government had ceded to oppressive terms of the loan (waiving sovereign immunity, submitting to foreign law, etc.). Moreover, the service on the debt in 2007 was found to be greater than the public expenditure on health, welfare, urban development and housing, the environment, and education.[157] On the basis of the findings of the Commission, President Correa made a selective default and declared two out of three international bonded loans illegal; he also stopped paying coupons without formally repudiating the loans. [158] Neither the Audit Commission nor President Correa, however, made any specific reference to the odiousness of the debts, possibly because the three criteria of odiousness were not met.[159]

5. The Doctrine as Domestic Law

The Guiding Principles on Foreign Debt and Human Rights, in laying down the three elements of the odious debt doctrine, underscore that odiousness and illegitimacy should be defined by national legislation (¶ 86(d)). This is far from being surprising, considering that one of the major sources of sovereign indebtedness is private loans that are governed by a domestic legal system usually coinciding with English law and New York law.[160]

Both the UNCTAD Principles and the HRC Guiding Principles, in their respective ways, stimulate national legislation to acknowledge the notion of odious debt in their jurisdictions. A significant step in this direction might be the elaboration of a sort of model law capable of constituting a benchmark for national legislation.[161] This model law might be elaborated within UNCTAD as a follow-up to the Principles

157. Feibelman, *supra* note 155, at 358.

158. WONG, *supra* note 99, at 94–95. Following the default, the Ecuadorian government started buying back the bonds at a risible price. Arturo C. Porzecanski, *When Bad Things Happen to Good Sovereign Debt Contracts: The Case of Ecuador*, 73 LAW & CONTEMP. PROBS. 251, 266-267 (2010). The success of the Ecuador operation was also due to the behavior of the trustee of the issuance, which decided not to accelerate the loan and enforce the bondholder's claims. *See* Lee C. Buchheit & G. Mitu Gulati, *The Coroner's Inquest*, 28 INT'L FIN. L. REV., Sept. 2009, at 22, 24–25.

159. The Audit Commission did not find that the debts were not contracted for the benefit of the population or that the creditors knew of this hypothetical fact; moreover, the borrowing government was not a dictatorship. *See* Feibelman, *supra* note 155, at 360.

160. Michael Gruson, *Controlling Choice of Law, in* SOVEREIGN LENDING: MANAGING LEGAL RISK 51, 59 (Michael Gruson & Ralph Reisner eds., 1984).

161. The benchmark is constituted by the UNCITRAL Model Law on Arbitration. *See generally* U.N. COMM. ON INT'L TRADE L., MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION, U.N. DOCS. A/40/17, annex I & A/61/17, annex I, U.N. Sales No. E.08.V.4 (1985) (amended 2006).

on Responsible Sovereign Borrowing and Lending. As such, the model law is not binding; nevertheless, states may freely incorporate the whole of it or some of its provisions in their legislation. Such a step may contribute to fill an objective lacuna.

In this context, it is worth noting that some states have enacted legislative measures to curb vulture funds' activism[162] in recovering their claims.[163] The issue of the illegitimate/odious debt, though, has not yet become the object of specific legislation. The only exception is perhaps the US Iraqi Freedom from Debt Act,[164] which underscored that international precedents exist under which

> debts incurred by dictatorships for the purposes of oppressing their people or for personal purpose may be considered "odious". In cases where borrowed money is used in ways contrary to the people's interest, with the knowledge of the creditors, the creditors may be said to have committed a hostile act against the people.[165]

This stipulation constitutes a plain acknowledgment of the Sackian odious debt doctrine in relation to government succession, but was confined to the exceptional situation of post-war Iraq. Moreover, the Act emphasized that such debts might be questioned, but not that they were *per se* illegal.

In the absence of specific national legislation addressing this phenomenon, the only solution is to have recourse to existing norms, such as abuse of rights,[166] unjust enrichment,[167] and agency.[168]

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162. Vulture funds are investment funds specializing in purchasing the debts of sovereigns in distress at a price below face value with the purpose of obtaining the nominal amount in court. On their disruptive activism, especially in connection with the saga of the Argentine sovereign bonds, see generally Tim R. Samples, *Rogue Trends in Sovereign Debt: Argentina, Vulture Funds, and* Pari Passu *Under New York Law*, 35 NW. J. INT'L L. & BUS. 49 (2014).

163. The most significant of these initiatives is perhaps the 2010 UK Parliament Debt Relief (Developing Countries) Act. *See generally* Debt Relief (Developing Countries) Act 2010, c. 22. Under this Act, a UK court cannot render a judgment, or enforce a foreign judgment or arbitral award, against a "heavily indebted poor country" under which private creditors would be enabled to recover their credits in excess of the sustainable level as calculated under the Heavily Indebted Poor Country Initiative. *Id.* §§ 3(1), 4(2), 5(1), (3).

164. *See generally* Iraqi Freedom From Debt Act, H.R. 2482, 108th Cong. (2003).

165. *Id.* § 2(3).

166. *See* Frankenberg & Knieper, *supra* note 97, at 428 (describing "abuse of rights" as being against the interests of the population or exceeding the sovereign's natural resources).

167. *See* Jeff A. King, *Odious Debt: The Terms of the Debate*, 32 N.C. J. INT'L L. & COM. REG. 605, 643 (2007) (arguing that unjust enrichment has questionable applicability to the odious debt doctrine because, by definition, odious debt requires there be no benefit to the state and thus no enrichment).

168. *See* Buchheit, Gulati & Thompson, *supra* note 83, at 1237–45 (describing that agency law may relieve a "principal" state's obligation to repay a debt in only some

However, this piecemeal approach does not ensure coverage for all the elements of the doctrine and is also too dependent on the applicable law and the seized forum. Against this background, the solution is then to accept that the odious debt doctrine lacks a proper normative status. Nevertheless, because the doctrine reflects values and values are traditionally protected by public policy, it can come into play in the form of public policy.

6. The Doctrine as Public Policy

Under the law of contracts, a contract cannot be enforced if it is against public policy. Public policy is usually understood as the "whole body of laws and legal instruments whose principles cannot be set at naught either by special conventions or by a conflicting foreign law."[169] Although it reflects the fundamental economic, social, moral, and political values of a given country, the content of public policy is subject to variation at different times and in different places.[170] The judge plays a key role in appreciating the meaning and operation of these values. In this process, the judge should not follow mass opinion when it is clearly in error. He is called to direct it, not so much on the basis of personal convictions, but rather on the ground of the convictions of the healthy elements of the population that are able to combine respect for tradition with acceptance of social change.[171]

Against this background, the key point is, first, to understand whether and to what extent the values protected by the odious debt doctrine may be subsumed under the umbrella of public policy and, second, under which category of public policy they may fall. Normally, contracts are appreciated in the light of the municipal public policy of the forum. Unfortunately, the values that traditionally come into play under this policy are the domestic values of the forum. This fact makes municipal public policy unsuited to acknowledge international values like those protected by the odious debt doctrine. These values are better served under transnational public policy.

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circumstances, such as when a lender is aware of the "agent" regime's self-dealing motives).

169. Application of Convention of 1902 Governing Guardianship of Infants (Neth. v. Swed.), Judgment, 1958 I.C.J. 55, 102 (Nov. 28) (separate opinion by Moreno, J.).

170. Evanturel v. Evanturel, [1874] UKPC 58, 68 (Can.). Public policy is a "conception the definition of which in any particular country is largely dependent on the opinion prevailing at any given time in such country itself . . .." Payment of Various Serbian Loans Issued in France (Fr. v. Yugoslavia), 1929 P.C.I.J. (ser. A) No. 20, at 46.

171. DENNIS LLOYD, PUBLIC POLICY: A COMPARATIVE STUDY IN ENGLISH AND FRENCH LAW 125–26 (1953).

IV. TRANSNATIONAL PUBLIC POLICY

The existence of a transnational public policy (or transnational public order) has been envisaged in certain international commercial arbitrations and has formed the object of intense doctrinal debate. From a substantive point of view, transnational public policy transcends the boundaries of national states.[172] Its values come from many sources: natural law, principles of universal justice, *jus cogens*, and general principles of morality and public policy accepted in civilized countries.[173] In addition to the prohibition of corruption that can be considered a sort of "*noyau dur*" of the transnational public policy,[174] these values include abhorrence of slavery, discrimination, kidnapping, murder, piracy, and terrorism, the promotion of fundamental human rights, and the acknowledgement of uniform laws and codes of practice. [175] However, to reflect a universal moral standard, a truly international public order value does not necessarily have to be accepted in all the jurisdictions.[176] From a systematic point of view, transnational public policy poses itself alongside municipal public policy and international public policy.

A. *The Notion of Public Policy*

Juristic elaboration has progressively distinguished three types of public policy: municipal, international, and transnational. Municipal public policy has the effect of rendering a contract void and unenforceable. Under common law, a contrast with public policy makes a contract illegal and thereby unenforceable,[177] while under civil law a contrast with public policy makes the consideration unlawful and the contract void.[178] In any case, contracts infringing on public policy do

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172. Michael Pryles, *Reflections on Transnational Public Policy*, 24 J. INT'L ARB. 1, 3 (2007).

173. JULIAN D.M. LEW, APPLICABLE LAW IN INTERNATIONAL COMMERCIAL ARBITRATION 534 (1978).

174. JEAN-BAPTISTE RACINE, L'ARBITRAGE COMMERCIAL INTERNATIONAL ET L'ORDRE PUBLIC 393–94 (1999).

175. LEW, *supra* note 173, at 535.

176. The condemnation of racial discrimination, corruption, or drug trafficking is not necessarily unanimous, FOUCHARD, GAILLARD, GOLDMAN ON INTERNATIONAL COMMERCIAL ARBITRATION 853, 863–864 (Emmanuel Gaillard & John Savage eds., 1999). In this context, the elaboration of the transnational public policy takes place along the same lines as that of the general principles of law. RACINE, *supra* note 174, at 360.

177. Illegality may affect both the formation and the performance of the contract. *See* Prentice, *supra* note 55, at 1224.

178. Article 1131 of the French *Code Civil* stipulates that "*l'obligation . . . sur une cause illicite, ne peut avoir aucun effet*," Code Civil [C. CIV.] [CIVIL CODE] art. 1131, while Article 1133 provides that "*la cause est illicite . . . quand elle est contraire . . . à l'ordre public.*" *Id.* art. 1133.

not give rise to claims for specific performance or damages.[179] From a substantive standpoint, it is possible to distinguish between political public policy and economic public policy. The former prohibits those contracts that openly conflict with the social order; the latter prohibits those contracts that, without infringing on the fundamental values of the society, affect economic relations.[180]

International public policy consists of values that are regarded as so fundamental by the seized forum that their infringement can block the application of a foreign law or the enforcement of a foreign act.[181] This policy is stricter in scope and mandate than municipal public policy; otherwise, the whole private international law system would be seriously impaired.[182] In this respect, international public policy is a misnomer, as it concerns those fundamental, moral, economic, social, and political interests of the seized forum.[183] As a result, domestic courts are less inclined to apply public policy in cases involving an international element than they are in cases of purely domestic characterization.[184] That implies that "not every rule which belongs to the *ordre public interne* is necessarily part of the *ordre public externe ou international*."[185] This narrowness is reflected in the EU conflict-of-laws system. Under the Brussels I Regulation, the recognition and enforcement of a foreign judgment may be refused as far as it is "manifestly" contrary to the public policy of the seized forum (Articles 45 and 46).[186] In the same vein, under the Rome I Regulation, the application of a provision of the law of a foreign country may be refused only if that application is "manifestly" incompatible with the public policy of the forum (Article 21).[187]

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179. *See* KONRAD ZWEIGERT & HEIN KÖTZ, INTRODUCTION TO COMPARATIVE LAW 380–81 (T. Weir trans., 3rd ed. 1998) (describing the unenforceability of contracts contrary to public policy in the western world).

180. EUROPEAN CONTRACT LAW 142–43 (Bénédicte Fauvarque-Cosson & Denis Mazeaud eds., 2008).

181. Mathias Forteau, *L'ordre public « Transnational » ou « Réellement International »*, 138 J. DROIT INT'L 3, 5 (2011).

182. Vervake v. Smith [1982] 2 All ER 144 (HL) 157 (Lord Simon of Glaisdale) (appeal taken from EWHC Fam.) (UK).

183. JULIAN D.M. LEW, TRANSNATIONAL PUBLIC POLICY: ITS APPLICATION AND EFFECT BY INTERNATIONAL ARBITRAL TRIBUNALS 20 (2018).

184. *See* Loucks v. Standard Oil Co., 120 N.E. 198, 202 (N.Y. 1918) ("The courts are not free to refuse a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good moral, some deep-rooted tradition of common weal.").

185. DICEY, MORRIS & COLLINS, *supra* note 25, at 1874 (internal quotation marks omitted).

186. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2012 O.J. (L 351) 1.

187. Rome I Regulation, *supra* note 25, art. 21.

Still, international public policy is wider in content than municipal public policy as it acknowledges some values of the international community.[188] In *Oppenheimer v. Cattermole*, the House of Lords refused to apply a foreign law, which constituted a grave infringement of fundamental human rights.[189] In *Kuwait Airways v. Iraqi Airways*, the House of Lords refused to enforce a foreign act which was adopted under a *jus cogens* violation.[190] In *Yukos Capital Sarl v. OJSC Rosneft Oil Co*, Lord Justice Rix, delivering the judgment of the Court of Appeal, which dealt with the public policy exception to the act of state doctrine,[191] drew a distinction between

> the act of State which cannot be challenged for its effectiveness despite some alleged unfairness, and the act of State which is sufficiently outrageous or penal or discriminatory to set up the successful argument that it falls foul of clear international law standards or English public policy and therefore can be challenged.[192]

Conceptually speaking, these international elements of international public policy belong to the realm of transnational public policy or the truly international public order, that "is the one that establishes universal principles, in various fields of international law and relations, to serve the higher interests of the world community, the common interests of mankind, above and sometimes even contrary to the interests of the individual nations."[193]

B. The Emergence of Transnational Public Policy

The existence of a truly international public order has been the object of an intense doctrinal debate. In a course delivered at the Hague Academy of International Law in 1932, Professor Niboyet evoked the existence of an "*ordre public international.*" The justification for this peculiar form of public policy lies in the fact that the international judge has no territorial forum and, therefore, no territorial public policy to enforce. Substantively, this "*ordre public international*" would correspond to the public policy of civilized countries capable of

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188. International public policy has undergone a process of internationalization. Forteau, *supra* note 181, at 9–10.

189. Oppenheimer v. Cattermole [1976] AC 249 (HL) 278 (appeal taken from EWHC (Ch)) (UK).

190. Kuwait Airways Corp. v. Iraqi Airways Co. [2002] UKHL 19 [114], [2002] 2 AC (HL) 883 (UK).

191. *See* Yukos Capital Sarl v. OJSC Rosneft Oil Co [2012] EWCA (Civ) 855 [68]–[69] (Eng.).

192. *Id.* at [110].

193. Jacob Dolinger, *World Public Policy: Real International Public Policy in the Conflict of Laws*, 17 TEX. INT'L L.J. 167, 172 (1982).

displacing, in case of contrast, the application of municipal law.[194] Professor Rolin took this point further and specified that the *ordre public international* would prevent not only the application of a conflicting municipal substantive rule but also the application of a conflicting municipal public policy rule.[195]

Currently, the view that identified truly international public order with the common principles of civilized nations is no longer tenable.[196] In this respect, Maury spoke of an "*ordre public de la société internationale*" based on customary norms and the general principles of law,[197] while Goldman specified that truly international public order was to be understood as the public policy of the international community and not as a mere juxtaposition of the common public policy of civilized nations.[198]

This approach was substantively endorsed in 1986 at the Eighth Congress of the International Chamber of Commercial Arbitration (ICCA). In that context, it was acknowledged that not only international arbitrators, but also municipal judges had in a number of cases referred to a notion of a transnational public policy capable of encompassing both the territorial values of the forum and the fundamental values of the international community.[199] The existence of a truly international public order was further acknowledged in the International Law Association (ILA) Interim Report on Public Policy as a Bar to Enforcement of International Arbitral Awards (2000). On that occasion, it was affirmed the existence of a transnational public policy with universal application that consists of "fundamental rules of natural law, principles of universal justice, *jus cogens* in public international law and the general principles of morality accepted by what are referred as 'civilised nations.'"[200]

From an axiological point of view, the application of the values of the international community can be justified by the fact that they reflect the establishment of a world public order based on respect for

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194. Jean-Paul Niboyet, *Le Rôle de la Justice International en Droit International Privé: Conflit de Lois*, 40 RECUEIL COURS 157, 178 (1932).

195. HENRI ROLIN, *Vers un Ordre Réellement International, in* HOMMAGE D'UNE GÉNÉRATION DE JURISTES AU PRÉSIDENT BASDEVANT 441, 444 (1960).

196. PHILIPPE FOUCHARD, L'ARBITRAGE COMMERCIAL INTERNATIONAL 399 (1965).

197. JACQUES MAURY, L'EVICTION DE LA LOI NORMALMENT COMPETENTE: L'ORDRE PUBLIC INTERNATIONAL ET LA FRAUDE A LA LOI 141 (1952).

198. *See* Berthold Goldman, *La Protection Internationale des Droits de l'Homme et l'Ordre Public International dans le Fonctionnement de la Regle de Conflit de Lois, in* 1 RENÉ CASSIN AMICORUM DISCIPULORUMQUE LIBER 449, 464 (1969).

199. *See* Pierre Lalive, *Ordre Public Transnational (ou Réellement International) et Arbitrage International*, REVUE DE L'ARBITRAGE 329, 329–30 (1986) (Fr.) [hereinafter Lalive, *Ordre Public Transnational et Arbitrage International*].

200. ALAN REDFERN, MARTIN HUNTER, NIGEL BLACKBY & CONSTANTINE PARTASIDES, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 420 n. 8 (2004) (citing INTERNATIONAL LAW ASSOCIATION, INTERIM REPORT ON PUBLIC POLICY AS A BAR TO ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS (2000)).

human dignity.[201] Nevertheless, jurists in developing countries have occasionally perceived these values as a new form of legal colonization by jurists of developed countries.[202]

1. Early Cases

Traditionally, the emergence of the doctrine of truly international public order can be traced back to the ICC Award Number 1110 (1963), in which Judge Lagergren held that a contract that had as its object bribery infringed the law of nations.[203] Although the approach used by Judge Lagergren was quite innovative, it was not the first time that truly international public policy, in some way, had emerged. This point was highlighted by Professor Lalive, who recalled two old cases referred to by Professor Niboyet where the existence of a transnational public policy, in some way, had been foreshadowed.[204] The key point is that, in these two cases, national mandatory rules were applied as reflecting principles of universal justice that mirrored an emerging transnational public policy.

The *Créole Case* concerned the release by British authorities of slaves embarked on a US ship that entered the port of Nassau (1840).[205] The ship was sailing from Virginia to New Orleans when, along the coast of Florida, some of the slaves took control of the ship and forced the captain to dock at the port of Nassau, a British colony. As slavery was forbidden by the Slavery Abolition Act of 1833, which had abolished slavery throughout the British Empire,[206] the British authorities released the slaves. The United States authorities protested against this release, and the case was submitted to the British–US Mixed Commission (1855). The Commission heard the claim, and, based on the findings, Subarbiter Bates accorded an indemnity to the US claimants. In his line of reasoning, the Subarbiter acknowledged, as a matter of principle, that slavery was against the

201. This is the backbone of the so-called New Haven School. *See* W. Michael Reisman, Siegfried Wiesner & Andrew Willard, *The New Haven School: A Brief Introduction*, 32 YALE J. INT'L L. 575, 576 (2007).

202. With specific reference to the issue of transnational public policy, Andrew I. Okekeifere, *The Enforcement and Challenge of Foreign Awards in Nigeria*, 14 J. INT'L ARB. 223, 237 (1997), underscored that "[j]ust like the concepts of international law of contract and international mercantile law this new concept is hardly anything short of an ego trip by a few writers of the developed world eager to impose, for the advantage of their countries and regions, rules that they are conversant with on the poor less-heard nations without caring about the sensibilities of the latter's local setting and peculiar dynamics."

203. *See infra* note 214.

204. Lalive, *Ordre Public Transnational et Arbitrage International*, *supra* note 199, at 335–36.

205. Niboyet, *supra* note 194, at 181–87.

206. Slavery Abolition Act 1833, 3 & 4 Will. 4 c. 73 (Eng.). The Slavery Abolition Act was anticipated by the celebrated case Somerset v. Stewart (1772) 98 Eng. Rep. 499.

principles of justice and humanity, but he concluded that, as slavery was accepted in various countries, it was not against the law of nations. In other words, the fact that slavery was accepted in a number of countries prevented the formation of general consent against it.[207]

A different conclusion was reached in relation to the *Maria Luz Case*. The Maria Luz was a Peruvian ship sailing from China to Peru with a certain number of "coolies" on board. Following the progressive abolition of the slave trade, labor-intensive industries—such as cotton and sugar plantations, mines, and railway construction—were left without a supply of cheap manpower. To fill this gap, a large-scale slavery-like trade in Asian (primarily Indian and Chinese) indentured laborers—the coolies—emerged.[208] Technical problems obliged the Maria Luz to enter the Japanese port of Kanawaga (1872). The Japanese authorities asked the coolies whether they preferred to be freed or to continue their travel to Peru. The coolies chose the first option and were embarked on a ship to China at the expense of the Japanese government. Nevertheless, a dispute arose between Peru and Japan regarding the behavior of the Japanese authorities, which was later submitted to the arbitration of the Czar Alexander II (1875). The Czar ruled that the Japanese government bore no responsibility for the release of the coolies as it had simply applied its own laws and customs without infringing general rules of international law or particular treaties.[209] In other words, the Czar, in his award, endorsed the application of the overriding mandatory rules of the forum,[210] that displaced the law governing the contract of the semi-enslavement of the coolies. With reference to international law, the Czar did not say

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207. In practice, the legal problem was solved by giving precedence to the *lex navis* (the slaves on the ship were under US jurisdiction) over the *lex loci* (the port of Nassau was under British jurisdiction). In this respect, Subarbiter Bates failed to apply the customary rule of the jurisdiction of the coastal state on its internal waters. *See* GILBERT GIDEL, LE DROIT INTERNATIONAL PUBLIC DE LA MER: TOME II LES EAUX INTÉRIEURES 93-94 (1932). The decision of the Mixed Commission is reprinted in French in ALBERT DE LAPRADELLE & NICOLAS POLITIS, 1 RECUEIL DES ARBITRAGES INTERNATIONAUX 704–5 (1905).

208. Coolies replaced slaves for masters who were gradually losing their labor force because of the anti-slavery laws. Some of these laborers signed contracts based on misleading promises, some were kidnapped and sold into the trade, some were victims of clan violence and sold to coolie brokers, while others sold themselves to pay off gambling debts. Workers from China were mainly transported to Peru and Cuba. The Peru coolies were mainly employed in silver mines and guano collecting industry. *See* ELLIOTT YOUNG, ALIEN NATION: CHINESE MIGRATION IN THE AMERICAS FROM THE COOLIE ERA THROUGH WORLD WAR II 46–58 (2014).

209. See the text of the arbitration in FERDINAND PERELS, MANUEL DE DROIT MARITIME INTERNATIONAL 93–94 (L. Arendt trans., 1884).

210. *See supra* Part II.A.2.

that the law of nations imposed the liberation of the coolies, but he implied that that it did not forbid it.[211]

C. *Arbitral Awards*

Arbitral practice has provided a significant contribution to the emergence of the notion of transnational public policy in relation to transnational contracts.[212] In this context, two different conceptions of public policy have arisen. The first requires that public policy in arbitration should coincide with that of the seat of arbitration and the country where the arbitral award is to be enforced. The second may provide a better solution. This considers that the power of arbitrators to adjudicate a dispute derives from all the jurisdictions that are ready to recognize the award under certain conditions, with the result that arbitrators should not focus on the public policy of a specific forum, but should be guided by fundamental requirements of justice.[213]

In the ICC Award 1110 (1963), the claim concerned the failure to pay services for a bribing activity under a contract between an Argentine wheeler-dealer and a German firm.[214] The object of the contract was the bribery of high officials of the Argentine government by the Argentine wheeler-dealer to secure, on behalf of the German firm, a contract for the building of an electric power station. Since the German firm refused to pay the Argentine wheeler-dealer for his services, the dispute was submitted to ICC arbitration. Judge Lagergren, the sole arbitrator, declined to hear the case on the assumption that "corruption is an international evil; it is contrary to good morals and to an international public policy common to the community of nations."[215] In the view of Judge Lagergren, cases involving gross violations of good morals and international public law could not have countenance in any court of a civilized country or

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211. *Cf. infra* notes 227–31 and accompanying text (discussing the judgment of the Japanese court).

212. Stephen Jagusch, *Issues of Substantive Transnational Public Policy*, *in* INTERNATIONAL ARBITRATION AND PUBLIC POLICY 23, 29 (Devin Bray & Heather L. Bray eds., 2015).

213. An arbitral tribunal sitting in a country where racial or religious discrimination is part of public policy should not depart from the fundamental rules of justice embedded in transnational public policy to comply with the rules of the seat, FOUCHARD, GAILLARD, GOLDMAN ON INTERNATIONAL ARBITRATION, *supra* note 165, at 862.

214. Argentine Engineer v. British Company, ICC Case No. 1110, Award (1963), *reprinted in* 10 ARB. INT'L 282 (1994).

215. *Id.* ¶ 20. Judge Lagergren did not declare the contract null and void, as he followed the non-separability doctrine between the claim submitted to arbitration and the arbitral agreement. *See id.*

arbitral tribunal.[216] Judge Lagergren could have taken an easier road and simply declared that the claim was against Argentine law (the law governing the performance of the contract) and French law (the law governing the arbitration). Nevertheless, he took the road less travelled and founded his decision on the public policy of the community of nations.[217]

The issue of a truly international public order has come into play again in more recent times.[218] In *World Duty Free Company Ltd v. Kenya* (2006), the claim was based on an act of expropriation of duty-free complexes at the Nairobi and Mombasa airports by the Kenyan government.[219] During the proceedings, however, evidence emerged that the agreement for the construction and maintenance of the duty-free complexes had been tainted with corruption.[220] Since the ICSID tribunal found that corruption was contrary to the international public policy of most countries or, in other words, to transnational public policy, the claims could not be heard. In the view of the ICSID tribunal, public policy consists of "an international consensus as to universal standards and accepted norms of conduct that must be applied in all fora."[221] The ICSID tribunal did not declare the contract null and void but upheld the decision by the Kenyan government to do so.[222] Although the result would have been the same under the domestic public policy of the applicable (Kenyan and English) laws, the arbitrators consciously implied that transnational public policy takes precedence over municipal public policy.[223]

The World Duty Free award gained some followers. In 2009, in *EDF v. Romania*, the ICSID tribunal held that the request for a bribe by a state agency amounted to a violation of not only the fair and equitable treatment rule contained in the Romania–United Kingdom BIT (1995), but also truly international public order.[224] Also, in this case, the arbitral tribunal felt it necessary to bring corruption under the scope of transnational public policy.

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216. *Id.* ¶ 23.

217. *Id.* The view of Lagergren reflected values of universal justice. *See id.*

218. *See* ICC Case No. 3913, Award (1981) & ICC Case No. 8891, Award (1981); Pierre Lalive, *L'Ordre Public Transnational et l'Arbitre International*, *in* NUOVI STRUMENTI DI DIRITTO INTERNAZIONALE PRIVATO – LIBER FAUSTO POCAR 598, 605 (Gabriella Venturini & Stefania Bariatti eds. 2009) [hereinafter Lalive, *L'Ordre Public Transnational et l'Arbitre International*] (referring to ICC Case No. 3913).

219. World Duty Free Co. v. Republic of Kenya, ICSID Case No. ARB/00/7, Award, ¶ 62 (Oct. 4, 2006).

220. *See* Cecily Rose, *Questioning the Role of International Arbitration in the Fight Against Corruption*, 31 J. INT'L ARB. 183, 202–04 (2014).

221. *See World Duty Free.* ICSID Case No. ARB/00/7, ¶ 139.

222. *Id.* ¶¶ 179, 183.

223. *See* Moritz Renner, *Towards a Hierarchy of Norms in Transnational Law?*, 26 J. INT'L ARB. 533, 547 (2009).

224. EDF (Servs.) Ltd. v. Romania, ICSID Case No. ARB/05/13, Award, ¶ 221 (Oct. 8, 2009).

Arbitral tribunals evoked, rather than applied, transnational public policy in these arbitral awards, because of the nonseparability doctrine between contracts and arbitration.[225] Once these constraints were definitively overcome, arbitrators could straightforwardly declare the contracts on which the claims are based null and void.

D. *International Contracts in Domestic Fora*

In domestic fora, truly international public order values have generally come into play under the umbrella of international public policy, to block the enforcement of foreign laws, acts, and decisions. This does not occur with reference to the enforcement of contractual claims, because the illegality of contracts is traditionally appreciated in the light of the municipal public policy of the forum that is scarcely permeable by international values. Nevertheless, in relation to international contracts cases, the presence of an international connecting factor would justify the acknowledgment of certain transnational public policy values into the domain of the municipal public policy of the forum. This process would take place along the same lines as in relation to conflict-of-laws cases where the presence of an international connecting factor has justified the gradual introduction of certain transnational public policy values into the international public policy of the forum. Such a scenario would imply a radical change in the content and operation of the municipal public policy, but it also would introduce a certain degree of uniformity across domestic fora.[226]

In this context, a useful benchmark may be constituted by the decision rendered by the Japanese court of Kanawaga in the above-mentioned case of the liberation of the coolies.[227] The Japanese court dealt with two specific issues: whether and to what extent the contract was, first, valid and enforceable and, second, against *bonos mores*. With reference to the first issue, the judge held, as a matter of principle, that a foreign contract should be construed and enforced in accordance with the *lex loci contractus*. Nevertheless, the judge stressed that when the *lex fori* and the *lex loci contractus* collide, the latter must yield to the

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225. *See* Ronán Feehily, *Separability in International Commercial Arbitration; Confluence, Conflict and the Appropriate Limitations in the Development and Application of the Doctrine*, 34 ARB. INT'L 355, 355–57 (2018).

226. *See* Martin Hunter & Gui Conde e Silva, *Transnational Public Policy and Its Application in Investment Arbitration*, 4 J. WORLD INV. 367, 368 (2003).

227. *See supra* Part IV.B.1. The decision rendered by the Kanawaga Kencho on 27 September 1872 is available in English in 1 PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 548–52 (1873) [hereinafter Kanagawa Kencho Decision]. For a historical account see Igor R. Saveliev, *Rescuing the Prisoners of the* Maria Luz*: The Meiji Government and the 'Coolie Trade', 1868–75, in* TURNING POINTS IN JAPANESE HISTORY 71 (Bert Edström ed., 2002).

former. In this case, Japanese law forbade not only any kind of enslavement in Japan, but also the importation and exportation of slaves in and from Japan. As a result, the contracts entered into between the Peruvian masters and the coolies were in contrast with the overriding mandatory rules of the forum, and thereby not enforceable.[228] With reference to the second issue, the judge found that, although there was no universal law that made these contracts void *ab initio*, they contained features that could not be favorably acknowledged by countries other than those strictly concerned. As the condition of slavery was "so repugnant to all sense of natural justice" that it could be recognized only under a specific law, there was no obligation under either international law or international comity by a sovereign state to provide assistance to it.[229] In effect, in delivering his decision, the judge clearly stated that he had been guided by "broader principles of natural justice and equity which are of universal application."[230] In this way, the judge founded his decision on not only the territorial rules of the forum, but also the broader values reflecting transnational public policy. Although these values were not so far-reaching to affect the validity of the semi-enslavement contracts, they were sufficiently strong to justify the liberation of the coolies.[231]

Although the decision of the Japanese court could be represented more as a forgotten case than an effective precedent, practice has recorded some scattered instances where transnational public policy was applied by municipal courts in relation to international contracts. In this context, however, it is not always clear whether the national judge is applying international law norms or referring to international values. The point is well highlighted in a judgment delivered in 1966 by the *Cour d'appel* of Paris.[232] The case concerned a contract, entered into in Geneva by two corporations based in Luxembourg, that had as its object the sale of weapons abroad. The court held that such a contract was contrary to both French and international public policy

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228. The Kanawaga Kencho underscored that these rules reflected an established policy of the empire under which "no laborers or other persons subject to this government of enjoying its protection shall be taken beyond its jurisdiction against their free and voluntary consent, nor then without the express consent of the government." *See* Kanawaga Kencho Decision, *supra* note 227, at 549.

229. *Id.* at 550. The Japanese decision echoes Somerset v. Stewart, *supra* note 206, at 510, where Lord Mansfield held that the status of slavery was so odious that nothing could be suffered to support it except for positive law, and the laws of England did not approve it.

230. Kanawaga Kencho Decision, *supra* note 227, at 548.

231. This humanitarian gesture raised Japan's status in the eyes of the international community. *See* DOUGLAS HOWLAND, INTERNATIONAL LAW AND JAPANESE SOVEREIGNTY 33–37 (2016).

232. Cour d'appel [CA] [regional court of appeal] Paris, 5 ch., Feb. 9, 1966, Favier C. Soc. Anderssen, note Pierre Louis-Lucas (Fr.), *in* 55 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVE 264 (1966) (Fr.).

(namely, transnational public policy). The difficulty in appreciating this reference to truly international public order is that its sources were identified with pieces of international legislation in force rather than with international values. Nevertheless, a closer analysis demonstrates that the pieces of international legislation were not considered in their normative characterization. Rather, they were regarded in their capacity of expressing—notably but not exclusively—transnational public policy in the context of the sale of weapons.[233]

This issue has been better highlighted in a couple of cases concerning the sale abroad of works of art. In 1982, the *Tribunale* of Turin delivered a judgment regarding the restitution of Peruvian works of art illegally brought into Italy. Based on the criterion of the *lex rei sitae*, the court found that the law governing the transaction was Peruvian law. Since Peruvian law forbade the transfer abroad of works of art in the absence of an authorization, the works of art were to be returned to the Peruvian authorities. In its line of reasoning, the court held that applying Peruvian law was consistent not only with Italian public policy, but also with international public policy (namely, transnational public policy). In detail, the court referred to the rules contained in the 1970 UNESCO Convention on the Illicit Import, Export, and Transfer of Ownership of Cultural Property.[234] These rules, though, came into play not so much as applicable norms—as at the time of the purchase of the Peruvian artefacts the Convention had not yet entered into force—but rather as principles reflecting the common values of the international community in the field of transfer of cultural properties.[235] This Italian judgment did not remain completely isolated. In 1997, the Swiss *Tribunal Fédéral*, in a case concerning the restitution of a picture stolen abroad, came to the conclusion that, although the above mentioned 1970 UNESCO Convention and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects[236] were not technically applicable, as they

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233. *"[C]e traffic est contraire à l'ordre public international, tel que celui-ci est révelé notamment par l'acte général de la Conférence de Bruxelles du 2 juillet 1890, article 8, par l'arrangement conclu le 13 décembre 1906 entre la France, la Grande-Bretagne et l'Italie, enfin à la Convention internationale, conclue le 17 juin 1925, sous les auspices de la Société des Nations sur la répression de trafic d'armes . . .."* *See id.* at 265.

234. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property Nov. 14, 1970, 823 U.N.T.S. 231, http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html [https://perma.cc/WNY7-Z85E] (archived Nov. 20, 2020).

235. *See* Judgment of 25 marzo 1982, Casa della Cultura Equadoriana c. Damusso e Altri, 18 RIVISTA ITALIANA DI DIRITTO INTERNAZIONALE PRIVATO E PROCESSUALE 615 (1982).

236. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Jun. 24, 1995, 2421 U.N.T.S. 457, https://www.unidroit.org/instruments/cultural-property/1995-convention (last visited Sept. 6, 2020) [https://perma.cc/BC7J-KLXU] (archived Sept. 6, 2020).

had not yet been ratified by Switzerland, their norms "relèvent d'une commune inspiration [et] constituent autant d'expressions d'un ordre public international en vigeur ou en formation."[237]

Despite their scantiness, these cases indicate that municipal judges have not hesitated to acknowledge a wider notion of public policy capable of embracing the fundamental values of the international community and to deny the enforcement of international contracts infringing these values.[238] In this context, it is worth highlighting that international contracts, nowadays, are a wide notion not confined to contracts between parties in different countries, but excluding only those situations where no international element is involved or, in other words, where all elements are connected to a single country.[239]

Applying this empirical approach to sovereign loans involves overcoming the traditional division between the economic and the legal definition of sovereign debt. The economic definition focuses on the residency of the creditors: the debt is internal when creditors are resident within the borrowing state; it is external when they are resident outside. The legal definition impinges on the characterization of the loan contract: the debt is foreign when the loan is denominated in a foreign currency, launched on foreign markets, submitted to a foreign law or jurisdiction; it is domestic when none of these connecting factors is present.[240] The result is that only domestic loans in the hands of internal creditors would escape from being qualified as international loan contracts. This picture, potentially, would enlarge the operation of transnational public policy in relation to sovereign debt.

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237. Lalive, *L'Ordre Public Transnational et l'Arbitre International*, *supra* note 218, at 604 (quoting UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, *supra* note 236).

238. Pierre Lalive, *Transnational (or Truly International) Public Policy and International Arbitration*, *in* COMPARATIVE ARBITRATION PRACTICE AND PUBLIC POLICY IN ARBITRATION 257, 286 (Pieter Sanders ed., 1986).

239. The international character of a contract may be defined in a great variety of ways. The solutions adopted in both national and international legislation range from a reference to the place of business or habitual residence of the parties in different countries to the adoption of more general criteria, such as the contract having "significant connections with more than one State," "involving a choice between the laws of different States", or "affecting the interests of international trade". Although the UNIDROIT Principles of International Commercial Contracts do not expressly acknowledge any of these criteria, the general assumption is that the concept of "international" contracts should be given the broadest possible interpretation, so as ultimately to exclude only those situations where no international element at all is involved; i.e., where all the relevant elements of the contract in question are connected with one single country. *See* UNIDROIT, UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 1 (2016).

240. *See* MEGLIANI, *supra* note 133, at 4–5.

E. *Odious Debt and Transnational Public Policy*

In terms of illegitimate/odious debt, two connected issues arise: whether the odious debt doctrine can be subsumed under the umbrella of transnational public policy, and whether, once a debt is declared illegitimate/odious, restitutionary remedies are available.

In relation to subsumption under transnational public policy, the Sackian view pursuant to which a debt must be odious not only in the view of a government, but also in that of the family of nations, ideally places the odious debt doctrine in this context.[241] Nevertheless, this qualification is to be tested. In this respect, it is necessary to draw a distinction between situations where the financial transaction is tainted with corruption and situations where no corruptive activity emerges. In the first case, the financial transaction is considered collateral to the corruptive activity and follows its fate.[242] In the second case, it is questionable whether transactions not affected by corruption but by mere "odiousness" may be declared illegal and unenforceable.

The reading of the World Duty Free arbitration may offer some guidance in this regard. In the view of the arbitral tribunal, bribery was contrary to transnational public policy "[i]n light of domestic laws and international conventions relating to corruption, and in light of the decisions taken in this matter by courts and arbitral tribunals."[243] These are the benchmarks against which to ascertain the subsumption of the values protected by the odious debt doctrine under transnational public policy. In terms of national law, some pieces of legislation are specifically aimed at curbing the judicial activism of vulture funds,[244] but this is a very different issue from considering a loan contracted without the consent of the population, not for its benefit and in the awareness of the creditors to be illegal. In terms of international conventions, no international instrument regulating this phenomenon has so far been drafted, even though two pieces of soft law can be recorded: the UNCTAD Principles Promoting Responsible Sovereign Lending and Borrowing and the HRC Guiding Principles on Foreign Debt and Human Rights (¶ 86(d)).[245] In the first, the three elements of the odious debt doctrine are in some way embedded in the text; in the second, the odious debt doctrine is expressly mentioned, but with the

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241. *See* SACK, *supra* note 74, at 162.

242. "[C]laims based on contracts of corruption or on contracts obtained by corruption cannot be upheld by this Arbitral Tribunal," World Duty Free Co. v. Republic of Kenya, ICSID Case No. ARB/00/7, Award, ¶ 157 (Oct. 4, 2006).

243. *Id.*

244. *See* Debt Relief (Developing Countries) Act 2010, c. 22 (U.K.). Further, there is a 2008 Belgian law meant to prevent funds appropriated by the Belgian government for development co-operation from becoming an object of attachment by creditors of recipient states. *See* DEVI SOOKUN, STOP VULTURE FUNDS LAWSUITS 88 (2010).

245. *Supra* Part III.B.3.

indication that it should be formalized through national legislation. On the one hand, this picture reflects the failure of a proper normative characterization of the doctrine; on the other hand, it indicates an emerging principle capable of gaining progressive acceptance.

In terms of arbitration, the only case in which the doctrine has been applied is the so-called Tinoco arbitration.[246] The case concerned the validity of a loan contracted by Frederico Tinoco, President of Costa Rica, with the Royal Bank of Canada following the *coup d'état* of 1917. In January 1917, Tinoco was Secretary of War under President Alfredo Gonzalez. On the grounds that Gonzalez was seeking presidential reelection in violation of a constitutional limitation, Tinoco used the army and navy to seize the government and assume the provisional headship of the Republic. He, then, called a presidential election and became the new president of Costa Rica, but soon he lost the favor of the population and was obliged to relinquish power. Over this period, the sums provided under the loan contracted with the Royal Bank of Canada were used for the personal expenses of President Tinoco and his kinship. Because of this, the successor government did not recognize the loan, and the United Kingdom, acting in diplomatic protection on behalf of the Canadian bank, agreed with Costa Rica to submit the controversy to arbitration. Umpire Taft, the Chief Justice of the U.S. Supreme Court at the time, held that the Canadian Bank did not behave in good faith in its lending activity and thereby Costa Rica had been right in repudiating the loan.[247] The Tinoco arbitral award, however, does not contain all three of the traditional elements of the doctrine, as Tinoco was democratically elected.[248] Moreover, this is a "vintage" case, too old and isolated in the arbitral practice to constitute a precedent.[249]

All this picture indicates that, to this day, the acknowledgment of the odious debt doctrine within transnational public policy is not well established but is still a process in formation. Nevertheless, this does not preclude courts and tribunals from applying the doctrine and contributing to its formalization.

In relation to the availability of restitutionary remedies, it is again necessary to draw a distinction between cases in which the transaction

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246. *See* Aguilar-Armory & Royal Bank of Canada (Gr. Brit. v. Costa Rica), 1 R.I.A.A. 369, 394 (1923).

247. "The case of the Royal Bank depends not on the mere form of the transaction but upon the good faith of the bank in the payment of money for the real use of the Costa Rican Government under the Tinoco régime. It must make out its case of actual furnishing of money to the government for its legitimate use. It has not done so." *Id.* at 394.

248. *See* Sarah Ludington, Mitu Gulati & Alfred L. Brophy, *Applied Legal History: Demystifying the Doctrine of Odious Debts*, 11 THEORETICAL INQUIRIES IN L. 247, 262–63 (2010).

249. *See* Lee C. Buchheit & G. M. Gulati, *Odious Debts and Nation-Building: When the Incubus Departs*, 60 ME. L. REV. 477, 482 (2008).

is tainted with corruption and cases in which it is not. When a transaction is tainted with corruption, the doctrine of the unclean hands bars the recovery of what has been transferred under the contract, as the policy of discouraging corruptive activity is considered prevailing over the policy of avoiding unjust enrichment. In this case, it is superfluous to make an inquiry into the legal status of the odious debt doctrine. By contrast, when the transaction is not tainted with corruption, the availability of the restitutionary remedies depends on the legal status of the doctrine. Even assuming that the doctrine may have some public policy characterization, the general rule is that a claim for the recovery of money lent based on unjust enrichment can be barred only in rare cases.

However, the sanction of denying restitutionary remedies can be reasonable to the extent that creditors coincide with those who have partaken in the corruptive activity or the odious transaction. This is certainly the case of transactions with bankers, just like those declared invalid by the Mozambican Constitutional Council. By contrast, this can scarcely be the case of bonded loans where the holders of the bonds do not coincide with those who have taken part in the corruptive or odious activity. This involves that restitutionary remedies can hardly be refused to bondholders.

V. CONCLUSION

The controversy surrounding the Mozambican loans has opened the Pandora's box on the validity and enforceability of sovereign loans and guarantees lacking a proper authorization and tainted with corruption as well as on the availability of restitutionary remedies. As these transactions are contracts with private parties, these issues should be appreciated in the light of domestic law and before national courts. These two factors would determine the outcome of lawsuits. To avoid fragmentation, a possible solution is to have recourse to a uniform benchmark: the odious debt doctrine.

Under the odious debt doctrine, a sovereign loan or guarantee is invalid as long as it is incurred without the consent of the population and not in its interest with the awareness of the creditors. The legal status of this doctrine, though, is still uncertain. Failing a proper normative characterization, it may come into play in the form of public policy. Normally, public policy is meant to protect the fundamental values of the forum. As the odious debt doctrine protects international values, its ideal collocation could be under the umbrella of transnational public policy that serves the common interests of mankind.

In the case of international contracts, to the realm of which sovereign loans and guarantees with private parties belong, the presence of an international connecting factor can justify the

contamination of the parochial public policy of the forum with the values protected by the transnational public policy. In this context, it is plainly acknowledged that when an odious debt is incurred on the basis of an upstream corruptive activity, the illegality of this latter impinges upon the former and restitutionary remedies are unavailable. What remains an open question is whether and to what extent the values protected by the odious debt doctrine are *per se* subsumable under transnational public policy. The conclusion is that, to this day, this process of subsumption is still at an early stage. Nevertheless, this does not preclude courts and tribunals from applying the doctrine and contributing to its formalization.

Mozambique court declares void two loans in 'hidden debt' scandal

By **Reuters**

May 13, 2020 10:09 AM GMT+3 · Updated 5 years ago

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MAPUTO (Reuters) - Mozambique's constitutional court has declared void two loans totalling more than $1 billion at the heart of a "hidden debt" scandal that triggered a currency collapse and sovereign debt default, a court ruling showed.

The court ruling, seen by Reuters and dated May 8, also declared void state guarantees for the $622 million and $535 million loans arranged by Credit Suisse and Russian bank VTB.

The loans were contracted under English law, but the Mozambican court ruling could add weight to the government's efforts to challenge the validity of the guarantees for the loans via a London court.

Credit Suisse and VTB have argued in court documents that the government is liable for the money.

The loans were taken out in 2013 and 2014 by two Mozambican state companies, ProIndicus and Mozambique Asset Management, for a $2 billion project spanning tuna fishing and maritime security that U.S. authorities say was an elaborate front for a bribery and kickback scheme.

Hundreds of millions of dollars went missing from the project and the supposed benefits never materialised.

The government did not disclose all of the borrowing, and after donors like the International Monetary Fund found out in 2016, they cut off financial support.

The southern African country, one of the world's poorest but whose economy is set to be transformed by massive offshore natural gas deposits, has been battling to restructure its finances since the hidden borrowing came to light in 2016.

The constitutional court made a similar ruling last year on a $850 million Eurobond issued by another state company, Ematum, for the same project but which has been restructured into a sovereign bond.

The case in the constitutional court was brought by the Mozambique Budget Monitoring Forum, a coalition of Mozambique civil society organisations.

Adriano Nuvunga, coordinator of the forum, said in a statement: "The people of Mozambique had no say over, and no benefit from the loans, and should not have to repay one cent."

Reporting by Manuel Mucari and Emma Rumney; Editing by Cynthia Osterman; Writing by Alexander Winning

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Mozambique's "hidden debts": Turning a crisis into an opportunity for reform

FISEHA HAILE GEBREGZIABHER & ALBERT PIJUAN SALA | APRIL 19, 2022

Poverty Increase has been a fallout of the Hidden Debt crisis in Mozambique.

In 2016, the discovery of previously undisclosed debts upended Mozambique's development trajectory. Mozambique was one of the world's 10 fastest-growing economies for two decades. It was a darling of donors and a destination for 10–15 percent of total foreign direct investment (FDI) inflows into Sub-Saharan Africa.

What happened?

Its momentum came to a halt following the revelation of several state-backed

"hidden loans," guaranteed without parliamentary approval. In 2013 and 2014, a clique of government officials created three state-owned enterprises (SOEs) that took on more than $2bn of debt, equivalent to around 12% of gross domestic product (GDP). Allegedly, the funds were to build shipyards, develop tuna fishing, and police the coast—with financing arranged by Credit Suisse, VTB, and BNP Paribas, three major banks. Some $1.3bn of it was undisclosed until the international media reported on them in 2016. These loans breached the International Monetary Fund (IMF) program in place at the time, and the International Development Association's non-concessional borrowing policy, resulting in the outright suspension of budget support by both institutions and other development partners.

The "hidden debts" episode exposed the country's governance weaknesses at the time. In 2017, Mozambique concluded an independent audit of the "hidden" loans, documenting the lack of due process under Mozambican law. Subsequently, Mozambique's Attorney-General started proceedings against several Mozambican officials allegedly involved in contracting the loans, and the British financial supervisor pressed charges against the lending financial institutions. Several trials are underway in different jurisdictions. When the loans were contracted, the regulatory framework for state guarantees only required that guarantees remain within the yearly limit; the law was silent on who should approve publicly guaranteed debt.

What was the impact?

The "hidden" loans crisis plunged Mozambique into a protracted economic downturn. Growth halved from 7.7% in 2000–2016 to 3.3% in 2016–2019. The metical depreciated drastically, inflation surged to 17.4% by the end of 2016, and fiscal space narrowed markedly. FDI dried up as international investors lost confidence. Concessional lending from international financial institutions was far more limited, with official aid falling from 17.5 to 12.4% of GDP between 2013 and 2018.

As the hidden liabilities came to light, Mozambique's external public and publicly guaranteed debt ballooned from 61% of GDP in 2016 to 104% in 2018. The debt service burden due in any given year was too high for the economy to carry, with Mozambique defaulting on its debt in 2016. As a result, credit rating agencies downgraded the sovereign to selective or restricted default, and the World Bank

How did the World Bank respond?

Following the suspension of development policy financing (DPF), the Bank pivoted its portfolio towards technical assistance to help address the governance weaknesses that led to the crisis. The *Gestão Económica para Desenvolvimento Inclusivo* (GEDI) technical assistance (TA) program has been providing support on debt management and transparency, fiscal risks (including credit risks from SOEs), and public investment management. In the absence of DPF and Fund program, the TA program provided an entry point for much-need policy dialogue with the authorities and helped anchor domestic reform efforts. In addition to capacity building and analytical support, the program was instrumental in addressing major legislative and regulatory loopholes that paved the way for the egregious misappropriation of public funds.

With World Bank support through the GEDI program, the authorities have taken a series of critical policy and institutional measures:

- *Tightening checks and balances on guarantees and resuming transparent debt reports:* The Government of Mozambique (GoM) adopted new regulations in 2017 to strengthen debt and guarantees management and transparency. Besides, it improved SOE governance in 2018 through a new law enhancing oversight and corporate governance. The authorities tightened control over SOE borrowing by requiring a more stringent approval process. Leveraged by IDA's Sustainable Development Finance Policy (SDFP), they resumed the publication of debt reports in 2019, broadening the coverage to SOEs.
- *Introducing fiscal risks statements, including credit risks from SOEs*: With GEDI support, the GoM has been producing fiscal risk statements since 2019, an essential step towards containing risks from SOEs. It also recently approved a credit risk assessment framework for guarantees and on-lending to SOEs. Also underpinned by the SDFP, the authorities used these methodologies to prepare credit risk reports for seven major SOEs.
- *Establishing a public investment management (PIM) system and regulatory framework*: Mozambique adopted a regulatory framework for PIM in 2020. The regulations require that all public investment projects are pre-appraised for socio-economic returns before being financed and take disaster resilience into account. From the outset, this reform was supported by GEDI, helping the authorities develop methodologies, training public officials in their use, and developing IT systems for project appraisals

These reforms led to the adoption of a revised overarching public financial management (PFM) Law in 2020, integrating the SOE sector and decentralized bodies into the budget system for the first time.

What have we learned?

- **Strengthening debt recording and transparency is a gradual process**: Despite the authorities now covering the central government and SOEs in debt reports, central government debt data is not recorded in one place, and SOE debt is not centralized at the finance ministry. Ongoing support prioritizes migrating to the new Commonwealth Secretariat system, bringing public sector-wide debt recording and reporting in one place.
- ***Deeper SOE reforms are essential***. Several public enterprises continue to suffer from financial and operational underperformance. Despite the legal reforms, SOE oversight is fragmented. Public service obligations (quasi-fiscal operations) undermine SOE performance. Some of these gaps are being addressed through ongoing World Bank DPOs and projects.
- ***Calibrating iterations is vital***. Structural reforms are iterative processes, with each round providing greater understanding and buy-in from the authorities. The trajectory of the above-mentioned reforms speaks to the need to begin small, testing innovations through TA before enshrining them in legislation.
- ***Ownership is critical.*** In the wake of the hidden debt crisis, fully cognizant of the governance weaknesses at the time, the authorities have been in the driver's seat of reforms, from conception to implementation. The TA program has been fully embedded within the finance ministry and has been instrumental in leveraging the country's own reform initiatives and nudging them in the right direction.
- ***Timing is of the essence***. The crisis that ensued from the "hidden debt" scandal provided an excellent opportunity to undertake reforms. Periods of economic downturns often pave the way to implement difficult reforms by making people rally around them or weakening opposing interest groups.

The authors would like to acknowledge the contributions of Shireen Mahdi, Fernanda Massarongo, and Anna Carlotta Allen Massingue to the design and implementation of the Technical Assistance program.

UNITED NATIONS
Office on Drugs and Crime

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

UNITED NATIONS CONVENTION AGAINST CORRUPTION

UNITED NATIONS
New York, 2004

Foreword

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.

I am therefore very happy that we now have a new instrument to address this scourge at the global level. The adoption of the United Nations Convention against Corruption will send a clear message that the international community is determined to prevent and control corruption. It will warn the corrupt that betrayal of the public trust will no longer be tolerated. And it will reaffirm the importance of core values such as honesty, respect for the rule of law, accountability and transparency in promoting development and making the world a better place for all.

The new Convention is a remarkable achievement, and it complements another landmark instrument, the United Nations Convention against Transnational Organized Crime, which entered into force just a month ago. It is balanced, strong and pragmatic, and it offers a new framework for effective action and international cooperation.

The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors. And it makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen.

These provisions—the first of their kind—introduce a new fundamental principle, as well as a framework for stronger cooperation between States to prevent and detect corruption and to return the proceeds. Corrupt officials will in future find fewer ways to hide their illicit gains. This is a particularly important issue for many developing countries where corrupt high officials have

plundered the national wealth and where new Governments badly need resources to reconstruct and rehabilitate their societies.

For the United Nations, the Convention is the culmination of work that started many years ago, when the word corruption was hardly ever uttered in official circles. It took systematic efforts, first at the technical, and then gradually at the political, level to put the fight against corruption on the global agenda. Both the Monterrey International Conference on Financing for Development and the Johannesburg World Summit on Sustainable Development offered opportunities for Governments to express their determination to attack corruption and to make many more people aware of the devastating effect that corruption has on development.

The Convention is also the result of long and difficult negotiations. Many complex issues and many concerns from different quarters had to be addressed. It was a formidable challenge to produce, in less than two years, an instrument that reflects all those concerns. All countries had to show flexibility and make concessions. But we can be proud of the result.

Allow me to congratulate the members of the bureau of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on their hard work and leadership, and to pay a special tribute to the Committee's late Chairman, Ambassador Héctor Charry Samper of Colombia, for his wise guidance and his dedication. I am sure all here share my sorrow that he is not with us to celebrate this great success.

The adoption of the new Convention will be a remarkable achievement. But let us be clear: it is only a beginning. We must build on the momentum achieved to ensure that the Convention enters into force as soon as possible. I urge all Member States to attend the Signing Conference in Merida, Mexico, in December, and to ratify the Convention at the earliest possible date.

If fully enforced, this new instrument can make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development it can help us achieve the Millennium Development Goals. Be assured that the United Nations Secretariat, and in particular the United Nations Office on Drugs and Crime, will do whatever it can to support the efforts of States to eliminate the scourge of corruption from the face of the Earth. It is a big challenge, but I think that, together, we can make a difference.

Kofi A. Annan
Secretary-General

Contents

General Assembly resolution 58/4 of 31 October 2003

United Nations Convention against Corruption

The General Assembly,

Recalling its resolution 55/61 of 4 December 2000, in which it established an ad hoc committee for the negotiation of an effective international legal instrument against corruption and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument, and its resolution 55/188 of 20 December 2000, in which it invited the intergovernmental open-ended expert group to be convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the countries of origin,

Recalling also its resolutions 56/186 of 21 December 2001 and 57/244 of 20 December 2002 on preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin,

Recalling further its resolution 56/260 of 31 January 2002, in which it requested the Ad Hoc Committee for the Negotiation of a Convention against Corruption to complete its work by the end of 2003,

Recalling its resolution 57/169 of 18 December 2002, in which it accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention and requested the Secretary-General to schedule the conference for a period of three days before the end of 2003,

Recalling also Economic and Social Council resolution 2001/13 of 24 July 2001, entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds",

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption in Buenos Aires from 4 to 7 December 2001,

Recalling the Monterrey Consensus, adopted by the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002,[1] in which it was underlined that fighting corruption at all levels was a priority,

Recalling also the Johannesburg Declaration on Sustainable Development, adopted by the World Summit on Sustainable Development, held in Johannesburg, South Africa, from 26 August to 4 September 2002,[2] in particular paragraph 19 thereof, in which corruption was declared a threat to the sustainable development of people,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

1. *Takes note* of the report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption,[3] which carried out its work at the headquarters of the United Nations Office on Drugs and Crime in Vienna, in which the Ad Hoc Committee submitted the final text of the draft United Nations Convention against Corruption to the General Assembly for its consideration and action, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Corruption annexed to the present resolution, and opens it for signature at the High-level Political Signing Conference to be held in Merida, Mexico, from 9 to 11 December 2003, in accordance with resolution 57/169;

3. *Urges* all States and competent regional economic integration organizations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;

4. *Decides* that, until the Conference of the States Parties to the Convention established pursuant to the United Nations Convention against Corruption decides otherwise, the account referred to in article 62 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing

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[1] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

[2] *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 1, annex.

[3] A/58/422 and Add.1.

countries and countries with economies in transition of the technical assistance that they might require to prepare for ratification and implementation of the Convention;

5. *Also decides* that the Ad Hoc Committee for the Negotiation of a Convention against Corruption will complete its tasks arising from the negotiation of the United Nations Convention against Corruption by holding a meeting well before the convening of the first session of the Conference of the States Parties to the Convention in order to prepare the draft text of the rules of procedure of the Conference of the States Parties and of other rules described in article 63 of the Convention, which will be submitted to the Conference of the States Parties at its first session for consideration;

6. *Requests* the Conference of the States Parties to the Convention to address the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organizations, by, inter alia, making recommendations regarding appropriate action in that regard;

7. *Decides* that, in order to raise awareness of corruption and of the role of the Convention in combating and preventing it, 9 December should be designated International Anti-Corruption Day;

8. *Requests* the Secretary-General to designate the United Nations Office on Drugs and Crime to serve as the secretariat for and under the direction of the Conference of the States Parties to the Convention;

9. *Also requests* the Secretary-General to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote in an effective manner the rapid entry into force of the United Nations Convention against Corruption and to discharge the functions of secretariat of the Conference of the States Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 5 above;

10. *Further requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Merida, Mexico, in accordance with resolution 57/169, for submission to the General Assembly at its fifty-ninth session.

Annex

United Nations Convention against Corruption

Preamble

The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international co-operation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,[1] the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,[2] the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,[3] the Criminal Law

[1] See E/1996/99.

[2] *Official Journal of the European Communities*, C 195, 25 June 1997.

[3] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,[4] the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,[5] and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,[6]

Have agreed as follows:

Chapter I
General provisions

Article 1. Statement of purpose

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 2. Use of terms

For the purposes of this Convention:

(a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public

[4]Council of Europe, *European Treaty Series*, No. 173.

[5]Ibid., No. 174.

[6]General Assembly resolution 55/25, annex I.

official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(*d)* "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 3. Scope of application

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

Article 4. Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Chapter II
Preventive measures

Article 5. Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6. Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 7. Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the

performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8. Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures

and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9. Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10. Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11. Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12. Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14. Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Chapter III
Criminalization and law enforcement

Article 15. Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16. Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19. Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the

discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21. Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22. Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23. Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph *(b)* above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 24. Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may

be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25. Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 27. Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 28. Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

Article 29. Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30. Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional

privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention

and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31. Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 32. Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 34. Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out

their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37. Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 38. Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

Article 39. Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

Article 40. Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 41. Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

Article 42. Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 *(b)* (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 *(a)* (i) or (ii) or *(b)* (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Chapter IV
International cooperation

Article 43. International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 44. Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition,

shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies

solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample

opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 45. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

Article 46. Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. *(a)* A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory

of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or

convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 48. Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the

effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50. Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

Chapter V
Asset recovery

Article 51. General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 52. Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 *(a)* of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate

records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

Article 53. Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 *(a)* of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 *(a)* of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55. International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 *(a)*, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 *(a)* of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 *(b)* of this article, a legally admissible copy of an order of confiscation upon which the request is

based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56. Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences

established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57. Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations,

prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 58. Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Article 59. Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Chapter VI
Technical assistance and information exchange

Article 60. Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas:

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anti-corruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

(e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.

6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61. Collection, exchange and analysis of information on corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Article 62. Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Chapter VII
Mechanisms for implementation

Article 63. Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64. Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Chapter VIII
Final provisions

Article 65. Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 67. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of

ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69. Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 70. Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

Article 71. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

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GAZETTE NOTICE NO. 500

THE LAND ACT

(*No.* 6 *of* 2012)

NATIONAL LAND COMMISSSION

INTENTION TO ALLOCATE LAND

NOTICE is given that at the expiry of thirty (30) days from the date of publication of this notice, the National Land Commission on behalf of the Nairobi City County Government intends to regularize ownership of Parcel No. L.R. 196/19 measuring 5.5870 hectares in Nairobi City County for residential purposes (subject to terms, covenants, conditions and reservations which shall be included in the conveyance document) in accordance with section 14 of the Land Act, 2012.

Any interested person wishing to raise any comments may do so to the Chairman, National Land Commission within fifteen (15) days from the date of publication of this notice.

In the absence of any valid objections, the allocation shall take place at the Commission's offices in Nairobi (316 Upperhill Chambers, 2nd Ngong Avenue) as from 2.30 p.m. on the next working day following the expiry of this notice.

The terms of allocation are available at the Commission's offices in Nairobi and the office of the Co-ordinator, National Land Commission, Nairobi City County.

The land is planned and surveyed and ownership details may be inspected at the offices of the CECM in charge of Lands, Nairobi City County, Director of Surveys Nairobi and National Land Commission offices during working hours.

GERSHOM OTACHI,

MR/6520788 *Chairman, National Land Commission.*

GAZETTE NOTICE NO. 501

THE LAND ACT

(*No.* 6 *of* 2012)

NATIONAL LAND COMMISSSION

INTENTION TO ALLOCATE LAND

NOTICE is given that at the expiry of thirty (30) days from the date of publication of this notice, the National Land Commission on behalf of the Nairobi City County Government intends to regularize ownership of Parcel No. L.R. 2327/72 measuring 2.4295 hectares in Nairobi City County for residential purposes (subject to terms, covenants, conditions and reservations which shall be included in the conveyance document) in accordance with section 14 of the Land Act, 2012.

Any interested person wishing to raise any comments may do so to the Chairman, National Land Commission within fifteen (15) days from the date of publication of this notice.

In the absence of any valid objections, the allocation shall take place at the Commission's offices in Nairobi (316 Upperhill Chambers, 2nd Ngong Avenue) as from 2.30 p.m. on the next working day following the expiry of this notice.

The terms of allocation are available at the Commission`s offices in Nairobi and the office of the Co-ordinator, National Land Commission, Nairobi City County.

The land is planned and surveyed and ownership details may be inspected at the offices of the CECM in charge of Lands, Nairobi City County, Director of Surveys Nairobi and National Land Commission offices during working hours.

GERSHOM OTACHI,

MR/6520788 *Chairman, National Land Commission.*

GAZETTE NOTICE NO. 502

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

STATEMENT OF ACTUAL REVENUES AND NET EXCHEQUER ISSUES AS AT 31ST DECEMBER, 2024

Receipts	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
Opening Balance 01.07.2024			1,165,472,645.45
Tax Revenue	2,745,218,573,596.33	2,475,063,919,892.05	1,074,062,916,301.70
Non-Tax Revenue	171,979,175,130.02	156,354,004,023.09	86,111,480,729.51
Domestic Borrowing (Note 1)	828,384,133,205.36	978,299,192,296.17	477,172,806,348.95
External Loans and Grants	571,221,593,564.00	593,502,523,564.00	92,777,451,882.70
Other Domestic Financing	4,686,909,550.00	4,686,909,550.00	4,442,840,654.70
Total Revenue	**4,321,490,385,045.71**	**4,207,906,549,325.31**	**1,735,732,968,563.01**

RECURRENT EXCHEQUER ISSUES

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
R1011	Executive Office of the President	4,226,290,119.00	3,579,474,631.00	1,264,242,778.30
R1012	Office of the Deputy President	4,572,300,000.00	2,594,852,997.00	1,206,785,783.65
R1013	Office of the Prime Cabinet Secretary	1,140,788,324.00	721,710,705.00	304,942,191.05
R1014	State Department for Parliamentary Affairs	458,283,000.00	363,912,950.00	148,670,831.30
R1015	State Department for Performance and Delivery Management	597,112,861.00	507,850,137.00	218,978,719.00
R1016	State Department for Cabinet Affairs	275,136,014.00	228,672,243.00	114,672,868.90
R1017	State House	7,935,200,000.00	4,305,431,658.00	3,663,290,610.20
R1023	State Department for Correctional Services	34,720,821,616.00	34,383,156,068.00	14,885,253,056.00
R1024	State Department for Immigration and Citizen services	8,904,613,872.00	8,629,250,744.00	6,004,823,191.00
R1025	National Police Service	108,771,352,775.00	108,642,444,423.00	55,083,980,090.15
R1026	State Department for Internal Security and National Administration	28,218,704,720.00	27,732,214,955.00	17,899,243,003.75
R1032	State Department for Devolution	1,589,428,367.00	1,442,919,920.00	583,050,142.40
R1036	State Department for the ASALs and Regional Development	4,378,993,586.00	4,327,186,511.00	3,058,378,724.70
R1041	Ministry of Defence	166,120,417,170.00	165,985,661,938.00	79,746,849,002.10
R1053	State Department for Foreign Affairs	20,557,347,602.00	19,863,151,348.00	9,327,298,568.10
R1054	State Department for Diaspora Affairs	828,143,693.00	637,826,702.00	207,803,481.80
R1064	State Department for Vocational and Technical Training	18,335,038,919.00	18,302,786,255.00	8,876,396,841.00
R1065	State Department for Higher Education and Research	75,856,554,444.00	74,087,899,167.00	45,174,219,840.75
R1066	State Department for Basic Education	119,889,562,192.00	114,809,025,768.00	33,732,307,305.00
R1071	The National Treasury	60,543,407,865.00	51,668,854,053.00	30,347,776,024.95

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
R1072	State Department for Economic Planning	2,700,793,355.00	3,005,448,155.00	1,744,154,958.20
R1082	State Department for Medical Services	41,719,874,385.00	41,865,350,155.00	20,065,015,416.15
R1083	State Department for Public Health and Professional Standards	14,603,555,123.00	14,565,922,035.00	8,058,030,653.25
R1091	State Department for Roads	1,539,891,250.00	1,525,170,790.00	636,625,436.10
R1092	State Department for Transport	2,318,803,728.00	2,258,286,839.00	921,961,108.85
R1093	State Department for shipping and Maritime Affairs	419,974,935.00	372,966,147.00	224,309,069.95
R1094	State Department for Housing and Urban Development	1,229,392,681.00	1,216,950,967.00	514,062,281.30
R1095	State Department for Public Works	2,749,978,552.00	2,731,142,270.00	1,105,144,115.45
R1104	State Department for Irrigation	853,382,500.00	820,321,500.00	402,115,866.40
R1109	State Department for Water and Sanitation	2,495,338,911.00	2,481,696,084.00	1,220,289,434.55
R1112	State Department for Lands and Physical Planning	3,415,400,000.00	3,384,650,000.00	1,597,367,159.10
R1122	State Department for Information Communications,Technology and Digital Economy	2,065,220,752.00	2,048,254,349.00	874,982,097.75
R1123	State Department for Broadcasting and Telecommunications	2,744,410,364.00	3,042,839,032.00	1,913,777,619.50
R1132	State Department for Sports	627,486,404.00	613,710,286.00	282,989,268.05
R1134	State Department for Culture and Heritage	2,327,654,321.00	2,216,765,284.00	1,088,531,012.85
R1135	State Department for Youth Affairs and the Arts	1,706,010,229.00	1,705,655,341.00	869,295,768.35
R1152	State Department for Energy	919,434,710.00	907,118,087.00	464,590,342.55
R1162	State Department for Livestock Development.	3,775,304,089.00	3,730,037,448.00	1,406,914,726.80
R1166	State Department for Blue Economy and Fisheries	2,288,795,869.00	2,378,184,460.00	1,136,916,994.10
R1169	State Department for Crop Development	6,739,346,299.00	6,753,457,296.00	3,699,650,866.15
R1173	State Department for Cooperatives	4,582,183,583.00	5,557,708,765.00	1,020,983,955.15
R1174	State Department for Trade	1,476,771,146.00	1,450,152,233.00	548,940,164.85
R1175	State Department for Industry	1,633,906,621.00	1,768,413,227.00	739,039,778.95
R1176	State Department for Micro, Small and Medium Enterprises Development	1,108,018,500.00	1,028,846,750.00	498,241,155.45
R1177	State Department for Investment Promotion	603,613,914.00	658,686,422.00	304,374,016.60
R1184	State Department for Labour and Skills Development	1,639,429,843.00	1,588,436,768.00	743,998,785.35
R1185	State Department for Social Protection and senior citizens Affairs	33,010,825,645.00	33,157,332,733.00	23,716,580,610.95
R1192	State Department for Mining	1,005,898,447.00	894,870,257.00	368,712,510.45
R1193	State Department for Petroleum	325,211,883.00	319,209,736.00	141,926,629.60
R1202	State Department for Tourism	555,111,808.00	541,904,503.00	178,334,508.65
R1203	State Department for Wildlife	3,934,194,935.00	3,898,075,372.00	1,221,959,423.95
R1212	State Department for Gender and Affirmative Action	1,940,841,404.00	1,863,788,643.00	858,073,115.60
R1213	State Department for Public Service	15,421,644,125.00	15,708,886,786.00	8,211,062,840.10
R1221	State Department for East African Community	612,087,899.00	572,743,428.00	269,844,959.45
R1252	The State Law Office	6,255,890,997.00	4,707,323,368.00	2,017,746,387.10
R1261	The Judiciary	22,137,400,000.00	21,018,400,000.00	10,887,302,061.00
R1271	Ethics and Anti-Corruption Commission	4,099,930,000.00	4,099,930,000.00	1,944,705,751.70
R1281	National Intelligence Service	46,351,000,000.00	46,351,000,000.00	30,206,894,311.00
R1291	Office of the Director of Public Prosecutions	3,957,020,000.00	3,957,020,000.00	1,942,745,841.95
R1311	Office of the Registrar of Political Parties	2,037,871,453.00	1,927,814,682.00	937,209,209.00
R1321	Witness Protection Agency	741,192,500.00	697,134,000.00	391,817,700.45
R1331	State Deparment for Environment and Climate Change	2,413,435,109.00	2,234,640,214.00	1,120,218,192.85
R1332	State Deparment for Forestry	4,493,630,000.00	4,481,680,111.00	2,245,743,904.35
R2011	Kenya National Commission on Human Rights	478,074,025.00	478,039,387.00	219,541,716.15
R2021	National Land Commission	1,868,362,679.00	1,782,188,898.00	976,931,840.35
R2031	Independent Electoral and Boundaries Commission	3,730,899,680.00	3,817,732,834.00	1,604,939,104.25
R2041	Parliamentary Service Commission	1,167,000,000.00	1,287,266,307.00	527,287,001.20
R2042	National Assembly	26,770,000,000.00	24,863,564,575.00	10,918,976,270.50
R2043	Parliamentary Joint Services	6,547,000,000.00	6,153,382,408.00	3,175,655,853.10
R2044	Senate	8,010,000,000.00	7,404,177,595.00	3,538,306,694.80
R2051	Judicial Service Commission	902,900,000.00	660,115,164.00	298,554,960.60
R2061	The Commission on Revenue Allocation	413,465,304.00	364,348,789.00	197,789,455.90
R2071	Public Service Commission	3,607,230,017.00	3,461,510,559.00	1,806,381,705.15
R2081	Salaries and Remuneration Commission	472,230,922.00	452,736,206.00	136,092,838.65
R2091	Teachers Service Commission	357,115,737,118.00	346,834,589,260.00	175,321,119,375.45
R2101	National Police Service Commission	1,131,272,317.00	1,008,040,920.00	479,372,396.10
R2111	Auditor General	7,804,770,850.00	7,617,899,030.00	3,518,129,039.85
R2121	Office of the Controller of Budget	738,219,080.00	702,251,897.00	246,178,750.30
R2131	The Commission on Administrative Justice	661,974,500.00	636,521,142.00	259,134,271.50
R2141	National Gender and Equality Commission	425,810,000.00	407,702,500.00	234,734,302.65
R2151	Independent Policing Oversight Authority	1,107,672,060.00	1,088,640,481.00	491,821,374.60
	Total Recurrent Exchequer Issues	**1,348,449,273,960.00**	**1,307,942,915,648.00**	**654,543,090,015.10**

Vote	*CFS Exchequer Issues*	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
CFS 050	Public Debt (Note 2)	1,910,480,965,745.78	1,910,480,965,745.78	653,527,665,639.50
CFS 051	Pensions and Gratuities	199,366,132,378.93	223,146,773,733.53	82,838,659,428.45
CFS 052	Salaries, Allowances and Miscellaneous	4,209,674,431.00	4,209,674,431.00	1,723,787,529.50
	Total CFS Exchequer Issues	**2,114,056,772,555.71**	**2,137,837,413,910.31**	**738,090,112,597.45**

DEVELOPMENT EXCHEQUER ISSUES

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
D1011	Executive Office of the Presidenct	1,200,900,000.00	-	-

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
D1012	Office of the Deputy President	320,400,000.00		-
D1017	State House	1,558,700,000.00		-
D1023	State Department for Correctional Services	823,025,000.00	40,000,000.00	37,500,571.60
D1024	State Department for Immigration and Citizen services	2,110,200,000.00	1,696,200,000.00	1,125,695,203.25
D1025	National Police Service	1,780,720,000.00	35,000,000.00	-
D1026	State Department for Internal Security and National Administration	7,565,490,000.00	360,200,000.00	2,860,200,000.00
D1032	State Department for Devolution	2,653,000,000.00	2,653,000,000.00	479,584,992.00
D1036	State Department for ASALs and Regional Development	7,386,334,000.00	3,630,970,516.00	884,837,065.45
D1041	Ministry of Defence	-	-	
D1053	State Department for Foreign Affairs	2,390,100,000.00	-	-
D1064	State Department for Vocational and Technical Training	4,164,600,000.00	1,716,600,000.00	673,369,487.35
D1065	State Department for Higher Education and Research	4,334,640,000.00	1,180,000,000.00	75,000,000.00
D1066	State Department for Basic Education	19,406,560,000.00	13,432,000,000.00	8,183,464,295.30
D1071	The National Treasury	37,409,465,552.00	30,387,665,552.00	6,363,683,914.70
D1072	State Department of Economic Planning	63,780,240,000.00	68,563,687,681.00	22,923,158,161.00
D1082	State Department for Medical Services	23,535,200,000.00	16,387,700,000.00	4,020,025,438.30
D1083	State Department for Public Health and Professional Standards	5,564,180,000.00	4,289,000,000.00	1,108,650,468.00
D1091	State Department of Roads	73,196,031,868.00	66,232,714,989.00	26,365,453,354.65
D1092	State Department of Transport	5,461,400,000.00	2,235,000,000.00	532,716,751.90
D1093	State Department for shipping and Maritime Affairs	574,000,000.00	-	-
D1094	State Department for Housing and Urban Development	22,092,000,000.00	20,037,000,000.00	1,144,349,361.50
D1095	State Department for Public Works	1,209,100,000.00	124,000,000.00	3,346,449.00
D1104	State Department for Irrigation	15,414,780,000.00	13,722,590,000.00	6,807,692,105.30
D1109	State Department for Water and Sanitation	24,291,400,000.00	21,735,590,000.00	3,454,361,864.20
D1112	State Department for Lands and Physical Planning	5,204,136,000.00	1,729,000,000.00	1,500,679,970.00
D1122	State Department for Information Communications, Technology and Digital Economy	7,007,660,000.00	4,667,700,000.00	1,173,160,836.75
D1123	State Department for Broadcasting and Telecommunications	651,900,000.00	-	-
D1132	State Department for Sports	174,400,000.00	-	-
D1134	State Department for Culture and Heritage	162,843,000.00	70,000,000.00	-
D1135	State Department for Youth Affairs and the Arts	2,144,961,000.00	1,535,069,490.00	220,191,322.15
D1152	State Department for Energy	32,570,400,000.00	16,103,200,000.00	8,347,265,381.90
D1162	State Department for Livestock Development	4,478,450,000.00	5,466,000,000.00	793,577,634.10
D1166	State Department for Blue Economy and Fisheries	8,912,930,000.00	7,167,900,000.00	4,329,826,896.35
D1169	State Department for Crop Development	28,250,440,958.00	23,841,786,958.00	12,719,757,563.30
D1173	State Department for Co-operatives	2,346,770,000.00	2,000,000,000.00	2,000,000,000.00
D1174	State Department for Trade	500,000,000.00	290,000,000.00	290,000,000.00
D1175	State Department for Industry	6,366,770,000.00	3,343,870,000.00	1,362,342,086.25
D1176	State Department for Micro, Small and Medium Enterprises Development	7,702,840,000.00	4,428,500,000.00	3,612,537,719.00
D1177	State Department for Investment Promotion	3,605,430,000.00	1,200,000,000.00	600,000,000.00
D1184	State Department for Labour and Skills Development	1,512,885,400.00	100,000,000.00	33,575,890.00
D1185	State Department for Social Protection and Senior Citizen Affairs	2,189,880,000.00	1,907,621,000.00	1,099,165,725.85
D1192	State Department for Mining	652,260,000.00	-	-
D1193	State Department for Petroleum	375,200,000.00	-	-
D1202	State Department for Tourism	-	-	
D1203	State Department for Wildlife	2,018,000,000.00	125,000,000.00	42,331,000.00
D1212	State Department for Gender and Affirmative Action	3,838,700,000.00	3,384,850,000.00	1,676,280,188.00
D1213	State Department for Public Service	980,500,000.00	103,000,000.00	-
D1221	State Department for East African Community	35,400,000.00	-	-
D1252	The State Law Office	157,000,000.00	157,000,000.00	76,287,179.60
D1261	The Judiciary Fund	1,600,000,000.00	826,600,000.00	570,789,717.00
D1271	Ethics and Anti-Corruption Commission	57,920,000.00	30,000,000.00	11,951,448.00
D1291	Office of the Director of Public Prosecutions	48,500,000.00	26,000,000.00	6,682,416.80
D1331	State Deparment for Environment and Climate Change	1,446,796,186.00	1,237,796,186.00	472,341,031.20
D1332	State Deparment for Forestry	2,472,300,000.00	1,500,000,000.00	849,396,145.30
D2021	National Land Commission	147,860,000.00	-	-
D2031	Independent Electoral and Boundaries Commission	24,320,000.00	-	-
D2043	Parliamentary Joint Services	2,065,000,000.00	1,118,109,114.00	564,190,817.50
D2071	Public Service Commission	45,300,000.00	-	-
D2091	Teachers Service Commission	442,329,000.00	395,329,000.00	391,145,041.80
D2111	Auditor General	445,000,000.00	69,000,000.00	33,921,573.30
D2141	National Gender and Equality Commission	10,000,000.00	10,000,000.00	-
	Total Development Exchequer Issues	**458,867,547,964.00**	**351,292,250,486.00**	**129,820,487,067.65**
	Total Issues to National Government	**3,921,373,594,479.71**	**3,797,072,580,044.31**	**1,522,453,689,680.20**

The printed estimates and actuals for National Government exclude Appropriation in Aid (AIA).

Code	*County Governments-Equitable Share*	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
4460	Baringo	6,912,927,952.00	7,081,690,867.00	3,305,628,671.00
4760	Bomet	7,251,128,230.00	7,435,285,006.00	3,469,509,125.00
4910	Bungoma	11,543,041,769.00	11,841,786,703.00	5,524,787,885.00
4960	Busia	7,764,601,080.00	7,966,923,077.00	3,716,745,336.00

Code	*County Governments-Equitable Share*	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
4360	Elgeyo/Marakwet	4,987,118,183.00	5,117,018,760.00	2,387,210,099.00
3660	Embu	5,548,094,359.00	5,692,992,441.00	2,655,852,188.00
3310	Garissa	8,555,015,575.00	8,795,568,253.00	4,100,435,440.00
5110	Homa Bay	8,436,080,677.00	8,665,050,745.00	4,040,937,048.00
3510	Isiolo	5,078,735,614.00	5,224,617,690.00	2,435,178,659.00
4660	Kajiado	8,629,255,865.00	8,842,742,946.00	4,127,197,929.00
4810	Kakamega	13,411,035,025.00	13,761,644,563.00	6,419,920,803.00
4710	Kericho	6,962,657,506.00	7,143,558,879.00	3,332,713,748.00
4060	Kiambu	12,713,359,169.00	13,026,386,402.00	6,080,087,816.00
3110	Kilifi	12,554,603,733.00	12,913,485,798.00	6,019,221,131.00
3960	Kirinyaga	5,633,619,143.00	5,775,043,985.00	2,695,065,818.00
5210	Kisii	9,605,604,088.00	9,871,152,503.00	4,602,609,262.00
5060	Kisumu	8,681,516,388.00	8,912,694,311.00	4,157,154,753.00
3710	Kitui	11,244,322,462.00	11,542,680,618.00	5,384,035,558.00
3060	Kwale	8,887,496,757.00	9,158,813,536.00	4,266,274,035.00
4510	Laikipia	5,569,687,183.00	5,708,839,335.00	2,664,279,375.00
3210	Lamu	3,362,798,128.00	3,450,021,585.00	1,609,576,891.00
3760	Machakos	9,914,003,936.00	10,175,682,128.00	4,746,631,143.00
3810	Makueni	8,762,816,136.00	9,018,417,002.00	4,202,819,884.00
3410	Mandera	12,054,974,661.00	12,408,118,180.00	5,782,262,372.00
3460	Marsabit	7,830,334,637.00	8,065,563,537.00	3,757,649,186.00
3560	Meru	10,272,457,095.00	10,543,793,962.00	4,918,311,185.00
5160	Migori	8,661,896,842.00	8,890,446,021.00	4,147,122,523.00
3010	Mombasa	8,141,725,357.00	8,386,990,897.00	3,907,286,823.00
4010	Murang'a	7,753,474,531.00	7,968,423,986.00	3,715,327,799.00
5310	Nairobi City	20,855,390,632.00	21,388,604,740.00	9,979,930,505.00
4560	Nakuru	14,133,795,185.00	14,481,385,282.00	6,759,278,355.00
4410	Nandi	7,604,787,567.00	7,779,137,960.00	3,633,042,671.00
4610	Narok	9,531,074,923.00	9,808,366,926.00	4,571,074,683.00
5260	Nyamira	5,523,614,355.00	5,690,998,939.00	2,651,130,996.00
3860	Nyandarua	6,130,324,412.00	6,295,621,724.00	2,936,134,891.00
3910	Nyeri	6,729,749,120.00	6,913,914,490.00	3,224,049,483.00
4210	Samburu	5,806,692,471.00	5,963,444,433.00	2,781,185,276.00
5010	Siaya	7,545,450,410.00	7,739,781,074.00	3,611,152,623.00
3260	Taita/Taveta	5,229,266,247.00	5,373,939,132.00	2,505,681,687.00
3160	Tana River	7,040,540,708.00	7,241,713,306.00	3,375,514,312.00
3610	Tharaka - Nithi	4,534,480,732.00	4,670,803,484.00	2,176,054,334.00
4260	Trans Nzoia	7,798,593,372.00	7,989,497,394.00	3,729,293,915.00
4110	Turkana	13,653,200,352.00	14,007,437,175.00	6,535,028,344.00
4310	Uasin Gishu	8,766,325,224.00	8,974,531,918.00	4,190,131,643.00
4860	Vihiga	5,457,216,386.00	5,618,168,699.00	2,617,924,959.00
3360	Wajir	10,214,592,219.00	10,508,683,790.00	4,897,953,770.00
4160	West Pokot	6,837,314,170.00	7,002,505,099.00	3,268,949,349.00
	Total Issues -Equitable Share (Note 2:)	**400,116,790,566.00**	**410,833,969,281.00**	**191,615,344,281.00**
	Grand Total	**4,321,490,385,045.71**	**4,207,906,549,325.31**	**1,714,069,033,961.20**
	Exchequer Balance as at 31.10.2024	**-**	**-**	**21,663,934,601.81**

Note 1: Domestic Borrowing of KSh. 978,299,192,296.17 comprises of Net Domestic Borrowing KSh. 408,406,248,605.17 and Internal Debt Redemptions (Roll-overs) KSh. 569,892,943,691.00.

Note 2: The initial allocation to Counties with respect to Equitable Share amounted to KSh. 400,116,790,566.00. Following the withdrawal of the Finance Bill, 2024 the County Allocation of Revenue Bill, 2024 was resubmitted to Parliament with Equitable Share of KSh. 380,000,000,000.00. The Revised Estimates (Supplementary I) KSh. 410,833,969,281.00 comprise Equitable Share KSh. 380,000,000,000.00 and arrears for June 2024 KSh. 30,833,969,281.00. The Equitable Share Allocation was revised to KSh. 387,425,000,000.00 as per County Allocation of Revenue Act, 2024. The necessary adjustments will be effected in the Supplementary II Estimates. The County Governments Additional Allocations Bill, 2024 provides for additional allocations to County Governments in FY2024/2025 amounting to KSh. 55,453,732,777.07 to be disbursed through the respective Ministries, Departments and Agencies. The Bill is still under consideration by Parliament.

Dated the 14th January, 2025.

JOHN MBADI NG'ONG'O,
Cabinet Secretary, The National Treasury and Economic Planning.

GAZETTE NOTICE NO. 503

KENYA REVENUE AUTHORITY

CUSTOMS AND BORDER CONTROL DEPARTMENT

LIST OF OVERSTAYED GOODS AT INLAND CONTAINER DEPOT, NAIROBI

PURSUANT to the provisions of Section 42 of the East African Community Customs Management Act 2004 as amended (EACCMA 2004), notice is given that unless the under-mentioned goods are entered and removed from the custody of the Customs Warehouse Keeper, INLAND CONTAINER DEPOT NAIROBI within thirty (30) days of this notice, they will be treated as abandoned and will be disposed of in accordance with the provisions of EACCMA 2004 including being sold by public auction on 17th February, 2025, 18th February, 2025 and 19th February, 2025 through an online portal https://ibid.kra.go.ke.

Interested buyers may view the goods at specific locations on 13th February 2025 and 14th February 2025 during office hours.

THE KENYA GAZETTE

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GAZETTE NOTICES

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GAZETTE NOTICE NO. 1860

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Lawrent Okwemba Misango (deceased), is registered as proprietor of that piece of land containing 0.04 hectare or thereabouts, known as Kakamega/Viyalo/1709, situate in Vihiga County, and whereas the Senior Principal Magistrate's Court at Hamisi in Succession Cause No. E231 of 2024, has issued letters of administration in favour of Benard Misango Kwemba, and whereas Benard Misango Kwemba has executed an application to be registered as proprietor by transmission in respect of the said piece of land and whereas the land title deed is lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with the registration of the application to be registered as proprietor by transmission in favour of Benard Misango Kwemba, and upon such registration the land title deed issued to Lawrent Okwemba Misango (deceased) shall be deemed to be cancelled and of no effect.

Dated the 14th February, 2025.

H. K. LANGAT,
MR/6528947 *Land Registrar, Vihiga County.*

GAZETTE NOTICE NO. 1861

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Mwana Khadija Bint Sheikh Ahmed, is registered as proprietor of that piece of land containing 0.0200 hectare or thereabouts, known as Lamu/Block III/67, situate in Lamu County, and whereas in the Environment and Land Court at Kadhi's Court at Lamu Court in Succession Cause No. E8 of 2024, has issued an order to Hemedi Ali Salim as administrator, and whereas all efforts made to recover the land title deed and be surrendered to the land registrar for cancellation have failed, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with the registration of the order and issue land title deed to the said Hemedi Ali Salim, and upon such registration the land title deed issued to Mwana Khadija Bint Sheikh Ahmed, shall be deemed to be cancelled and of no effect.

Dated the 14th February, 2025.

J. B. OKETCH,
MR/6508596 *Land Registrar, Lamu County.*

GAZETTE NOTICE NO. 1862

THE LAND ACT

(*No.* 6 *of* 2012)

RIRUTA–NGONG METER GAUGE RAILWAY COMMUTER PROJECT

CORRIGENDUM

IN REFERENCE to Gazette Notice No. 16243 of 6th December, 2024, the National Land Commission on behalf of Kenya Railways Corporation (KRC) *corrects* the place to inspect plans for the affected land for Riruta–Ngong Meter Gauge Railway Commuter Project, which were erroneously indicated as Meru and Isiolo counties, the Commission notifies that plans should be inspected during office hours at the office of the National Land Commission, Ardhi House, 3rd Floor, Room 305, 1st Ngong Avenue, Nairobi and at the National Land Commission's County Co-ordinator's Office in Kajiado County.

Dated the 7th February, 2025.

GERSHOM OTACHI,
MR/6508634 *Chairman, National Land Commission.*

GAZETTE NOTICE NO. 1863

THE LAND ACT

(*No.* 6 *of* 2012)

CONSTRUCTION OF MUTHATARI–SIAKAGO ROADS PROJECT

DELETION, ADDENDUM AND INQUIRY

IN PURSUANCE of sections 112 and 162 (2) of the Land Act, 2012, Part VIII and further to Gazette Notices Nos. 7089 of 2021, 5369 and 5370 of 2022, the National Land Commission on behalf of Kenya Rural Roads Authority (KeRRA) gives notice that the National Government intends to *delete* and *add* the following parcel of land required for construction of Muthatari–Siakago Roads Project. Further inquiry for hearing of claims to compensation for interested parties in the land parcel shall be held on the date and place shown:-

Deletion

Plot No.	*Registered Owner(s)*	*Acquired Area (Ha.)*
Gaturi/Weru/11907	Daisy Karimi Ndwiga	0.0168

Addendum

Plot No.	*Registered Owner(s)*	*Acquired Area (Ha.)*
Gaturi/Weru/15068	Daisy Karimi Ndwiga	0.0178

Inquiry

Kiamuringa Chief's Office on 29th April, 2025 from 10.00 a.m.		
Plot No.	*Registered Owner(s)*	*Acquired Area (Ha.)*
Gaturi/ Weru/15068	Daisy Karimi Ndwiga	0.0178

Every person interested in the affected land is required to deliver to the National Land Commission on or before the day of the inquiry a written claim to compensation, a copy of identity card (ID), Personal Identification Number (PIN), land ownership documents and bank account details. The Commission offices are in Ardhi House, 3rd Floor, Room 305, 1st Ngong Avenue, Nairobi and at the County Co-ordinators' Office in Embu County.

Dated the 5th November, 2024.

GERISHOM OTACHI,
MR/6528802 *Chairman, National Land Commission.*

GAZETTE NOTICE NO. 1864

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

STATEMENT OF ACTUAL REVENUES AND NET EXCHEQUER ISSUES AS AT 31ST JANUARY, 2025

Receipts	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Actual Receipts (KSh.)*
Opening Balance 01.07.2024			1,165,472,645.45
Tax Revenue	2,745,218,573,596.33	2,475,063,919,892.05	1,251,882,102,351.05
Non-Tax Revenue	171,979,175,130.02	156,354,004,023.09	99,795,911,626.91
Domestic Borrowing (Note 1)	828,384,133,205.36	978,299,192,296.17	526,919,225,761.20
External Loans and Grants	571,221,593,564.00	593,502,523,564.00	111,794,174,091.75

Receipts	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Actual Receipts (KSh.)*
Other Domestic Financing	4,686,909,550.00	4,686,909,550.00	4,442,840,654.70
Total Revenue	**4,321,490,385,045.71**	**4,207,906,549,325.31**	**1,995,999,727,131.06**

RECURRENT EXCHEQUER ISSUES

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary Estimates (KSh.)*	*Exchequer Issues (KSh.)*
R1011	Executive Office of the President	4,226,290,119.00	3,579,474,631.00	1,570,802,114.05
R1012	Office of the Deputy President	4,572,300,000.00	2,594,852,997.00	1,464,721,248.60
R1013	Office of the Prime Cabinet Secretary	1,140,788,324.00	721,710,705.00	342,185,636.55
R1014	State Department for Parliamentary Affairs	458,283,000.00	363,912,950.00	169,752,211.50
R1015	State Department for Performance and Delivery Management	597,112,861.00	507,850,137.00	266,045,404.40
R1016	State Department for Cabinet Affairs	275,136,014.00	228,672,243.00	117,164,576.45
R1017	State House	7,935,200,000.00	4,305,431,658.00	3,880,559,601.55
R1023	State Department for Correctional Services	34,720,821,616.00	34,383,156,068.00	17,224,664,792.95
R1024	State Department for Immigration and Citizen Services	8,904,613,872.00	8,629,250,744.00	6,194,132,937.50
R1025	National Police Service	108,771,352,775.00	108,642,444,423.00	64,297,701,446.65
R1026	State Department for Internal Security and National Administration	28,218,704,720.00	27,732,214,955.00	18,902,193,003.75
R1032	State Department for Devolution	1,589,428,367.00	1,442,919,920.00	680,928,252.90
R1036	State Department for the ASALs and Regional Development	4,378,993,586.00	4,327,186,511.00	3,094,165,683.55
R1041	Ministry of Defence	166,120,417,170.00	165,985,661,938.00	90,170,054,739.10
R1053	State Department for Foreign Affairs	20,557,347,602.00	19,863,151,348.00	9,928,870,904.05
R1054	State Department for Diaspora Affairs	828,143,693.00	637,826,702.00	214,661,803.30
R1064	State Department for Vocational and Technical Training	18,335,038,919.00	18,302,786,255.00	9,769,042,753.20
R1065	State Department for Higher Education and Research	75,856,554,444.00	74,087,899,167.00	45,682,341,707.05
R1066	State Department for Basic Education	119,889,562,192.00	114,809,025,768.00	68,254,419,318.90
R1071	The National Treasury	60,543,407,865.00	51,668,854,053.00	34,739,935,681.20
R1072	State Department for Economic Planning	2,700,793,355.00	3,005,448,155.00	1,812,887,397.25
R1082	State Department for Medical Services	41,719,874,385.00	41,865,350,155.00	23,159,115,377.80
R1083	State Department for Public Health and Professional Standards	14,603,555,123.00	14,565,922,035.00	8,952,297,001.70
R1091	State Department for Roads	1,539,891,250.00	1,525,170,790.00	686,711,395.90
R1092	State Department for Transport	2,318,803,728.00	2,258,286,839.00	1,088,710,404.60
R1093	State Department for Shipping and Maritime Affairs	419,974,935.00	372,966,147.00	240,405,222.55
R1094	State Department for Housing and Urban Development	1,229,392,681.00	1,216,950,967.00	632,833,631.75
R1095	State Department for Public Works	2,749,978,552.00	2,731,142,270.00	1,386,800,510.90
R1104	State Department for Irrigation	853,382,500.00	820,321,500.00	402,115,866.40
R1109	State Department for Water and Sanitation	2,495,338,911.00	2,481,696,084.00	1,277,739,067.25
R1112	State Department for Lands and Physical Planning	3,415,400,000.00	3,384,650,000.00	1,659,272,738.25
R1122	State Department for Information Communications, Technology and Digital Economy	2,065,220,752.00	2,048,254,349.00	874,982,097.75
R1123	State Department for Broadcasting and Telecommunications	2,744,410,364.00	3,042,839,032.00	2,192,510,292.50
R1132	State Department for Sports	627,486,404.00	613,710,286.00	284,617,617.75
R1134	State Department for Culture and Heritage	2,327,654,321.00	2,216,765,284.00	1,105,441,984.35
R1135	State Department for Youth Affairs and the Arts	1,706,010,229.00	1,705,655,341.00	956,086,706.95
R1152	State Department for Energy	919,434,710.00	907,118,087.00	474,603,052.00
R1162	State Department for Livestock Development.	3,775,304,089.00	3,730,037,448.00	1,542,473,831.30
R1166	State Department for Blue Economy and Fisheries	2,288,795,869.00	2,378,184,460.00	1,164,665,043.45
R1169	State Department for Crop Development	6,739,346,299.00	6,753,457,296.00	3,699,650,866.15
R1173	State Department for Co-operatives	4,582,183,583.00	5,557,708,765.00	1,024,237,142.65
R1174	State Department for Trade	1,476,771,146.00	1,450,152,233.00	654,860,259.85
R1175	State Department for Industry	1,633,906,621.00	1,768,413,227.00	842,056,239.30
R1176	State Department for Micro, Small and Medium Enterprises Development	1,108,018,500.00	1,028,846,750.00	560,341,621.45
R1177	State Department for Investment Promotion	603,613,914.00	658,686,422.00	306,516,016.60
R1184	State Department for Labour and Skills Development	1,639,429,843.00	1,588,436,768.00	842,605,342.85
R1185	State Department for Social Protection and Senior Citizens Affairs	33,010,825,645.00	33,157,332,733.00	24,039,662,074.10
R1192	State Department for Mining	1,005,898,447.00	894,870,257.00	381,556,158.25
R1193	State Department for Petroleum	325,211,883.00	319,209,736.00	156,008,058.30
R1202	State Department for Tourism	555,111,808.00	541,904,503.00	212,547,946.35
R1203	State Department for Wildlife	3,934,194,935.00	3,898,075,372.00	1,432,955,583.85
R1212	State Department for Gender and Affirmative Action	1,940,841,404.00	1,863,788,643.00	923,954,046.35
R1213	State Department for Public Service	15,421,644,125.00	15,708,886,786.00	9,538,500,536.45

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary Estimates (KSh.)*	*Exchequer Issues (KSh.)*
R1221	State Department for East African Community	612,087,899.00	572,743,428.00	314,262,539.35
R1252	The State Law Office	6,255,890,997.00	4,707,323,368.00	2,247,973,006.25
R1261	The Judiciary	22,137,400,000.00	21,018,400,000.00	12,464,117,652.00
R1271	Ethics and Anti-Corruption Commission	4,099,930,000.00	4,099,930,000.00	2,100,208,184.45
R1281	National Intelligence Service	46,351,000,000.00	46,351,000,000.00	34,763,250,000.00
R1291	Office of the Director of Public Prosecutions	3,957,020,000.00	3,957,020,000.00	1,991,488,620.45
R1311	Office of the Registrar of Political Parties	2,037,871,453.00	1,927,814,682.00	950,294,895.50
R1321	Witness Protection Agency	741,192,500.00	697,134,000.00	439,960,730.15
R1331	State Deparment for Environment and Climate Change	2,413,435,109.00	2,234,640,214.00	1,167,639,629.10
R1332	State Deparment for Forestry	4,493,630,000.00	4,481,680,111.00	2,249,294,600.35
R2011	Kenya National Commission on Human Rights	478,074,025.00	478,039,387.00	219,541,716.15
R2021	National Land Commission	1,868,362,679.00	1,782,188,898.00	1,045,628,119.75
R2031	Independent Electoral and Boundaries Commission	3,730,899,680.00	3,817,732,834.00	2,062,545,184.90
R2041	Parliamentary Service Commission	1,167,000,000.00	1,287,266,307.00	600,776,593.20
R2042	National Assembly	26,770,000,000.00	24,863,564,575.00	13,264,939,631.45
R2043	Parliamentary Joint Services	6,547,000,000.00	6,153,382,408.00	3,935,946,992.10
R2044	Senate	8,010,000,000.00	7,404,177,595.00	4,105,179,619.40
R2051	Judicial Service Commission	902,900,000.00	660,115,164.00	350,372,832.65
R2061	The Commission on Revenue Allocation	413,465,304.00	364,348,789.00	220,435,677.90
R2071	Public Service Commission	3,607,230,017.00	3,461,510,559.00	1,897,097,709.00
R2081	Salaries and Remuneration Commission	472,230,922.00	452,736,206.00	164,877,079.85
R2091	Teachers Service Commission	357,115,737,118.00	346,834,589,260.00	195,321,119,375.45
R2101	National Police Service Commission	1,131,272,317.00	1,008,040,920.00	495,724,960.10
R2111	Auditor-General	7,804,770,850.00	7,617,899,030.00	3,712,877,346.60
R2121	Office of the Controller of Budget	738,219,080.00	702,251,897.00	253,290,860.20
R2131	The Commission on Administrative Justice	661,974,500.00	636,521,142.00	286,191,551.40
R2141	National Gender and Equality Commission	425,810,000.00	407,702,500.00	259,640,814.70
R2151	Independent Policing Oversight Authority	1,107,672,060.00	1,088,640,481.00	599,881,791.50
	Total Recurrent Exchequer Issues	**1,348,449,273,960.00**	**1,307,942,915,648.00**	**758,958,622,664.00**

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
CFS 050	Public Debt	1,910,480,965,745.78	1,910,480,965,745.78	772,842,324,056.95
CFS 051	Pensions and Gratuities	199,366,132,378.93	223,146,773,733.53	94,328,309,666.10
CFS 052	Salaries, Allowances and Miscellaneous	4,209,674,431.00	4,209,674,431.00	21,718,109,024.50
	Total CFS Exchequer Issues	**2,114,056,772,555.71**	**2,137,837,413,910.31**	**888,888,742,747.55**

DEVELOPMENT EXCHEQUER ISSUES

Vote	*Ministries / Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
D1011	Executive Office of the President	1,200,900,000.00	-	-
D1012	Office of the Deputy President	320,400,000.00		-
D1017	State House	1,558,700,000.00		-
D1023	State Department for Correctional Services	823,025,000.00	40,000,000.00	37,500,571.60
D1024	State Department for Immigration and Citizen Services	2,110,200,000.00	1,696,200,000.00	1,673,907,573.95
D1025	National Police Service	1,780,720,000.00	35,000,000.00	-
D1026	State Department for Internal Security and National Administration	7,565,490,000.00	360,200,000.00	2,860,200,000.00
D1032	State Department for Devolution	2,653,000,000.00	2,653,000,000.00	489,915,092.00
D1036	State Department for ASALs and Regional Development	7,386,334,000.00	3,630,970,516.00	1,506,302,065.45
D1053	State Department for Foreign Affairs	2,390,100,000.00	-	-
D1064	State Department for Vocational and Technical Training	4,164,600,000.00	1,716,600,000.00	673,369,487.35
D1065	State Department for Higher Education and Research	4,334,640,000.00	1,180,000,000.00	75,000,000.00
D1066	State Department for Basic Education	19,406,560,000.00	13,432,000,000.00	8,327,474,965.40
D1071	The National Treasury	37,409,465,552.00	30,387,665,552.00	6,959,429,700.35
D1072	State Department of Economic Planning	63,780,240,000.00	68,563,687,681.00	22,923,158,161.00
D1082	State Department for Medical Services	23,535,200,000.00	16,387,700,000.00	4,773,848,950.55
D1083	State Department for Public Health and Professional Standards	5,564,180,000.00	4,289,000,000.00	1,108,650,468.00
D1091	State Department of Roads	73,196,031,868.00	66,232,714,989.00	26,407,717,120.80
D1092	State Department of Transport	5,461,400,000.00	2,235,000,000.00	614,003,251.90
D1093	State Department for shipping and Maritime Affairs	574,000,000.00	-	-
D1094	State Department for Housing and Urban Development	22,092,000,000.00	20,037,000,000.00	1,962,491,097.70
D1095	State Department for Public Works	1,209,100,000.00	124,000,000.00	3,346,449.00
D1104	State Department for Irrigation	15,414,780,000.00	13,722,590,000.00	6,895,275,614.75
D1109	State Department for Water and Sanitation	24,291,400,000.00	21,735,590,000.00	4,567,469,155.50
D1112	State Department for Lands and Physical	5,204,136,000.00	1,729,000,000.00	1,500,679,970.00

Vote	*Ministries / Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
	Planning			
D1122	State Department for Information Communications, Technology and Digital Economy	7,007,660,000.00	4,667,700,000.00	1,398,468,836.75
D1123	State Department for Broadcasting and Telecommunications	651,900,000.00	-	-
D1132	State Department for Sports	174,400,000.00	-	-
D1134	State Department for Culture and Heritage	162,843,000.00	70,000,000.00	-
D1135	State Department for Youth Affairs and the Arts	2,144,961,000.00	1,535,069,490.00	220,191,322.15
D1152	State Department for Energy	32,570,400,000.00	16,103,200,000.00	11,297,599,651.60
D1162	State Department for Livestock Development	4,478,450,000.00	5,466,000,000.00	1,134,262,591.80
D1166	State Department for Blue Economy and Fisheries	8,912,930,000.00	7,167,900,000.00	4,329,826,896.35
D1169	State Department for Crop Development	28,250,440,958.00	23,841,786,958.00	12,852,484,463.30
D1173	State Department for Co-operatives	2,346,770,000.00	2,000,000,000.00	2,000,000,000.00
D1174	State Department for Trade	500,000,000.00	290,000,000.00	290,000,000.00
D1175	State Department for Industry	6,366,770,000.00	3,343,870,000.00	1,675,642,484.10
D1176	State Department for Micro, Small and Medium Enterprises Development	7,702,840,000.00	4,428,500,000.00	3,616,702,919.00
D1177	State Department for Investment Promotion	3,605,430,000.00	1,200,000,000.00	600,000,000.00
D1184	State Department for Labour and Skills Development	1,512,885,400.00	100,000,000.00	51,558,174.80
D1185	State Department for Social Protection and Senior Citizen Affairs	2,189,880,000.00	1,907,621,000.00	1,099,165,725.85
D1192	State Department for Mining	652,260,000.00	-	-
D1193	State Department for Petroleum	375,200,000.00	-	-
D1203	State Department for Wildlife	2,018,000,000.00	125,000,000.00	42,331,000.00
D1212	State Department for Gender and Affirmative Action	3,838,700,000.00	3,384,850,000.00	1,688,147,388.00
D1213	State Department for Public Service	980,500,000.00	103,000,000.00	-
D1221	State Department for East African Community	35,400,000.00	-	-
D1252	The State Law Office	157,000,000.00	157,000,000.00	86,601,437.20
D1261	The Judiciary Fund	1,600,000,000.00	826,600,000.00	570,789,717.00
D1271	Ethics and Anti-Corruption Commission	57,920,000.00	30,000,000.00	11,951,448.00
D1291	Office of the Director of Public Prosecutions	48,500,000.00	26,000,000.00	6,682,416.80
D1331	State Deparment for Environment and Climate Change	1,446,796,186.00	1,237,796,186.00	673,350,378.55
D1332	State Department for Forestry	2,472,300,000.00	1,500,000,000.00	979,594,635.30
D2021	National Land Commission	147,860,000.00	-	-
D2031	Independent Electoral and Boundaries Commission	24,320,000.00	-	-
D2043	Parliamentary Joint Services	2,065,000,000.00	1,118,109,114.00	920,941,089.80
D2071	Public Service Commission	45,300,000.00	-	-
D2091	Teachers Service Commission	442,329,000.00	395,329,000.00	391,145,041.80
D2111	Auditor-General	445,000,000.00	69,000,000.00	33,921,573.30
D2141	National Gender and Equality Commission	10,000,000.00	10,000,000.00	-
	Total Development Exchequer Issues	**458,867,547,964.00**	**351,292,250,486.00**	**139,331,098,886.75**
	Total Issues to National Government	**3,921,373,594,479.71**	**3,797,072,580,044.31**	**1,787,178,464,298.30**

The printed estimates and actuals for National Government exclude Appropriation in Aid (AIA)

Code	*County Governments–Equitable Share*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
4460	Baringo	6,912,927,952.00	7,081,690,867.00	3,305,628,671.00
4760	Bomet	7,251,128,230.00	7,435,285,006.00	4,030,718,802.00
4910	Bungoma	11,543,041,769.00	11,841,786,703.00	6,418,441,706.00
4960	Busia	7,764,601,080.00	7,966,923,077.00	4,317,940,230.00
4360	Elgeyo/Marakwet	4,987,118,183.00	5,117,018,760.00	2,387,210,099.00
3660	Embu	5,548,094,359.00	5,692,992,441.00	2,655,852,188.00
3310	Garissa	8,555,015,575.00	8,795,568,253.00	4,100,435,440.00
5110	Homa Bay	8,436,080,677.00	8,665,050,745.00	4,694,559,423.00
3510	Isiolo	5,078,735,614.00	5,224,617,690.00	2,829,059,211.00
4660	Kajiado	8,629,255,865.00	8,842,742,946.00	4,794,799,055.00
4810	Kakamega	13,411,035,025.00	13,761,644,563.00	6,419,920,803.00
4710	Kericho	6,962,657,506.00	7,143,558,879.00	3,332,713,748.00
4060	Kiambu	12,713,359,169.00	13,026,386,402.00	7,063,583,454.00
3110	Kilifi	12,554,603,733.00	12,913,485,798.00	6,019,221,131.00
3960	Kirinyaga	5,633,619,143.00	5,775,043,985.00	3,131,007,682.00
5210	Kisii	9,605,604,088.00	9,871,152,503.00	4,602,609,262.00
5060	Kisumu	8,681,516,388.00	8,912,694,311.00	4,829,580,956.00
3710	Kitui	11,244,322,462.00	11,542,680,618.00	5,384,035,558.00
3060	Kwale	8,887,496,757.00	9,158,813,536.00	4,266,274,035.00
4510	Laikipia	5,569,687,183.00	5,708,839,335.00	3,095,242,200.00
3210	Lamu	3,362,798,128.00	3,450,021,585.00	1,609,576,891.00
3760	Machakos	9,914,003,936.00	10,175,682,128.00	5,514,408,978.00
3810	Makueni	8,762,816,136.00	9,018,417,002.00	4,882,604,560.00

Code	*County Governments–Equitable Share*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
3410	Mandera	12,054,974,661.00	12,408,118,180.00	6,717,511,922.00
3460	Marsabit	7,830,334,637.00	8,065,563,537.00	4,365,421,198.00
3560	Meru	10,272,457,095.00	10,543,793,962.00	4,918,311,185.00
5160	Migori	8,661,896,842.00	8,890,446,021.00	4,147,122,523.00
3010	Mombasa	8,141,725,357.00	8,386,990,897.00	4,539,260,784.00
4010	Murang'a	7,753,474,531.00	7,968,423,986.00	4,316,277,170.00
5310	Nairobi City	20,855,390,632.00	21,388,604,740.00	11,594,227,523.00
4560	Nakuru	14,133,795,185.00	14,481,385,282.00	6,759,278,355.00
4410	Nandi	7,604,787,567.00	7,779,137,960.00	4,220,728,290.00
4610	Narok	9,531,074,923.00	9,808,366,926.00	5,310,423,604.00
5260	Nyamira	5,523,614,355.00	5,690,998,939.00	2,651,130,996.00
3860	Nyandarua	6,130,324,412.00	6,295,621,724.00	2,936,134,891.00
3910	Nyeri	6,729,749,120.00	6,913,914,490.00	3,224,049,483.00
4210	Samburu	5,806,692,471.00	5,963,444,433.00	2,781,185,276.00
5010	Siaya	7,545,450,410.00	7,739,781,074.00	4,195,270,418.00
3260	Taita/Taveta	5,229,266,247.00	5,373,939,132.00	2,910,972,770.00
3160	Tana River	7,040,540,708.00	7,241,713,306.00	3,375,514,312.00
3610	Tharaka-Nithi	4,534,480,732.00	4,670,803,484.00	2,528,014,922.00
4260	Trans Nzoia	7,798,593,372.00	7,989,497,394.00	3,729,293,915.00
4110	Turkana	13,653,200,352.00	14,007,437,175.00	6,535,028,344.00
4310	Uasin Gishu	8,766,325,224.00	8,974,531,918.00	4,190,131,643.00
4860	Vihiga	5,457,216,386.00	5,618,168,699.00	3,041,358,753.00
3360	Wajir	10,214,592,219.00	10,508,683,790.00	5,690,177,627.00
4160	West Pokot	6,837,314,170.00	7,002,505,099.00	3,268,949,349.00
	Total Issues -Equitable Share (Note 2:)	**400,116,790,566.00**	**410,833,969,281.00**	**207,631,199,336.00**
	Grand Total	**4,321,490,385,045.71**	**4,207,906,549,325.31**	**1,994,809,663,634.30**
	Exchequer Balance as at 31.01.2025	**-**	**-**	**1,190,063,496.76**

Note 1: Domestic Borrowing of KSh. 978,299,192,296.17 comprises of Net Domestic Borrowing KSh. 408,406,248,605.17 and Internal Debt Redemptions (Roll-overs) KSh. 569,892,943,691.00.

Note 2: The initial allocation to counties with respect to Equitable Share amounted to KSh. 400,116,790,566.00. Following the withdrawal of the Finance Bill, 2024 the County Allocation of Revenue Bill, 2024 was resubmitted to Parliament with Equitable Share of KSh. 380,000,000,000.00. The Revised Estimates (Supplementary I) KSh. 410,833,969,281.00 comprise Equitable Share KSh. 380,000,000,000.00 and arrears for June 2024 KSh. 30,833,969,281.00. The Equitable Share Allocation was revised to KSh. 387,425,000,000.00 as per County Allocation of Revenue Act, 2024. The necessary adjustments will be effected in the Supplementary II Estimates. The County Governments Additional Allocations Bill, 2024 provides for additional allocations to County Governments in FY2024/2025 amounting to KSh. 55,453,732,777.07 to be disbursed through the respective Ministries, Departments and Agencies. The Bill is still under consideration by Parliament.

Dated the 10th February, 2024.

JOHN MBADI NG'ONGO,
Cabinet Secretary for the National Treasury and Economic Planning.

GAZETTE NOTICE NO. 1865

ENERGY AND PETROLEUM REGULATORY AUTHORITY

SCHEDULE OF TARIFFS 2023 FOR ELECTRICITY TARIFFS, CHARGES, PRICES AND RATES

FUEL ENERGY COST CHARGE

PURSUANT to Clause 1 of Part III of the Schedule of Tariffs 2023, notice is given that all prices for electrical energy specified in Part II of the said Schedule will be liable to a fuel energy cost charge of plus 336 Kenya cents per kWh for all meter readings to be taken in February 2025.

Information used to calculate the fuel energy cost charge.

Power Station	*Fuel Price in January 2025 KSh/Kg. (Ci)*	*Fuel Displacement Charge/ Fuel Charge in January 2025 KSh./kWh*	*Variation from January 2025 Prices Increase/(Decrease)*	*Units in January 2025 in kWh (Gi)*
Kipevu I Diesel Plant	94.89		-	-
Kipevu II Diesel Plant (Tsavo)	-		-	-
Kipevu III Diesel Plant	84.41		0.02	42,331,390
Muhoroni GT	-		-	1,543,040
Rabai Diesel without steam turbine	82.20		0.02	22,875
Rabai Diesel with steam turbine	82.20		0.02	38,052,125
Iberafrica Diesel–Additional Plant	91.33		(2.50)	5,838,310
Thika Power Diesel Plant	88.47		(5.61)	1,577,700
Thika Power Diesel Plant (with steam unit)	88.47		(5.61)	10,884,200
Gulf Power	105.68		(0.65)	5,022,416
Triumph Power	99.36		1.56	479,370
Triumph Power	99.36		1.56	2,637,120
Olkaria IV Steam Charge		2.59	-	88,303,740
Olkaria I Unit IV&V Steam Charge		2.59	-	49,612,640
Sosian Menengai Geothermal Steam Charge		2.59	-	28,469,320
Import from UETCL		13.27	0.01	16,177,880

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SUPPLEMENT No. 12

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10. The management body shall adhere to the Global Industry Practices (GIPs) that promote good environmental and public health standards.

11. The management body shall ensure proper documentation, stock-take, monitoring and reporting of the land-scape level critical biodiversity resources including measures taken towards their protection and conservation

12. The management body shall pay such rates, ground rent, duties, assessments or outgoings payable to the National Government and County Government from time to time.

13. The management body shall facilitate the harmonious coordination of services provided by other public agencies on the reserved land, ensuring optimal and efficient utilization.

14. The management body shall be responsible for safeguarding the land making sure the demarcated boundaries of the land parcels are well maintained.

Dated the 12th February, 2025.

GERSHOM OTACHI,
Chairman, National Land Commission.

MR/6527661

GAZETTE NOTICE NO. 3354

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

STATEMENT OF ACTUAL REVENUES AND NET EXCHEQUER ISSUES AS AT 28TH FEBRUARY, 2025

Receipts	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Actual Receipts (KSh.)*
Opening Balance 01.07.2024			1,165,472,645.45
Tax Revenue	2,745,218,573,596.33	2,475,063,919,892.05	1,403,705,059,728.15
Non-Tax Revenue	171,979,175,130.02	156,354,004,023.09	113,475,724,937.26
Domestic Borrowing (Note 1)	828,384,133,205.36	978,299,192,296.17	675,115,889,788.05
External Loans and Grants	571,221,593,564.00	593,502,523,564.00	120,483,798,784.05
Other Domestic Financing	4,686,909,550.00	4,686,909,550.00	4,442,840,654.70
Total Revenue	4,321,490,385,045.71	4,207,906,549,325.31	2,318,388,786,537.66

RECURRENT EXCHEQUER ISSUES

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
R1011	Executive Office of the President	4,226,290,119.00	3,579,474,631.00	1,859,519,187.35
R1012	Office of the Deputy President	4,572,300,000.00	2,594,852,997.00	1,586,889,464.40
R1013	Office of the Prime Cabinet Secretary	1,140,788,324.00	721,710,705.00	391,416,341.20
R1014	State Department for Parliamentary Affairs	458,283,000.00	363,912,950.00	171,856,118.75
R1015	State Department for Performance and Delivery Management	597,112,861.00	507,850,137.00	329,237,342.65
R1016	State Department for Cabinet Affairs	275,136,014.00	228,672,243.00	147,201,089.85
R1017	State House	7,935,200,000.00	4,305,431,658.00	4,433,532,802.30
R1023	State Department for Correctional Services	34,720,821,616.00	34,383,156,068.00	19,632,770,242.95
R1024	State Department for Immigration and Citizen Services	8,904,613,872.00	8,629,250,744.00	6,759,594,825.55
R1025	National Police Service	108,771,352,775.00	108,642,444,423.00	64,972,878,727.10
R1026	State Department for Internal Security and National Administration	28,218,704,720.00	27,732,214,955.00	21,754,636,147.75
R1032	State Department for Devolution	1,589,428,367.00	1,442,919,920.00	746,064,334.70
R1036	State Department for the ASALs and Regional Development	4,378,993,586.00	4,327,186,511.00	3,340,264,605.25
R1041	Ministry of Defence	166,120,417,170.00	165,985,661,938.00	94,649,807,633.35
R1053	State Department for Foreign Affairs	20,557,347,602.00	19,863,151,348.00	13,762,754,488.80
R1054	State Department for Diaspora Affairs	828,143,693.00	637,826,702.00	302,729,934.60
R1064	State Department for Vocational and Technical Training	18,335,038,919.00	18,302,786,255.00	13,999,668,272.60
R1065	State Department for Higher Education and Research	75,856,554,444.00	74,087,899,167.00	58,085,219,783.75
R1066	State Department for Basic Education	119,889,562,192.00	114,809,025,768.00	71,679,372,416.20
R1071	The National Treasury	60,543,407,865.00	51,668,854,053.00	41,736,578,989.30
R1072	State Department for Economic Planning	2,700,793,355.00	3,005,448,155.00	2,026,209,891.60
R1082	State Department for Medical Services	41,719,874,385.00	41,865,350,155.00	26,061,850,283.90
R1083	State Department for Public Health and Professional Standards	14,603,555,123.00	14,565,922,035.00	10,789,593,763.30
R1091	State Department for Roads	1,539,891,250.00	1,525,170,790.00	801,537,553.95
R1092	State Department for Transport	2,318,803,728.00	2,258,286,839.00	1,205,458,214.70
R1093	State Department for shipping and Maritime Affairs	419,974,935.00	372,966,147.00	278,793,920.20
R1094	State Department for Housing and Urban Development	1,229,392,681.00	1,216,950,967.00	732,608,226.40
R1095	State Department for Public Works	2,749,978,552.00	2,731,142,270.00	1,600,298,962.40
R1104	State Department for Irrigation	853,382,500.00	820,321,500.00	443,803,968.30
R1109	State Department for Water and Sanitation	2,495,338,911.00	2,481,696,084.00	1,562,789,235.25
R1112	State Department for Lands and Physical Planning	3,415,400,000.00	3,384,650,000.00	1,929,832,633.90
R1122	State Department for Information Communications, Technology and Digital Economy	2,065,220,752.00	2,048,254,349.00	1,163,550,311.40
R1123	State Department for Broadcasting and Telecommunications	2,744,410,364.00	3,042,839,032.00	2,423,332,602.15

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
R1132	State Department for Sports	627,486,404.00	613,710,286.00	328,677,911.20
R1134	State Department for Culture and Heritage	2,327,654,321.00	2,216,765,284.00	1,305,102,900.15
R1135	State Department for Youth Affairs and the Arts	1,706,010,229.00	1,705,655,341.00	1,229,118,021.65
R1152	State Department for Energy	919,434,710.00	907,118,087.00	551,429,503.95
R1162	State Department for Livestock Development.	3,775,304,089.00	3,730,037,448.00	1,704,570,821.20
R1166	State Department for Blue Economy and Fisheries	2,288,795,869.00	2,378,184,460.00	1,352,360,686.30
R1169	State Department for Crop Development	6,739,346,299.00	6,753,457,296.00	4,266,328,567.15
R1173	State Department for Co-operatives	4,582,183,583.00	5,557,708,765.00	1,070,729,509.05
R1174	State Department for Trade	1,476,771,146.00	1,450,152,233.00	746,894,107.80
R1175	State Department for Industry	1,633,906,621.00	1,768,413,227.00	1,130,469,478.00
R1176	State Department for Micro, Small and Medium Enterprises Development	1,108,018,500.00	1,028,846,750.00	591,085,831.60
R1177	State Department for Investment Promotion	603,613,914.00	658,686,422.00	423,565,521.85
R1184	State Department for Labour and Skills Development	1,639,429,843.00	1,588,436,768.00	973,019,704.60
R1185	State Department for Social Protection and senior citizens Affairs	33,010,825,645.00	33,157,332,733.00	27,894,114,371.30
R1192	State Department for Mining	1,005,898,447.00	894,870,257.00	464,901,272.85
R1193	State Department for Petroleum	325,211,883.00	319,209,736.00	176,276,069.85
R1202	State Department for Tourism	555,111,808.00	541,904,503.00	251,821,808.35
R1203	State Department for Wildlife	3,934,194,935.00	3,898,075,372.00	1,654,192,248.45
R1212	State Department for Gender and Affirmative Action	1,940,841,404.00	1,863,788,643.00	983,214,241.10
R1213	State Department for Public Service	15,421,644,125.00	15,708,886,786.00	10,496,292,263.35
R1221	State Department for East African Community	612,087,899.00	572,743,428.00	455,586,511.75
R1252	The State Law Office	6,255,890,997.00	4,707,323,368.00	2,637,589,491.70
R1261	The Judiciary	22,137,400,000.00	21,018,400,000.00	13,229,117,652.00
R1271	Ethics and Anti-Corruption Commission	4,099,930,000.00	4,099,930,000.00	2,435,592,908.30
R1281	National Intelligence Service	46,351,000,000.00	46,351,000,000.00	37,763,250,000.00
R1291	Office of the Director of Public Prosecutions	3,957,020,000.00	3,957,020,000.00	2,299,657,738.45
R1311	Office of the Registrar of Political Parties	2,037,871,453.00	1,927,814,682.00	1,346,205,245.85
R1321	Witness Protection Agency	741,192,500.00	697,134,000.00	477,507,239.15
R1331	State Department for Environment and Climate Change	2,413,435,109.00	2,234,640,214.00	1,405,283,055.05
R1332	State Department for Forestry	4,493,630,000.00	4,481,680,111.00	2,621,570,473.85
R2011	Kenya National Commission on Human Rights	478,074,025.00	478,039,387.00	260,431,612.25
R2021	National Land Commission	1,868,362,679.00	1,782,188,898.00	1,182,744,601.30
R2031	Independent Electoral and Boundaries Commission	3,730,899,680.00	3,817,732,834.00	2,102,551,593.55
R2041	Parliamentary Service Commission	1,167,000,000.00	1,287,266,307.00	625,991,868.60
R2042	National Assembly	26,770,000,000.00	24,863,564,575.00	13,264,939,631.45
R2043	Parliamentary Joint Services	6,547,000,000.00	6,153,382,408.00	3,935,946,992.10
R2044	Senate	8,010,000,000.00	7,404,177,595.00	4,105,179,619.40
R2051	Judicial Service Commission	902,900,000.00	660,115,164.00	409,088,063.25
R2061	The Commission on Revenue Allocation	413,465,304.00	364,348,789.00	253,339,922.15
R2071	Public Service Commission	3,607,230,017.00	3,461,510,559.00	2,203,213,933.90
R2081	Salaries and Remuneration Commission	472,230,922.00	452,736,206.00	204,858,053.95
R2091	Teachers Service Commission	357,115,737,118.00	346,834,589,260.00	231,322,403,562.40
R2101	National Police Service Commission	1,131,272,317.00	1,008,040,920.00	585,506,666.80
R2111	Auditor General	7,804,770,850.00	7,617,899,030.00	4,226,823,651.15
R2121	Office of the Controller of Budget	738,219,080.00	702,251,897.00	300,224,693.85
R2131	The Commission on Administrative Justice	661,974,500.00	636,521,142.00	332,702,644.70
R2141	National Gender and Equality Commission	425,810,000.00	407,702,500.00	260,772,379.70
R2151	Independent Policing Oversight Authority	1,107,672,060.00	1,088,640,481.00	621,459,212.50
	Total Recurrent Exchequer Issues	**1,348,449,273,960.00**	**1,307,942,915,648.00**	**859,825,356,174.70**
CFS 050	Public Debt	1,910,480,965,745.78	1,910,480,965,745.78	928,896,888,611.95
CFS 051	Pensions and gratuities	199,366,132,378.93	223,146,773,733.53	108,314,701,591.15
CFS 052	Salaries Allowances and Miscellaneous	4,209,674,431.00	4,209,674,431.00	22,019,494,078.15
	TOTAL CFS Exchequer issues	**2,114,056,772,555.71**	**2,137,837,413,910.31**	**1,059,231,084,281.25**

DEVELOPMENT EXCHEQUER ISSUES

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
D1011	Executive Office of President	1,200,900,000.00	-	-
D1012	Office of the Deputy President	320,400,000.00	-	-
D1017	State House	1,558,700,000.00	-	-
D1023	State Department for Correctional Services	823,025,000.00	40,000,000.00	37,500,571.60
D1024	State Department for Immigration and Citizen services	2,110,200,000.00	1,696,200,000.00	1,673,907,573.95

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
D1025	National Police Service	1,780,720,000.00	35,000,000.00	-
D1026	State Department for Internal Security and National Administration	7,565,490,000.00	360,200,000.00	2,860,200,000.00
D1032	State Department for Devolution	2,653,000,000.00	2,653,000,000.00	491,873,492.00
D1036	State Department for ASALs and Regional Development	7,386,334,000.00	3,630,970,516.00	1,509,710,865.45
D1053	State Department for Foreign Affairs	2,390,100,000.00	-	-
D1064	State Department for Vocational and Technical Training	4,164,600,000.00	1,716,600,000.00	722,650,438.35
D1065	State Department for Higher Education and Research	4,334,640,000.00	1,180,000,000.00	75,000,000.00
D1066	State Department for Basic Education	19,406,560,000.00	13,432,000,000.00	11,476,293,108.50
D1071	The National Treasury	37,409,465,552.00	30,387,665,552.00	8,960,331,232.15
D1072	State Department of Economic Planning	63,780,240,000.00	68,563,687,681.00	29,931,827,770.00
D1082	State Department for Medical Services	23,535,200,000.00	16,387,700,000.00	5,236,535,222.35
D1083	State Department for Public Health and Professional Standards	5,564,180,000.00	4,289,000,000.00	1,537,602,561.45
D1091	State Department of Roads	73,196,031,868.00	66,232,714,989.00	27,045,574,103.30
D1092	State Department of Transport	5,461,400,000.00	2,235,000,000.00	673,644,801.90
D1093	State Department for shipping and Maritime Affairs	574,000,000.00	-	-
D1094	State Department for Housing and Urban Development	22,092,000,000.00	20,037,000,000.00	1,997,491,097.70
D1095	State Department for Public Works	1,209,100,000.00	124,000,000.00	3,402,449.00
D1104	State Department for Irrigation	15,414,780,000.00	13,722,590,000.00	6,895,275,614.75
D1109	State Department for Water and Sanitation	24,291,400,000.00	21,735,590,000.00	5,082,500,361.50
D1112	State Department for Lands and Physical Planning	5,204,136,000.00	1,729,000,000.00	1,500,679,970.00
D1122	State Department for Information Communications,Technology and Digital Economy	7,007,660,000.00	4,667,700,000.00	1,430,158,008.45
D1123	State Department for Broadcasting and Telecommunications	651,900,000.00	-	-
D1132	State Department for Sports	174,400,000.00	-	-
D1134	State Department for Culture and Heritage	162,843,000.00	70,000,000.00	-
D1135	State Department for Youth Affairs and the Arts	2,144,961,000.00	1,535,069,490.00	220,191,322.15
D1152	State Department for Energy	32,570,400,000.00	16,103,200,000.00	11,297,599,651.60
D1162	State Department for Livestock Development	4,478,450,000.00	5,466,000,000.00	1,871,261,350.35
D1166	State Department for Blue Economy and Fisheries	8,912,930,000.00	7,167,900,000.00	4,980,730,787.80
D1169	State Department for Crop Development	28,250,440,958.00	23,841,786,958.00	12,954,099,340.90
D1173	State Department for Co-operatives	2,346,770,000.00	2,000,000,000.00	2,000,000,000.00
D1174	State Department for Trade	500,000,000.00	290,000,000.00	290,000,000.00
D1175	State Department for Industry	6,366,770,000.00	3,343,870,000.00	1,675,642,484.10
D1176	State Department for Micro, Small and Medium Enterprises Development	7,702,840,000.00	4,428,500,000.00	3,679,702,919.00
D1177	State Department for Investment Promotion	3,605,430,000.00	1,200,000,000.00	600,000,000.00
D1184	State Department for Labour and Skills Development	1,512,885,400.00	100,000,000.00	52,372,974.80
D1185	State Department for Social Protection and Senior Citizen Affairs	2,189,880,000.00	1,907,621,000.00	1,651,546,885.40
D1192	State Department for Mining	652,260,000.00	-	-
D1193	State Department for Petroleum	375,200,000.00	-	-
D1203	State Department for Wildlife	2,018,000,000.00	125,000,000.00	54,831,000.00
D1212	State Department for Gender and Affirmative Action	3,838,700,000.00	3,384,850,000.00	1,699,809,888.00
D1213	State Department for Public Service	980,500,000.00	103,000,000.00	-
D1221	State Department for East African Community	35,400,000.00	-	-
D1252	The State Law Office	157,000,000.00	157,000,000.00	86,601,437.20
D1261	The Judiciary Fund	1,600,000,000.00	826,600,000.00	570,789,717.00
D1271	Ethics and Anti-Corruption Commission	57,920,000.00	30,000,000.00	11,951,448.00
D1291	Office of the Director of Public Prosecutions	48,500,000.00	26,000,000.00	6,682,416.80
D1331	State Department for Environment and Climate Change	1,446,796,186.00	1,237,796,186.00	854,516,498.05
D1332	State Department for Forestry	2,472,300,000.00	1,500,000,000.00	1,002,208,631.00
D2021	National Land Commission	147,860,000.00	-	-
D2031	Independent Electoral and Boundaries Commission	24,320,000.00	-	-
D2043	Parliamentary Joint Services	2,065,000,000.00	1,118,109,114.00	981,333,638.80
D2071	Public Service Commission	45,300,000.00	-	-
D2091	Teachers Service Commission	442,329,000.00	395,329,000.00	391,145,041.80

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Exchequer Issues (KSh.)*
D2111	Auditor General	445,000,000.00	69,000,000.00	33,921,573.30
D2141	National Gender and Equality Commission	10,000,000.00	10,000,000.00	-
	Total Development Exchequer Issues	**458,867,547,964.00**	**351,292,250,486.00**	**156,109,098,248.45**
	Total Issues To National Government	**3,921,373,594,479.71**	**3,797,072,580,044.31**	**2,075,165,538,704.40**

The printed estimates and actuals for National Government exclude Appropriation in Aid (AIA).

Code	*County Governments-Equitable Share*	*Original Estimates (KSh.)*	*Supplementary I Estimates (KSh.)*	*Total Cash Released*
4460	Baringo	6,912,927,952.00	7,081,690,867.00	3,840,338,449.00
4760	Bomet	7,251,128,230.00	7,435,285,006.00	4,627,004,084.00
4910	Bungoma	11,543,041,769.00	11,841,786,703.00	7,367,948,891.00
4960	Busia	7,764,601,080.00	7,966,923,077.00	4,956,709,805.00
4360	Elgeyo/Marakwet	4,987,118,183.00	5,117,018,760.00	2,773,348,671.00
3660	Embu	5,548,094,359.00	5,692,992,441.00	3,085,443,962.00
3310	Garissa	8,555,015,575.00	8,795,568,253.00	4,763,671,217.00
5110	Homa Bay	8,436,080,677.00	8,665,050,745.00	5,389,033,196.00
3510	Isiolo	5,078,735,614.00	5,224,617,690.00	3,247,557,297.00
4660	Kajiado	8,629,255,865.00	8,842,742,946.00	5,504,125,252.00
4810	Kakamega	13,411,035,025.00	13,761,644,563.00	7,458,361,111.00
4710	Kericho	6,962,657,506.00	7,143,558,879.00	4,444,560,624.00
4060	Kiambu	12,713,359,169.00	13,026,386,402.00	8,108,547,569.00
3110	Kilifi	12,554,603,733.00	12,913,485,798.00	6,992,808,619.00
3960	Kirinyaga	5,633,619,143.00	5,775,043,985.00	3,594,195,912.00
5210	Kisii	9,605,604,088.00	9,871,152,503.00	5,347,076,187.00
5060	Kisumu	8,681,516,388.00	8,912,694,311.00	5,544,033,797.00
3710	Kitui	11,244,322,462.00	11,542,680,618.00	6,254,912,976.00
3060	Kwale	8,887,496,757.00	9,158,813,536.00	4,956,306,948.00
4510	Laikipia	5,569,687,183.00	5,708,839,335.00	3,553,140,201.00
3210	Lamu	3,362,798,128.00	3,450,021,585.00	1,869,931,365.00
3760	Machakos	9,914,003,936.00	10,175,682,128.00	6,330,172,928.00
3810	Makueni	8,762,816,136.00	9,018,417,002.00	5,604,875,778.00
3410	Mandera	12,054,974,661.00	12,408,118,180.00	7,711,214,569.00
3460	Marsabit	7,830,334,637.00	8,065,563,537.00	5,011,178,961.00
3560	Meru	10,272,457,095.00	10,543,793,962.00	5,713,858,399.00
5160	Migori	8,661,896,842.00	8,890,446,021.00	5,530,660,180.00
3010	Mombasa	8,141,725,357.00	8,386,990,897.00	5,210,733,117.00
4010	Murang'a	7,753,474,531.00	7,968,423,986.00	4,954,785,877.00
5310	Nairobi City	20,855,390,632.00	21,388,604,740.00	13,309,418,104.00
4560	Nakuru	14,133,795,185.00	14,481,385,282.00	7,852,638,235.00
4410	Nandi	7,604,787,567.00	7,779,137,960.00	4,845,144,261.00
4610	Narok	9,531,074,923.00	9,808,366,926.00	6,095,981,832.00
5260	Nyamira	5,523,614,355.00	5,690,998,939.00	3,079,930,055.00
3860	Nyandarua	6,130,324,412.00	6,295,621,724.00	3,411,056,685.00
3910	Nyeri	6,729,749,120.00	6,913,914,490.00	3,745,538,254.00
4210	Samburu	5,806,692,471.00	5,963,444,433.00	3,231,043,644.00
5010	Siaya	7,545,450,410.00	7,739,781,074.00	4,815,895,576.00
3260	Taita/Taveta	5,229,266,247.00	5,373,939,132.00	3,341,594,546.00
3160	Tana River	7,040,540,708.00	7,241,713,306.00	3,921,491,779.00
3610	Tharaka - Nithi	4,534,480,732.00	4,670,803,484.00	2,901,973,047.00
4260	Trans Nzoia	7,798,593,372.00	7,989,497,394.00	4,332,534,035.00
4110	Turkana	13,653,200,352.00	14,007,437,175.00	7,592,091,010.00
4310	Uasin Gishu	8,766,325,224.00	8,974,531,918.00	4,867,923,611.00
4860	Vihiga	5,457,216,386.00	5,618,168,699.00	3,491,257,159.00
3360	Wajir	10,214,592,219.00	10,508,683,790.00	6,531,915,475.00
4160	West Pokot	6,837,314,170.00	7,002,505,099.00	3,797,728,150.00
	Total Issues -Equitable Share (Note 2:)	**400,116,790,566.00**	**410,833,969,281.00**	**240,911,691,400.00**
	GRAND TOTAL	**4,321,490,385,045.71**	**4,207,906,549,325.31**	**2,316,077,230,104.40**
	Exchequer Balance as at 28.02.2025	**-**	**-**	**2,311,556,433.26**

Note 1: Domestic Borrowing of KSh. 978,299,192,296.17 comprises of Net Domestic Borrowing KSh. 408,406,248,605.17 and Internal debt redemptions (Roll-overs) KSh. 569,892,943,691.00.

Note 2: The initial allocation to Counties with respect to Equitable Share amounted to KSh. 400,116,790,566.00. Following the withdrawal of the Finance Bill, 2024 the County Allocation of Revenue Bill, 2024 was resubmitted to Parliament with Equitable Share of KSh. 380,000,000,000.00. The Revised Estimates (Supplementary I) KSh. 410,833,969,281.00 comprise Equitable Share KSh. 380,000,000,000.00 and arrears for June 2024 KSh. 30,833,969,281.00. The Equitable Share Allocation was revised to KSh. 387,425,000,000.00 as per County Allocation of Revenue Act, 2024. The necessary adjustments will be effected in the Supplementary II Estimates. The County Governments Additional Allocations Bill, 2024 provides for additional allocations to County Governments in FY2024/2025 amounting to KSh. 55,453,732,777.07 to be disbursed through the respective Ministries, Departments and Agencies. The Bill is still under consideration by Parliament.

Dated the 10th February, 2024.

JOHN MBADI NG'ONGO,
Cabinet Secretary for the National Treasury and Economic Planning.

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L.R.A. 42 and issue a land title deed to (1) Josphine Ngina Ngui and (2) Thomas Songole Govedi, and upon such registration the land title deed issued earlier to the said Frank Juba Govedi (deceased), shall be deemed to be cancelled and of no effect.

Dated the 17th April, 2025.

A. W. MARARIA,
Land Registrar, Kajiado North.

MR/6525210

GAZETTE NOTICE NO. 4981

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Sylvester Olang Okeyo, is registered as proprietor of all that piece of land known as North Ugenya/Sega/3803, situate in the district of Ugenya, and whereas the High Court of Kenya at Siaya in has odered that the said piece of land be reverted back to the appellant Sylvester Owino Osundo, and whereas all efforts made to compel the registered proprietor to surrender the land title deed issued in respect of the said piece of land to the land registrar have failed, notice is given that after the expiration of sixty (60) days from the date hereof, provided no objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with the registration of the said instrument of transfer and issue land title deed to the said Sylvester Owino Osundo, and upon such registration the land title deed issued earlier to Sylvester Olang Okeyo, shall be deemed to be cancelled and of no effect.

Dated the 17th April, 2025.

J. O. OSIOLO,
Land Registrar, Ugenya.

MR/6525414

GAZETTE NOTICE NO. 4982

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

CANCELLATION OF GAZETTE NOTICE

WHEREAS Joseph Karuoro Claudio made an application for Reconstruction of Destroyed Land Rregister in respect of L.R. 209/14159 and presented a Grant purportedly registered as I.R. 85892/1 and whereas the office out of misrepresentation issued a Notice of Reconstruction of Destroyed Land Register (L.R.A. 18) which was duly advertised and is contained in Volume CXXVI No. 230, Gazette Notice No. 16969 of 2024 and whereas before reconstrauction of the said register, we established that the Grant that was issued in respect of L.R. 209/14159 was I.R. 87101/1 and not I.R. 85892/1 and the Grant presented during the application is not authentic, Notice is given that the Gazette Notice is cancelled.

Dated the 17th April, 2025.

S. C. NJOROGE,
Registrar of Titles, Nairobi.

MR/6525218

GAZETTE NOTICE NO. 4983

THE LAND ACT

(*No.* 6 *of* 2012)

MENENGAI GEOTHERMAL PROJECT ACCESS ROADS

DELETION AND CORRIGENDA

IN PURSUANCE of the Land Act, 2012 and further to Gazette Notice Nos. 16979 of 2023 and 5293 and 5294 of 2024, the National Land Commission on behalf of Geothermal Development Company (GDC), gives notice that, the National Government intends to delete and correct the following parcels of land required to facilitate access to Menengai Geothermal Project in Nakuru County.

Corrigenda

Title No.	*Registered Owner (s)*	*Approximate Area (Ha.)*
Solai/Kirima Block 2/429 (Maciaro)	William Njoroge Gikuni	0.1100
Solai/Kirima Block 2/75 (Valley Farmers)	Susan Wanjiru Maingi	0.2000

Plan of the affected land may be inspected during office hours at the Office of the National Land Commsiion, Ardhi House, 3rd Floor, Room 305, 1st Ngong Avenue, Nairobi at the County Co-ordinator's Office in Nakuru County.

Dated the 5th March, 2025.

GERSHOM OTACHI,
Chairman, National Land Commission.

MR/6525222

GAZETTE NOTICE NO. 4984

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

STATEMENT OF ACTUAL REVENUES AND NET EXCHEQUER ISSUES AS AT 28TH MARCH, 2025

Receipts	*Original Estimates (KSh.)*	*Revised Estimates (KSh.)*	*Actual Receipts (KSh.)*
Opening Balance 01.07.2024			1,165,472,645.45
Tax Revenue	2,745,218,573,596.33	2,400,723,983,739.21	1,579,435,426,664.20
Non-Tax Revenue	171,979,175,130.02	180,202,849,121.77	122,307,729,296.21
Domestic Borrowing (Note 1)	828,384,133,205.36	1,167,044,112,541.72	731,598,268,573.30
External Loans and Grants	571,221,593,564.00	718,401,161,535.30	314,079,983,182.60
Other Domestic Financing	4,686,909,550.00	8,522,308,315.00	4,442,840,654.70
Total Revenue	4,321,490,385,045.71	4,474,894,415,253.00	2,753,029,721,016.46

RECURRENT EXCHEQUER ISSUES

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary II Estimates (KSh.)*	*Exchequer Issues (KSh.)*
R1011	Executive Office of the President	4,226,290,119.00	4,486,162,672.00	2,064,189,183.05
R1012	Office of the Deputy President	4,572,300,000.00	3,015,252,997.00	1,912,823,893.05
R1013	Office of the Prime Cabinet Secretary	1,140,788,324.00	890,110,705.00	453,698,895.20
R1014	State Department for Parliamentary Affairs	458,283,000.00	338,938,246.00	215,156,625.65
R1015	State Department for Performance and Delivery Management	597,112,861.00	632,750,137.00	412,704,473.20
R1016	State Department for Cabinet Affairs	275,136,014.00	218,672,243.00	157,543,376.90
R1017	State House	7,935,200,000.00	7,964,920,050.00	5,734,834,228.70
R1023	State Department for Correctional Services	34,720,821,616.00	35,745,496,613.00	22,375,217,366.50

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary II Estimates (KSh.)*	*Exchequer Issues (KSh.)*
R1024	State Department for Immigration and Citizen services	8,904,613,872.00	9,054,160,433.00	7,293,975,415.15
R1025	National Police Service	108,771,352,775.00	114,753,785,719.00	74,273,484,727.95
R1026	State Department for Internal Security and National Administration	28,218,704,720.00	34,468,517,079.00	24,911,752,317.10
R1032	State Department for Devolution	1,589,428,367.00	1,470,919,920.00	825,149,388.25
R1036	State Department for the ASALs and Regional Development	4,378,993,586.00	9,616,956,511.00	3,377,984,859.80
R1041	Ministry of Defence	166,120,417,170.00	172,215,661,938.00	116,811,732,929.75
R1053	State Department for Foreign Affairs	20,557,347,602.00	20,786,117,481.00	14,343,485,873.60
R1054	State Department for Diaspora Affairs	828,143,693.00	633,696,665.00	329,362,333.60
R1064	State Department for Vocational and Technical Training	18,335,038,919.00	19,967,362,374.00	15,094,500,427.45
R1065	State Department for Higher Education and Research	75,856,554,444.00	80,698,299,990.00	64,655,585,351.35
R1066	State Department for Basic Education	119,889,562,192.00	116,039,025,768.00	86,918,578,663.45
R1071	The National Treasury	60,543,407,865.00	62,551,409,809.00	45,629,238,510.80
R1072	State Department for Economic Planning	2,700,793,355.00	3,437,369,323.00	2,374,250,366.10
R1082	State Department for Medical Services	41,719,874,385.00	50,972,918,255.00	29,604,104,299.45
R1083	State Department for Public Health and Professional Standards	14,603,555,123.00	19,306,922,035.00	13,252,267,274.25
R1091	State Department for Roads	1,539,891,250.00	1,449,140,931.00	999,973,168.05
R1092	State Department for Transport	2,318,803,728.00	2,666,986,839.00	1,348,310,959.55
R1093	State Department for shipping and Maritime Affairs	419,974,935.00	649,366,147.00	313,743,042.90
R1094	State Department for Housing and Urban Development	1,229,392,681.00	1,366,066,493.00	818,239,248.65
R1095	State Department for Public Works	2,749,978,552.00	3,099,142,270.00	2,037,313,758.70
R1104	State Department for Irrigation	853,382,500.00	1,027,642,419.00	583,967,625.35
R1109	State Department for Water and Sanitation	2,495,338,911.00	2,932,908,098.00	1,767,860,634.20
R1112	State Department for Lands and Physical Planning	3,415,400,000.00	3,368,650,000.00	2,198,193,507.60
R1122	State Department for Information Communications,Technology and Digital Economy	2,065,220,752.00	2,560,154,349.00	1,426,114,941.70
R1123	State Department for Broadcasting and Telecommunications	2,744,410,364.00	3,904,438,061.00	2,885,211,093.55
R1132	State Department for Sports	627,486,404.00	863,810,286.00	391,066,881.50
R1134	State Department for Culture and Heritage	2,327,654,321.00	2,474,885,284.00	1,489,264,377.65
R1135	State Department for Youth Affairs and the Arts	1,706,010,229.00	2,023,555,341.00	1,355,535,965.70
R1152	State Department for Energy	919,434,710.00	979,918,087.00	632,909,829.65
R1162	State Department for Livestock Development.	3,775,304,089.00	3,690,737,448.00	2,021,405,346.05
R1166	State Department for Blue Economy and Fisheries	2,288,795,869.00	2,867,754,460.00	1,549,565,734.60
R1169	State Department for Crop Development	6,739,346,299.00	6,855,457,296.00	5,171,495,217.20
R1173	State Department for Co-operatives	4,582,183,583.00	4,178,408,765.00	1,124,992,660.30
R1174	State Department for Trade	1,476,771,146.00	3,663,732,233.00	892,275,221.10
R1175	State Department for Industry	1,633,906,621.00	2,380,106,327.00	1,314,755,916.05
R1176	State Department for Micro, Small and Medium Enterprises Development	1,108,018,500.00	1,238,846,750.00	730,830,308.25
R1177	State Department for Investment Promotion	603,613,914.00	1,041,056,422.00	456,507,274.25
R1184	State Department for Labour and Skills Development	1,639,429,843.00	1,879,437,895.00	1,072,011,396.05
R1185	State Department for Social Protection and senior citizens Affairs	33,010,825,645.00	33,349,832,733.00	31,818,251,954.55
R1192	State Department for Mining	1,005,898,447.00	1,029,070,257.00	566,363,517.60
R1193	State Department for Petroleum	325,211,883.00	330,558,826.00	208,948,066.05
R1202	State Department for Tourism	555,111,808.00	(336,415,690.00)	301,371,169.40
R1203	State Department for Wildlife	3,934,194,935.00	3,894,375,372.00	1,946,435,102.65
R1212	State Department for Gender and Affirmative Action	1,940,841,404.00	1,847,588,643.00	1,066,831,696.70
R1213	State Department for Public Service	15,421,644,125.00	16,255,313,296.00	11,454,889,247.35
R1221	State Department for East African Community	612,087,899.00	851,713,428.00	584,743,949.90
R1252	The State Law Office	6,255,890,997.00	4,948,276,328.00	3,165,025,251.60
R1261	The Judiciary	22,137,400,000.00	21,894,110,165.00	14,618,323,090.00
R1271	Ethics and Anti-Corruption Commission	4,099,930,000.00	4,135,730,000.00	2,798,556,202.70
R1281	National Intelligence Service	46,351,000,000.00	55,651,000,000.00	43,780,055,215.00
R1291	Office of the Director of Public Prosecutions	3,957,020,000.00	4,169,420,000.00	3,066,326,154.15
R1311	Office of the Registrar of Political Parties	2,037,871,453.00	1,723,814,682.00	1,404,554,569.75

Vote	*Ministries/Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary II Estimates (KSh.)*	*Exchequer Issues (KSh.)*
R1321	Witness Protection Agency	741,192,500.00	723,134,000.00	526,723,687.65
R1331	State Deparment for Environment and Climate Change	2,413,435,109.00	2,416,640,214.00	1,576,288,131.50
R1332	State Deparment for Forestry	4,493,630,000.00	4,650,880,111.00	2,993,080,906.60
R2011	Kenya National Commission on Human Rights	478,074,025.00	483,039,387.00	321,880,155.60
R2021	National Land Commission	1,868,362,679.00	1,958,188,898.00	1,386,030,307.45
R2031	Independent Electoral and Boundaries Commission	3,730,899,680.00	3,847,732,834.00	2,576,353,950.60
R2041	Parliamentary Service Commission	1,167,000,000.00	1,376,266,307.00	772,613,488.60
R2042	National Assembly	26,770,000,000.00	25,710,794,575.00	16,234,374,560.05
R2043	Parliamentary Joint Services	6,547,000,000.00	6,369,382,408.00	5,017,498,741.65
R2044	Senate	8,010,000,000.00	7,766,807,595.00	5,464,208,469.50
R2051	Judicial Service Commission	902,900,000.00	759,095,164.00	441,728,118.30
R2061	The Commission on Revenue Allocation	413,465,304.00	357,072,328.00	273,620,345.80
R2071	Public Service Commission	3,607,230,017.00	3,553,853,354.00	2,408,253,334.60
R2081	Salaries and Remuneration Commission	472,230,922.00	553,760,602.00	225,338,831.40
R2091	Teachers Service Commission	357,115,737,118.00	364,308,286,620.00	261,429,331,232.05
R2101	National Police Service Commission	1,131,272,317.00	1,008,040,920.00	724,865,310.00
R2111	Auditor-General	7,804,770,850.00	7,767,663,830.00	5,160,925,137.10
R2121	Office of the Controller of Budget	738,219,080.00	702,251,897.00	339,214,958.90
R2131	The Commission on Administrative Justice	661,974,500.00	639,821,142.00	427,804,211.35
R2141	National Gender and Equality Commission	425,810,000.00	437,702,500.00	312,020,994.80
R2151	Independent Policing Oversight Authority	1,107,672,060.00	1,108,640,481.00	755,710,535.00
	Total Recurrent Exchequer Issues	**1,348,449,273,960.00**	**1,412,671,072,371.00**	**991,751,705,484.80**

Vote	*CFS Exchequer Issues*	*Original Estimates (KSh.)*	*Supplementary II Estimates (KSh.)*	*Exchequer Issues (KSh.)*
CFS 050	Public Debt	1,910,480,965,745.78	2,042,061,543,246.00	1,085,806,178,038.10
CFS 051	Pensions and gratuities	199,366,132,378.93	223,146,773,734.00	115,138,779,354.55
CFS 052	Salaries, Allowances and Miscellaneous	4,209,674,431.00	23,822,203,592.00	22,358,653,824.65
	Total CFS Exchequer issues	**2,114,056,772,555.71**	**2,289,030,520,572.00**	**1,223,303,611,217.30**

DEVELOPMENT EXCHEQUER ISSUES

Vote	*Ministries / Departments/Agencies*	*Original Estimates (KSh.)*	*Supplementary II Estimates (KSh.)*	*Exchequer Issues (KSh.)*
D1011	Executive Office of Presidenct	1,200,900,000.00	50,000,000.00	-
D1012	Office of the Deputy President	320,400,000.00	-	-
D1013	Office of the Prime Cabinet Secretary		65,000,000.00	
D1017	State House	1,558,700,000.00	400,000,000.00	-
D1023	State Department for Correctional Services	823,025,000.00	110,000,000.00	37,500,571.60
D1024	State Department for Immigration and Citizen services	2,110,200,000.00	1,696,200,000.00	1,673,907,573.95
D1025	National Police Service	1,780,720,000.00	85,000,000.00	-
D1026	State Department for Internal Security and National Administration	7,565,490,000.00	2,870,200,000.00	2,860,200,000.00
D1032	State Department for Devolution	2,653,000,000.00	1,565,750,000.00	514,555,132.00
D1036	State Department for ASALs and Regional Development	7,386,334,000.00	4,670,234,728.00	1,509,710,865.45
D1053	State Department for Foreign Affairs	2,390,100,000.00	-	-
D1064	State Department for Vocational and Technical Training	4,164,600,000.00	1,776,600,000.00	745,620,166.35
D1065	State Department for Higher Education and Research	4,334,640,000.00	647,796,400.00	75,000,000.00
D1066	State Department for Basic Education	19,406,560,000.00	20,032,000,000.00	11,508,404,956.50
D1071	The National Treasury	37,409,465,552.00	28,744,125,046.00	10,865,281,220.85
D1072	State Department of Economic Planning	63,780,240,000.00	70,790,091,681.00	29,954,827,770.00
D1082	State Department for Medical Services	23,535,200,000.00	18,895,892,428.00	7,246,843,616.80
D1083	State Department for Public Health and Professional Standards	5,564,180,000.00	4,859,308,317.00	1,537,602,561.45
D1091	State Department of Roads	73,196,031,868.00	75,741,283,121.00	27,788,757,864.65
D1092	State Department of Transport	5,461,400,000.00	4,309,750,000.00	1,229,614,509.40
D1093	State Department for shipping and Maritime Affairs	574,000,000.00	370,000,000.00	-
D1094	State Department for Housing and Urban Development	22,092,000,000.00	5,749,500,000.00	2,374,229,642.00
D1095	State Department for Public Works	1,209,100,000.00	224,000,000.00	13,333,024.00
D1104	State Department for Irrigation	15,414,780,000.00	12,462,590,000.00	7,424,025,372.45
D1109	State Department for Water and Sanitation	24,291,400,000.00	15,292,961,126.00	5,872,465,646.10
D1112	State Department for Lands and Physical Planning	5,204,136,000.00	1,699,000,000.00	1,615,875,117.35
D1122	State Department for Information	7,007,660,000.00	2,147,700,000.00	1,526,189,602.15

	Communications,Technology and Digital Economy			
D1123	State Department for Broadcasting and Telecommunications	651,900,000.00	-	-
D1132	State Department for Sports	174,400,000.00	-	-
D1134	State Department for Culture and Heritage	162,843,000.00	70,000,000.00	9,961,050.75
D1135	State Department for Youth Affairs and the Arts	2,144,961,000.00	933,359,490.00	230,485,439.85
D1152	State Department for Energy	32,570,400,000.00	16,232,731,352.00	11,297,599,651.60
D1162	State Department for Livestock Development	4,478,450,000.00	4,451,000,000.00	2,216,733,130.75
D1166	State Department for Blue Economy and Fisheries	8,912,930,000.00	8,289,900,000.00	5,242,230,787.80
D1169	State Department for Crop Development	28,250,440,958.00	24,975,346,000.00	18,549,099,340.90
D1173	State Department for Cooperatives	2,346,770,000.00	3,014,000,000.00	2,500,000,000.00
D1174	State Department for Trade	500,000,000.00	290,000,000.00	290,000,000.00
D1175	State Department for Industry	6,366,770,000.00	4,164,570,000.00	1,862,971,736.35
D1176	State Department for Micro, Small and Medium Enterprises Development	7,702,840,000.00	4,326,500,000.00	3,912,399,369.00
D1177	State Department for Investment Promotion	3,605,430,000.00	944,580,000.00	600,000,000.00
D1184	State Department for Labour and Skills Development	1,512,885,400.00	638,210,000.00	55,955,774.80
D1185	State Department for Social Protection and Senior Citizen Affairs	2,189,880,000.00	1,807,621,000.00	1,651,546,885.40
D1192	State Department for Mining	652,260,000.00	-	-
D1193	State Department for Petroleum	375,200,000.00	-	-
D1203	State Department for Wildlife	2,018,000,000.00	125,000,000.00	54,831,000.00
D1212	State Department for Gender and Affirmative Action	3,838,700,000.00	2,825,899,404.00	1,709,803,075.00
D1213	State Department for Public Service	980,500,000.00	403,000,000.00	-
D1221	State Department for East African Community	35,400,000.00	-	-
D1252	The State Law Office	157,000,000.00	157,000,000.00	86,601,437.20
D1261	The Judiciary Fund	1,600,000,000.00	771,600,000.00	570,789,717.00
D1271	Ethics and Anti-Corruption Commission	57,920,000.00	54,700,000.00	29,999,871.00
D1291	Office of the Director of Public Prosecutions	48,500,000.00	46,000,000.00	6,682,416.80
D1331	State Deparment for Environment and Climate Change	1,446,796,186.00	1,674,796,186.00	900,000,616.00
D1332	State Deparment for Forestry	2,472,300,000.00	1,300,000,000.00	1,276,089,707.20
D2021	National Land Commission	147,860,000.00	-	-
D2031	Independent Electoral and Boundaries Commission	24,320,000.00	-	-
D2043	Parliamentary Joint Services	2,065,000,000.00	1,318,109,114.00	981,333,638.80
D2071	Public Service Commission	45,300,000.00	-	-
D2091	Teachers Service Commission	442,329,000.00	795,712,436.00	391,145,041.80
D2111	Auditor-General	445,000,000.00	69,235,200.00	33,921,573.30
D2141	National Gender and Equality Commission	10,000,000.00	-	-
	Total Development Exchequer Issues	**458,867,547,964.00**	**354,933,853,029.00**	**170,834,126,474.35**
	Total Issues to National Government	**3,921,373,594,479.71**	**4,056,635,445,972.00**	**2,385,889,443,176.45**

The printed estimates and actuals for National Government exclude Appropriation in Aid (AIA).

Code	*County Governments-Equitable Share*	*Original Estimates (KSh.)*	*Supplementary II Estimates (KSh.)*	*Total Cash Released (KSh.)*
4460	Baringo	6,912,927,952.00	7,215,693,926.00	4,408,467,589.00
4760	Bomet	7,251,128,230.00	7,573,354,888.00	4,627,004,084.00
4910	Bungoma	11,543,041,769.00	12,059,631,451.00	7,367,948,891.00
4960	Busia	7,764,601,080.00	8,112,982,999.00	4,956,709,805.00
4360	Elgeyo/Marakwet	4,987,118,183.00	5,210,848,408.00	3,183,620,904.00
3660	Embu	5,548,094,359.00	5,797,242,036.00	3,541,885,222.00
3310	Garissa	8,555,015,575.00	8,950,347,059.00	5,468,359,230.00
5110	Homa Bay	8,436,080,677.00	8,820,550,663.00	5,389,033,196.00
3510	Isiolo	5,078,735,614.00	5,315,430,193.00	3,247,557,297.00
4660	Kajiado	8,629,255,865.00	9,009,031,165.00	5,504,125,252.00
4810	Kakamega	13,411,035,025.00	14,013,515,558.00	8,561,703,939.00
4710	Kericho	6,962,657,506.00	7,274,716,308.00	4,444,560,624.00
4060	Kiambu	12,713,359,169.00	13,271,899,667.00	8,108,547,569.00
3110	Kilifi	12,554,603,733.00	13,138,579,633.00	8,027,245,325.00
3960	Kirinyaga	5,633,619,143.00	5,882,890,697.00	3,594,195,912.00
5210	Kisii	9,605,604,088.00	10,046,523,652.00	6,138,072,295.00
5060	Kisumu	8,681,516,388.00	9,074,271,364.00	5,544,033,797.00
3710	Kitui	11,244,322,462.00	11,752,326,679.00	7,180,220,233.00
3060	Kwale	8,887,496,757.00	9,312,139,711.00	5,689,466,918.00
4510	Laikipia	5,569,687,183.00	5,815,695,031.00	3,553,140,201.00

Code	*County Governments-Equitable Share*	*Original Estimates (KSh.)*	*Supplementary II Estimates (KSh.)*	*Total Cash Released (KSh.)*
3210	Lamu	3,362,798,128.00	3,513,418,983.00	2,146,557,994.00
3760	Machakos	9,914,003,936.00	10,361,006,562.00	6,330,172,928.00
3810	Makueni	8,762,816,136.00	9,173,745,326.00	5,604,875,778.00
3410	Mandera	12,054,974,661.00	12,621,274,707.00	7,711,214,569.00
3460	Marsabit	7,830,334,637.00	8,201,982,024.00	5,011,178,961.00
3560	Meru	10,272,457,095.00	10,735,750,187.00	6,559,127,314.00
5160	Migori	8,661,896,842.00	9,052,392,398.00	5,530,660,180.00
3010	Mombasa	8,141,725,357.00	8,528,596,411.00	5,210,733,117.00
4010	Murang'a	7,753,474,531.00	8,109,770,075.00	4,954,785,877.00
5310	Nairobi City	20,855,390,632.00	21,784,477,445.00	13,309,418,104.00
4560	Nakuru	14,133,795,185.00	14,754,472,473.00	9,014,333,105.00
4410	Nandi	7,604,787,567.00	7,930,493,763.00	4,845,144,261.00
4610	Narok	9,531,074,923.00	9,977,563,666.00	6,095,981,832.00
5260	Nyamira	5,523,614,355.00	5,786,724,115.00	3,535,529,055.00
3860	Nyandarua	6,130,324,412.00	6,409,000,509.00	3,915,661,091.00
3910	Nyeri	6,729,749,120.00	7,037,436,120.00	4,299,620,073.00
4210	Samburu	5,806,692,471.00	6,070,774,588.00	3,709,018,159.00
5010	Siaya	7,545,450,410.00	7,882,514,002.00	4,815,895,576.00
3260	Taita/Taveta	5,229,266,247.00	5,469,372,732.00	3,341,594,546.00
3160	Tana River	7,040,540,708.00	7,367,974,537.00	4,501,592,837.00
3610	Tharaka - Nithi	4,534,480,732.00	4,749,766,134.00	2,901,973,047.00
4260	Trans Nzoia	7,798,593,372.00	8,140,487,291.00	4,973,476,662.00
4110	Turkana	13,653,200,352.00	14,264,799,101.00	8,715,220,095.00
4310	Uasin Gishu	8,766,325,224.00	9,146,485,411.00	5,588,077,577.00
4860	Vihiga	5,457,216,386.00	5,714,284,578.00	3,491,257,159.00
3360	Wajir	10,214,592,219.00	10,691,090,724.00	6,531,915,475.00
4160	West Pokot	6,837,314,170.00	7,135,644,331.00	4,359,555,626.00
	Total Issues -Equitable Share (Note 3)	**400,116,790,566.00**	**418,258,969,281.00**	**255,540,469,281.00**
	GRAND TOTAL	**4,321,490,385,045.71**	**4,474,894,415,253.00**	**2,641,429,912,457.45**
	Exchequer Balance as at 28.03.2025(Note 2)	-	-	111,599,808,559.01

Note 1: Domestic Borrowing of KSh. 1,167,044,112,541.72 comprises of Net Domestic Borrowing KSh. 597,151,168,850.72 and Internal Debt Redemptions (Roll-overs) KSh. 569,892,943,691.00.

Note 2: The Closing balance includes an amount of KSh. 110,032,544,825.90 being proceeds from Eurobond issuance.

Note 3: The initial allocation to Counties with respect to Equitable Share amounted to KSh. 400,116,790,566.00. Following the enactment of the County Allocation of Revenue Act, 2024, the Equitable Share Allocation was revised to KSh. 387,425,000,000.00. The Revised Estimates KSh. 418,258,969,281.00 comprise Equitable Share KSh. 387,425,000,000.00 and arrears for June 2024 KSh. 30,833,969,281.00. The County Governments Additional Allocations Bill, 2024 provides for additional allocations to County Governments in FY2024/2025 amounting to KSh. 55,453,732,777.07 to be disbursed through the respective Ministries, Departments and Agencies. The Bill is still under consideration by Parliament.

Dated the 9th April, 2025.

JOHN MBADI NG'ONG'O,
Cabinet Secretary, The National Treasury and Economic Planning.

GAZETTE NOTICE NO. 4985

THE COUNTY GOVERNMENTS ACT

(*No.* 17 *of* 2012)

THE TAITA TAVETA COUNTY TAX WAIVERS ADMINISTRATION ACT, 2013

COUNTY GOVERNMENT OF TAITA TAVETA

WAIVER ON UNPAID LAND RATES

NOTICE is given that the County Executive Committee Member for Finance and Economic Planning, in exercise of the powers conferred by sections 5 and 6 of the Taita Taveta County Tax Waivers Administration Act, 2013, and with the written concurrence of the Governor, shall grant a 40% waiver on all unpaid land rates, provided that the remaining 60% of the outstanding principal is paid in full on or before the 30th May, 2025.

This waiver is aimed at encouraging compliance among defaulting ratepayers, facilitating recovery of outstanding revenues for county development, and ensuring a smooth transition to the new valuation roll by regularizing ratepayer accounts.

Dated the 11th April, 2025.

ELIJAH M. MWAZO,
CECM, Finance and Economic Planning.

MR/6525386

GAZETTE NOTICE NO. 4986

THE CONSTITUTION OF KENYA

THE PUBLIC FINANCE MANAGEMENT ACT

(*No.* 18 *of* 2012)

THE MOMBASA COUNTY TAX WAIVER AND VARIATION ACT

(*No.* 2 *of* 2017)

COUNTY GOVERNMENT OF MOMBASA

WAIVER ON PENALTIES AND INTERESTS ON LAND RATES AND SINGLE BUSINESS PERMIT

NOTICE is given that pursuant to the powers conferred by Article 210 of the Constitution of Kenya, section 159 of the Public Finance Management Act, 2012 and sections 6 and 7 of the Mombasa County Tax Waiver and Variation Act, 2017 and all other enabling laws and upon obtaining concurrence from the Governor of Mombasa County, the County Executive Committee Member Finance, do waive all penalties and interest on Land Rates and Single Business Permit. This notice takes effect from the 14th April, 2025 to the 14th May, 2025.

Dated the 11th April, 2025.

EVANS OANDA,
CECM,
Finance and Economic Planning.

MR/6525458