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The Conception of Odious Debt in Uganda: A critical Review

by

Musa Idi Menya

ORCID: 0009-0003-6521-3488

E-mail: menyaidi@gmail.com

Department of International Law,

Faculty of Law

Istanbul University,

Istanbul Türkiye

Abstract

This article critically explores the doctrine of odious debt within the framework of international law and its applicability to Uganda's contemporary debt crisis. Originating from Alexander Sack's 1927 thesis, odious debt refers to liabilities incurred by illegitimate regimes without public consent and used against national interests. The doctrine, though morally compelling, lacks firm grounding in customary international law and has not been codified in major treaties like the 1983 Vienna Convention. Despite sporadic references in historical cases—such as Costa Rica's Tinoco arbitration and Iraq's post-war debt restructuring—the odious debt doctrine remains largely a political tool rather than a legal norm. Uganda's mounting public debt, now exceeding $31.5 billion and 52% of GDP, illustrates a practical context for odious debt discourse. Much of this debt is attributed to unaccountable borrowing, corruption, and fiscal mismanagement, with limited tangible benefits for the population. The article argues that some of Uganda's debt may meet the odious debt criteria, particularly in light of increasing domestic liabilities and controversial foreign lending practices. The paper advocates for the formalization of the odious debt doctrine through national legislation or international soft law mechanisms, emphasizing its alignment with human rights, equity, and democratic governance. By drawing from global precedents and Uganda's debt experience, the study recommends enhancing fiscal transparency, legal accountability, and international cooperation to prevent exploitative lending and ensure sustainable sovereign financing. Uganda's case presents an urgent call to revisit and institutionalize the odious debt concept as both a legal and moral imperative in global financial governance.

Key words: Odious Debt, International Law, Uganda, Debt Sustainability

An Overview of the Concept of Odious Debt

The modern concept of odious debts was first articulated in the post-World War I context, by the jurist Alexander Nahun Sack, in his 1927 book *The Effects of State Transformations on their Public Debts and Other Financial Obligations*. For Sack, odious debts were debts contracted and spent against the interests of the population of a State, without its consent, and with full awareness of the creditor[1]. Sack continued

[1] Robert Howse, **"The Concept of Odious Debt In Public International Law".** University of Michigan Law School Press, 2007, p.6

classifying odious debt into three types: war debts, conquered or imposed obligations, and regime debts respectively.[2] An odious debt described any debt contracted for purposes that do not conform or comply with customary international law and, in particular, the principles of international law embodied in the Charter of the United Nations.[3] This specific subset of sovereign debt is separate from such issues as unsustainable debts incurred by democratic or quasi-democratic developing countries, or debts incurred by nondemocratic regimes for legitimate public ends[4]. The concept of odious debt includes all money borrowed by dictators from foreign creditors that is then either spent on illegitimate ends, such as repressing the country's population, or simply looted and deposited into the private offshore bank accounts of the ruling class[5].

Like many concepts in international law, the concept of odious debt has been shaped by multiple normative sources: formal concepts of sovereignty and statehood have been influential and so have notions of political justice and accountability, as well as ideas of fair dealing and equity in contractual relations. In recent and contemporary treatments of odious debt, human rights elements have attained importance as they have more generally in thinking about problems of transitional justice[6] . However, to understand properly the normative foundations of the concept of odious debt, it is necessary to bear in mind that it constitutes a *limitation* on the international legal obligation to repay state-to-state debts. This obligation has generally been articulated as based on the notion of *pacta sunt servanda*, the requirement that States honour their agreements with one another. However, the concept of *pacta sunt servanda* concerns treaties, that is to say, state-to-state agreements that evidence the intent of the States in question to be bound in *international* law[7]. When States enter into loan contracts with other States, they intend that the obligations in question be international law obligations, private law obligations or both. The limitation of the *pacta sunt servanda* concept for settling the issue of continuity of

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[2] Alexander Nahum Sack, **Les Effets Des Transformations Des ´Etats Sur Leurs Dettes Publiques Et Autres Obligations Financi `** Eres [The Effects of State Transformations on Their Public Debts and Other Financial Obligations],1927, p.48

[3] Mohammed Bedjaoui (Special Rapporteur of the Int'l Law Comm'n**), Ninth Rep. on the Succession of States in Respect of Matters Other than Treaties,** 129, U.N. Doc. A/CN.4/301 and Add.1 (Apr. 13 and 20, 1977), p.13

[4] Jonathan Shafter, **The Due Diligence Model: A New Approach to the Problem of Odious Debts,** 2007, pp 49.

[5] **Ibid.**

[6] Robert Howse, **Ibid**, p.8.

[7] Ruti Teitel, "**Transitional Justice Genealogy, Symposium: Human Rights in Transition**", Harvard Human Rights Journal, Vol. 16, 2003, p. 15,

debt obligations became clear early on when both theorists and state practitioners grappled with the problem of state succession[8].

The odious debt concept does not create an *obligation* in all circumstances to repudiate the debt in question. Instead, when the creditor *chooses* to invoke the doctrine, it can provide one kind of normative and legal foundation for a transitional solution that includes debt reduction. For example, it is not inconsistent with the concept of odious debt that this transitional solution includes partial repayment of such debt. In some transitional situations, the best option for reasons of economic and financial stability could be to continue to pay all debt, even if it is odious. Cheng suggests that the odious debt concept somehow would require that a debtor assert the non-enforcement of all the debt in question[9]. However, in reality, rather than repudiating debt, a debtor State might invoke concerns of odious debt in negotiations with its creditors in order to reach compromise that promotes financial stability and future access to credit. Parties often hold back from the exercise of their full legal rights and obligations for pragmatic reasons, including reputation effects and an interest in maintaining relationships[10]. This does not mean that the rights and obligations are lesser or that their existence does not have an important bearing on the negotiated outcome. It would be mistaken to cite cases where the debt was arguably odious, but the outcome was an adjustment rather than the elimination of obligations, as evidence that state practice does not support the existence of the odious debt concept as customary international law. While some debts may be considered odious, the resolution of such cases through adjustment, rather than complete cancellation, does not necessarily negate the potential for odious debt to be recognized as a part of customary international law in the future. Transitional or successor regimes may, in some contexts, give amnesties and pardons to human rights violators in the previous regime where this is desirable for purposes of reconciliation and building a successful democracy[11]. Similarly, transitional regimes may also decide to continue relationships with financial institutions that had odious dealings with the previous regime when the economic and financial stability of the transition suggests such a course of action.

At the same time, it is not fatal to the concept of odious debt that, in state practice, one rarely sees *all* the considerations or aspects of transitional justice in debt obligation that

[8] Robert Howse, **Ibid,** p.7.
[9] Tai-Heng Cheng, **Renegotiating the odious debt doctrine**, Forthcoming Duke L. & Contemporary Problems., 2007, p.8
[10] Robert Howse, **Ibid**, p.39.
[11] Daron Acemoglu and James A. Robinson, **"Economic Origins of Dictatorship and Democracy"**, New York, Cambridge University Press, 2005, p,49

have been regrouped under the notion of odious debt operating in the same situation. Cheng, rather like Daron, seeks to explain away state practice supporting the relevance of odiousness to the obligation to repay by suggesting that practices related to war debts and decolonization are irrelevant to the concept of odious debt, one overlooks historical contexts where such debts were considered unjust or illegitimate. The idea of odious debt often ties back to situations where a regime incurs debt that does not benefit the people but rather serves the interests of a corrupt or oppressive government. While the resolution of war debts and debts incurred during decolonization may not have directly eliminated obligations, they still contribute to the broader understanding of how debt legitimacy and international law intersect.

The normative considerations, according to Cheng, are entirely different[12]. However, one of the central considerations with respect to war debts is that the debt cannot be considered as beneficial to the postwar Successor State and its population, which is clearly one consideration that is involved in the determination of odiousness. Similarly, it is certainly the case that the oppressive nature of the prewar or colonial regime has been a factor in justifying a refusal to pay war debts or debts incurred in colonial situations, and this of course highlights another aspect of odiousness. International law experts such as Basaran, defined the concept of odious debt as a legal and moral concept in international law that refers to sovereign debt incurred by a regime for purposes that do not serve the best interests of the nation and that the population did not consent to.[13] The concept suggests that such debt is illegitimate and should not be enforceable or repayable by the succeeding government, especially after a regime change. As a matter of principle, governments inherit the debts of prior governments. The perpetual debtor is the legal person of the state, while government is the temporary representative of the state. As long as the legal personality of the state continues, the debt of the state continues, too. The change of government does not make any difference to the external indebtedness of the state and this is the position of public international law[14].

Whereas Anna in his publication titled, *Odious, Not Debt* revealed that the notion of odious debt has been a topic of debate for a long time but positive international law does not deem the invocation of odious debt valid; the idea of odious debt has failed to take

[12] Robert Howse, **Ibid**, p.16.

[13] HalilRahman Basaran, **Odious Debt in International Law: A Legal and Moral Perspective**, Oxford University Press, 2020.

[14] Halil Rahman Basaran, "**Odious Debt**". Liverpool Law Review, 2023, 6(4):137–155. Accessed: 3/9/2024: https://doi.org/10.1007/s10991-023-09322-0

root in international law. Indeed, there is still no treaty on odious debt and it is difficult to argue for a customary norm of odious debt in international law due to the lack of regular practice in respect of odious debt[15]. Although the sole arbitrator, in his award, did not use the term "odious debt", he held that the debts incurred for the personal interest of the previous Costa Rican government members would be invalid and that it would not bind the subsequent governments. Apart from the Tinoco arbitration, there is still no any other case that has been decided by an international court or tribunal on the basis of the 'odiousness' of an external sovereign debt[16].

Odious debt is a moral issue**,** as it is manifestly unfair to demand that a population repay what are basically the personal debts of its former captors—loans that were in many cases used to actually fund the machinery of public repression. However, it is crucial to disclose that the principles of odious debt offer a moral basis for terminating, entirely or partially, the continuation of legal obligations in cases where the debt was taken out and utilized in ways that were detrimental to the general public's interests. As a result, the debt is typically modified or cancelled during political changes, partly because of the belief that the debt did not help the country's citizens or was even used against them.[17] According to existing literature, odious debt first came into existence when the United States declined to take on the debts that Spain had accumulated when it relinquished control of the Philippines, Puerto Rico, Cuba, and other territories in the late nineteenth century following the well-known Spanish-American War.[18] The United States claimed that the debt Spain was attempting to pass on after trading colonial rule was not contracted for the benefit of the Cuban people, and in fact was hostile to their interests. As a result, the United States bore no obligation to honor it. Although Spain maintained the position that the sovereign who gains the benefits of ruling also bears the burdens of assuming its debts, the United States eventually prevailed.[19]

There have been a few repudiations or cancellations of external sovereign debt that seem to hint at or allude to the notion of odious debt. However, the role of public international

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[15] Anna Gelpern, **"Odious, Not Debt",** Law and Contemporary Problems, 2007, p,74

[16] Robert Howse, **Ibid**, p.38.

[17] Natasha L. Bannan, **Puerto Rico's Odious Debt**: The Economic Crisis of Colonialism, 19 CUNY L. Rev. 287, 2016, p.38

[18] Paul B. Stephan, **The Institutionalist Implications of an Odious Debt Doctrine**, 70 L. & CONTEMP. PROBS. 213, 219–20, 2007, p.83

[19] Chris Jochnick, **The Legal Case for Debt Repudiation, in Sovereign Debt At The Crossroads**: Challenges And Proposals For Resolving The Third World Debt Crisis, (Chris Jocknick & Fraser A. Preston eds., 2006), p.61

law in these cases is not certain. Rather, they seem to have been sporadic political cases[20]. For instance, in 1918, the Soviet Union successfully repudiated all government debt purportedly odious debt issued by the former Tsarist regime of Russia. Whereas in 1986, the Soviet Union made an agreement with the United Kingdom (UK) to settle the Russian external debt. The British holders of Russian government bonds were able to receive about ten percent of the value of bonds. And, the French holders of Tsarist Russian government bonds could receive only one percent. The French state, at the time of the 1918 Soviet Russian repudiation of the debt, held a considerable amount of Russian Tsarist gold and the French state seized this gold[21].

Consequently, the 1996 deal was made partially thanks to factoring in the liquidation of that Russian gold. Indeed, today, the French bondholders still demand the outstanding due. Russia responds that the French government did not compensate its citizens with the proceeds of the French-Russian deal. Arguably, repudiations and cancellations of sovereign debt are primarily political matters, as exemplified by the repudiation of debt by Soviet Russia following the 1917 revolution. This act of repudiation was a politically motivated decision, reflecting the new regime's rejection of the debts incurred by the previous government, which it deemed illegitimate. Such decisions often have broader implications on international relations and can set precedents for how sovereign debt is managed or contested in political contexts. Public international law does not play a role in that respect[22]. Whereas, Feibelman further added that odious debt's controversial and largely theoretical concept in international law that argues for the repudiation of debt incurred by illegitimate regimes for purposes that do not benefit the population. While it has moral and ethical appeal, its application is challenging, and it remains outside the formal legal framework of international debt law[23].

The concept of odious debt is shaped by a number of international legal standards, all of which apply to Puerto Rico. Under the notion of odious debt, strict adherence to conventional contract law and creditor/debtor lending rules gives way to more equitable considerations. These factors include encouraging fairness and equality, defending human rights, establishing and advancing democracy and democratic movements, and

[20] Matthias Goldmann, "**Sovereign Debt Crises as Threats to the Peace**: Restructuring under Chapter VII of the UN Charter", Goettingen Journal of International Law, 2012, p.113
[21] See Halil Rahman Basaran, 2023, p.140
[22] Basaran, **Ibid**, 2023, p.150.
[23] Adam Feibelman, **"Contract, Priority, and Odious Debt".** North Carolina Law Review, 2007.

developing procedures for genuine civic engagement.[24] In Puerto Rico, where the economic crisis had led to a foreclosure and housing crisis, increased crime and violence, forced migration, and abnormally high levels of poverty and unemployment, the importance of taking human rights into account when taking on and repaying debt is especially evident. Due to the outstanding debt, millions have been affected by public service cuts and austerity measures.[25]

As a result, there has been limited chance to decide allegations of odious debt in a domestic setting since the conclusion of the Spanish-American War in 1898. However, because it is rarely used as a defense against contract enforcement, odious debt has not gained much traction in domestic practice. The United States created the idea of odious debt more than a century ago, but it has consistently supported creditors' positions in talks with sovereign debtors that are in default since World War II. As of right now, any treaty or law does not expressly cover this defense, and neither contemporary arbitral tribunals nor domestic courts in any nation have accepted it.[26] Conversely, contract law is grounded in common law, and as such evolves with the facts, law, and equitable principles presented in each case; therefore, odious debt and other equitable remedy doctrines develop over time.

A comparable concept in the context of international human rights is customary international law, which is a corpus of law created by the accumulation of rulings, standards, and principles in national, regional, and global fora. It encompasses states' general and regular practices as well as the sense of legal duty that obligates them to follow such rulings and actions. Since odious debt is a remedy at equity rather than at law and because successor nations do not consistently assume the debt of prior regimes, it is still up for question whether or not it is considered to be a part of customary international law. That does not, however, always lessen the odiousness of debt.[27] The doctrine should not be disregarded or its expression discouraged due to contrary or even insufficient governmental behavior, nor should requirements that are considered offensive be enforced in domestic forums. Conventional wisdom and state policy acknowledge that

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[24] Adam Feibelman, **Ibid.**

[25] Ed Morales, **The Roots of Puerto Rico's Debt Crisis and Why Austerity Will Not Solve It**, NATION (May 8, 2025), http://www.thenation. Com/article/the-roots-of-puerto-ricos-debt-crisis-and-why-austerity-will-not-solve-it/[https://perma.cc/QAH5-QR3Z].

[26] 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, 1247–53, 2004, p.361

[27] Robert K. Rasmussen, **Sovereign Debt Restructuring, Odious Debt, and the Politics of Debt Relief**, 70 L. & CONTEMP. PROBS. 249, 252, 2017, p.15

debt has resulted in odiousness judgments in a wide range of legal and political circumstances. Therefore, stringent requirements, clauses, or situations are not required to support the non-enforcement of debt obligations.[28] The United States has consistently recognized debt repudiation by various states outside the traditional scope of despotic dictatorships.

The Application of the Odious Debt Concept

The original context in which the issue of odiousness of debt became salient was that of state succession, i.e. where the international legal personality of the State that contracted the debt has been eliminated or transformed[29]. It is fairly obvious that in cases of state succession, the issue of the future of debt obligations must be addressed, since the debtor as a legal person has ceased to exist. The fact that this has been the predominant traditional context in which the odiousness of debt has arisen as an issue has been interpreted in some instances as suggesting that the doctrine of odious debt applies only in cases of state succession and not other kinds of political transition, such as regime change. This was the assumption of the Iran Claims Tribunal, as noted above. However, strictly speaking, the Iran Claims Tribunal's remark may be viewed as obiter *dictum* For example, if a judge discusses a point of law that is unrelated to the actual case at hand, or offers a hypothetical scenario, those remarks are considered dicta. Only the legal findings that directly address the issues in the case form the binding portion of the decision, known as the **ratio decidendi**. Since the Tribunal explicitly stated that it was not going to pronounce on the odious debt doctrine as a matter of law. Both O'Connell and Brownlie challenge the assumption that the odious debt doctrine is limited to state succession[30].

Although state succession and regime change raise different issues from the perspective of international legal personality, these differences nevertheless do not lessen the extent to which there are common normative challenges of transitional justice[31] As discussed above, part of the confusion concerning the application of the odious debt doctrine to government succession arises from the way that some governments have disclaimed debt they considered odious on the purported legal ground that government succession

[28] Sara Ludington et al., **Applied Legal History: Demystifying the Doctrine of Odious Debt**, 11 Theoretical Inquiries, L.247, 248–49, 2010, p.38.

[29] An example of State succession would be the dissolution of the former Yugoslavia or Soviet Union and the establishment of several new States on the same territory.

[30] Ashfaq Khalfan, Jeff King and Bryan Thomas, "**Advancing the Odious debt doctrine**", Center for International Sustainable Development Law, Working Paper COM/RES/ESJ, 11 March, 2003, p.47

[31] See, Ruti Teitel, 2003, p, 48

eliminates the obligation to repay. This is contrary to the default rule of continuity of legal obligations in government succession. But it does not follow that the rejection of such claims by the international community is a rejection of odiousness of debt as a basis for non-enforcement. It is instead a rejection of government succession *per se* or *in itself* as a basis for discharge of the obligation to repay. For example, the notion that a political revolution necessarily discharges the obligation to repay debt incurred by the previous regime has sometimes been advanced after regime change. Such a notion is certainly far too broad and in tension with the current default rule in international law that government succession does not alter or eliminate a State's international obligations, i.e. government change does not change international legal personality[32].

However, as a default rule, this doctrine is entirely consistent with the notion that considerations of odiousness of debt may affect the obligation to repay after a political transition that does not entail state succession. According to one expert, "When Chief Justice William Taft sat as arbitrator in Great Britain v. Costa Rica …he could not rely on the doctrine of odious debt because Costa Rica did not undergo state succession. Instead, Taft confirmed the international rule in existence at that time that government succession does not terminate preexisting state debts because the identity of the State is unchanged"[33]. On the other hand, Taft's opinion could be interpreted differently: it was precisely because the default rule was that government succession does not terminate preexisting state debts that Taft went on to consider whether, despite that default rule, odiousness might nevertheless be a basis for non-enforcement; and Taft's answer was yes.

In recent articulations of the concept of odious debt, one of the conditions for the characterization of debt as odious and eligible for repudiation is that the creditor at the time at which the loan contract was made knew, or should have known, that the debt was odious, i.e. that the funds were intended for a purpose contrary to the interests of the population. Proving subjective knowledge of this kind is in many instances a difficult proposition, although in some cases the likelihood of such knowledge is virtually obvious (Tinoco). Short of actual subjective knowledge, the notion that the lender ought to have known the intent of the debtor raises the issue of the nature and extent of the burden imposed on creditors to take positive steps to inform themselves of the purposes of the loan, and to assess the credibility of assertions of borrower state officials in that respect [34].

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[32] See, Robert Howse**,** 2007**,** p.20

[33] See, Cheng, 2007, p, 20–21

[34] See Ashfaq Khalfan, Jeff King and Bryan Thomas, 2003, p.14.

According to Professor Ernst H. Feilchenfeld, there are two potential instances of state succession in which the debt had not passed. These were the failed passing of the Cuban debt to the U.S. in connection with the Spanish-American War and the failed passing of the Prussian debt relating to the forced colonization of Polish lands under the Treaty of Versailles. Nevertheless, in both cases, Feilchenfeld highlighted that there had been a benefit for the population. With regard to this point, in his work on state succession, Professor Daniel O'Connell highlighted that the position of the U.S. commissioners during the negotiations for the peace treaty with Spain was influenced by doctrines relating to the self-determination of the American continent, while the non-passing to Poland of the debt incurred by Germany for the forced colonization of the Polish lands was justified on the basis of the intrinsic wrongfulness of that debt[35].

There are no obvious international legal rules that establish an appropriate standard for creditor behavior in this respect: however, the general principles of law of "civilized nations" are a valid source of international law, and are drawn from the common repository of the world's main legal systems. Along these lines, notions of responsibility in contractual negotiations, originally derived from domestic legal contexts, may evolve into general principles that help fill gaps in international legal materials. These principles, while rooted in national legal systems, can serve as guiding frameworks in international agreements, where formal legal structures may be less established or uniform. This dynamic allows for greater consistency in how states and other international actors approach issues such as liability, obligations, and enforcement. For example, in some domestic legal systems and in some circumstances, agency law places a duty of diligence on a third party or creditor in ascertaining whether an agent, the debtor State is exceeding its authority. This agent only has authority to act for the benefit of his principal, the population to which it owes a fiduciary duty. The very power of making binding commitments on behalf of another is considered to carry with it special responsibility for acting in the interests of that person[36].

Based on the agency concept, a regime's reputation for exploiting and oppressing its own people may place on the lender a higher burden to satisfy itself that the proceeds of the borrowing are benefiting the principal (the country) and not just the agent. The legal

[35] Mauro Megliani, **The Odious Debt Doctrine: The Equitable Rule**: German Law Journal (2024), 25, pp. 772–796, Milan, 2024, p.772-3.

[36] Harald Finger, Mauro Mecagni, "**Sovereign Debt Restructuring and Debt Sustainability**: An Analysis of Recent Cross-Country Experience" International Monetary Fund, Washington Dc, 2007, p.163

analysis allowing for the piercing of the corporate veil on situations of abuse by a controlling shareholder, can also be adapted to the legal analysis of sovereign States. A court may be able to fashion a remedy to allow a creditor to recover from an abusing shareholder in the corporate context, or a State to avoid debts contracted by a collusive lender and corrupt government officials in the sovereign context. Even if a loan is assigned to a third party who had no knowledge of, for example, corruption or bribery contrary to the United States Foreign Corrupt Practices Act 1977, the law relating to the assignment of contractual rights provides that the borrower can raise the same defences against the assignee[37]. The assignee never gets a better right than the assignor had. In general, the domestic law of contract may provide ample room for a judge or adjudicator to balance the equities in a case involving illegal behaviour of one or more of the parties to the transaction. Examples include applying the principle of unjust enrichment (one cannot receive a benefit at another's expense without conferring a reciprocal benefit), abuse of right, there is some authority for the notion that abuse of rights is a general principle of law. There is some authority for the notion that the abuse of rights is a general principle of law. This principle suggests that rights cannot be exercised in a manner that is contrary to their intended purpose or in a way that causes harm or injustice to others. It has been recognized in both domestic legal systems and international law as a safeguard against the misuse of legal entitlements, ensuring that legal rights are not exploited to undermine fairness or violate the rights of others. Therefore, one cannot exercise one's rights in an excessive or abusive manner, such that it harms the rights of others, restitution, among others[38].

The concept of odious debt, where applied on a case-by-case or loan-by-loan basis, depends on the notion that a particular loan was used for a purpose contrary to the interests of the people of the sovereign in question. However, it is clearly arguable that loans that are used for a non-odious purpose may indirectly contribute to odious purposes, in that the sovereign is enabled to free other funds that would otherwise be needed for non-odious purposes and put them to odious purposes. There is thus a conceptual argument for declaring "odious" a proportion of all loans to an oppressive regime that was spending money on odious purposes, whether or not a connection can be established between any particular loan and an odious purpose. Such an approach almost necessarily implies a political action, either unilateral or negotiated, rather than a case-by-case

[37] Robert Howse, **Ibid**, p.19.
[38] See, Robert Howse, 2007, p.21

litigation of individual loan contracts. Moreover, whether, in the absence of the loan(s) in question, an oppressive regime would have chosen to spend other available funds on non-odious rather than odious purposes is, of course, a counterfactual that is very difficult to prove as a fact in a litigation context. Oppressive regimes often will avoid what would appear to be even the most essential spending on legitimate public purposes in order to deploy funds to oppressive goals or purposes contrary to international law[39].

The Legal Foundation and International Perspective on Odious Debt

The doctrine of odious debt was neither acknowledged in the 1983 Vienna Convention nor formalized as a customary norm despite the proposal advanced by Professor Badjaoui to insert it in the text of the Convention as it was not acknowledged by the delegates of the participating states.

According to Article 38 of the International Court of Justice Statute, odious debt is "a general practice accepted as law." Two methods have emerged in relation to the psychological aspect, while the International Court of Justice (ICJ) has held that nations must use the material factor consistently and uniformly. First, it is possible to deduce the existence of this factor from prior rulings, the literature, or the extremely broad practice. Second, it must be successfully demonstrated that this element exists[40]. However, with reference to the phenomenon of state succession, since 1945, practice has not recorded significant instances of non-passing debt based on the odious debt doctrine. There is an exception, perhaps, of the debts relating to the Dutch administration of Indonesia (1949) and the French administration of Algeria (1962).[41]

The matter pertains to treaty law and was raised in the draft provisions on state debt succession. Professor Bedjaoui identified two definitions of odious debt in his Report on the Non-Transferability of Odious Debt: debt contracted by the antecessor state for purposes that are against the major interests of the successor state or the transferred territory, and debt contracted for purposes that are not in accordance with international law, specifically the United Nations' principles[42]. With specific reference to this second point, Professor Bedjaoui emphasized that, in terms of ethics, the odiousness of a debt

[39] Jeff A. King, "**Odious Debt: The Terms of the Debate**", North Carolina Journal Of International Law, 2007.
[40] Mauro Megliani, **Mozambican Illegal Debts: Testing the Odious Debt Doctrine**, Vanderbilt Law Review, 1637, 2021, p.73
[41] 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, p.92
[42] **Ibid.**

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.[43] The obvious result of proving that a debt is repugnant is that it is not transferred to the succeeding state. Professor Bedjaoui made a distinction between subjugation debt and war debt in relation to this. Subjugation debt included the Spanish debt guaranteed by Cuban income and the German debt incurred for the colonization of Polish territories; war debt included the debt incurred by the Boer Republic to resist Britain and the debt committed by the German Empire following the start of World War I. 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.[44]

The odious debt doctrine was raised before the Iran-United States Claims Tribunal in relation to the enforceability of a contract concerning the provision of military equipment to Iran.[45] The Tribunal dismissed the argument that Iran would not have benefited from the supply because the nation was not engaged in war actions at the time the deal was made. Furthermore, the Tribunal determined that the odious debt theory did not apply in this case because it could only be used in cases involving state succession and not regime change. Importantly, the Tribunal believed that the odious debt theory might be relevant to state succession but not government succession, regardless of other factors.[46]

From a doctrinal standpoint, there are two main problems. While the latter focuses on the odious debt theory's standing as an international law concept, the former addresses Sack's doctrine's place within the field of international law studies. Regarding Sack's doctrine's place in international law studies, it is important to note that, prior to the late 1990s, Sack's work was not highly valued by international law experts. Professor Ernst Feilchenfeld detailed two examples of repugnant debt that warranted an exemption from the maintenance rule in his highly acclaimed book on public debt and debt succession: the

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[43] 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].

[44] 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.

[45] Charles N. Brower & Jason D. Brueschke, **The Iran United States Claims Tribunal** 3-10 (1998), p.10.

[46] **U.S. v. Islamic Republic of Iran**, 32 Iran-U.S. Cl. Trib. Rep. 162, 1996, p.19

German debt incurred for the colonization of Polish-owned lands and the Spanish debt incurred for quelling insurgencies in Cuba.[47] 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 authority to reinforce his position.[48]

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. [49] Academic writings are mentioned for two reasons. On the one hand, it serves to close the gaps in international law, which is a legal framework devoid of a legislative process on par with that of individual states. However, it also acknowledges that the works of renowned academics—the so-called founders of contemporary international law—are where international law first emerged.[50] In favor of custom and treaties, where states are the actors of the law-making process, the influence of academic publications as a source of international law decreased with the emergence of legal positivism. Although academics' papers still occasionally impact the creation of international law in specific areas, they are now mostly cited in national courts and arbitral tribunals to support arguments.[51] As an international law doctrine, the odious debt doctrine should be pled before international courts and tribunals.

There is an objective gap in the current framework of international law regarding the regulations that apply to the issue of sovereign debt: neither international conventions nor established laws exist in this area. Some international organizations have created some soft legislation to close this gap. The Principles on Promoting Responsible Sovereign Lending and Borrowing were endorsed by UNCTAD, the United Nations Conference on Trade and Development, in January 2012. With this approval, a UN General Assembly resolution emphasizing the need of responsible financing—wherein public and private creditors as well as sovereign debtors share accountability for averting unsustainable debt

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[47] Mauro Megliani, **Mozambican Illegal Debts**, ibid, p.85

[48] 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, p.37

[49] Patricia Adams, **Odious Debts**: Loose Lending, Corruption, And The Third World Environmental Legacy 164-67, 1991, p.41

[50] Arthur Nussbaum, **A Concise History Of The Law Of Nations** 58-177, 1947, p.18

[51] **ibid**

situations, was put into effect.[52] For two reasons, the UNCTAD Principles have not been formally incorporated into a legally binding document: first, this decision aligns with the soft law definition of international financial law; second, the Principles' primary goal is to identify fundamental guidelines and best practices rather than defining rights and obligations. This second justification illustrates the principles' fluid and dynamic character as well as their uneven legal standing. It is too early to classify these principles as a true set of legal standards, even though there may be some progressive recognition of them in restructuring and litigation.[53] 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.[54]

Nevertheless, the criteria to be used in assessing the odiousness or illegitimacy of a debt should be defined by national legislation based on the following elements: the absence of consent by the debtor state's population, the absence of benefit to the debtor state's population, and the creditors' awareness[55]. 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[56]. Rather, their normative contribution consists of identifying existing basic

[52] Mauro Megliani, **Sovereign Debt**: Genesis, Restructuring, Litigation 430-61, 2015, p. 63
[53] Chris Brummer, **Why Soft Law Dominates International Finance-and not Trade**, 13 J. INT'L ECON. L. 623-24, 2011, p.58.
[54] Juan Pablo Bohoslavsky & Carlos Esposito, **Principles Matter**: The Legal Status of the Principles on Responsible Sovereign Financing, in Sovereign Financing and International Law, 2022, p.14.
[55] **Ibid.**
[56] **Sovereign Debt Workout Mechanism**, United Nations Conference on Trade and Development,

human rights standards applicable to sovereign debt and related policies, as well as in elaborating the implications of these standards.[57]

On the other hand, 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.[58] 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. The restructuring of the Argentine debt was characterized by a sharp unilateralism both in form and in substance. First, the debtor did not encourage the formation of negotiating committees and refused to have contacts with those formed at the initiative of some bondholders; second, the debtor formalized a "take-it-or-leave-it" proposal of restructuring, which involved huge losses for creditors[59]. 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. 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.[60]

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),

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https://unctad.org/en/Pages/GDS/Sovereign-Debt-Portal/Sovereign-Debt-Workout-Mechanism.aspx (last visited Sept. 6, 2020) [https://perma.cc/K23C-E2UH] (Accessed May. 6, 2025).

[57] 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.

[58] Andreas F. Lowenfeld, **International Economic Law**, 614-15, 2008, p.13.

[59] Jose Garcia-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, p.19

[60] Arturo C. Porzecanski, **From Rogue Creditors to Rogue Debtors**: Implications of Argentina's Default, 6 CHI. J. INT'L L. 311, 323-24, 2005, p.63

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.[61] 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.[62] This reduction took place mainly within the machinery of the Paris Club, where the Iraqi debt enjoyed generous treatment. In this context, the Iraqi debt should have been rescheduled under the so-called Classical Terms that involve rescheduling at market rate. [63] Instead, this debt benefitted from an *ad hoc* treatment implying a cancellation of nearly $30 billion thanks to diplomatic activism by the United States. 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. 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.[64]

In relation to the restructuring of Ecuador's debt, the odious debt doctrine was also invoked. Rafael Correa, a presidential candidate, pledged throughout his campaign to use the money meant for payment on public sector projects rather than repaying some of the nation's external obligations. According to him, Ecuador would have good reason to do so because the bonded debt reflected unjust and illegitimate obligations that had been unlawfully taken on by earlier authoritarian administrations.[65] 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. The Commission considered Ecuador's foreign duties in a number of ways. It was discovered that several

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[61] Detlev F. Vagts, **Sovereign Bankruptcy**: In Re Germany (1953), In Re Iraq (2004), 98 AM. J. INT'L L. 302, 303, 2004, p.18

[62] 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), p.27

[63] Classic Terms, Paris Club, https://clubdeparis.org/en/ communications/page/classic-terms [https://perma.cc/3FMJ-JF3D] (Accessed April. 25, 2025)

[64] Jai Damle, **The Odious Debt Doctrine After Iraq**, 70 Law & Contemp. Probs. 139, 148, 150-51, 2007, p.35.

[65] Adam Feibelman, **Ecuador's Sovereign Default**: A Pyrrhic Victory for Odious Debt?, 25 J. INT'L BANKING L. & REG. 357, 358, 2010, p.29.

internal and external subjects had improperly benefited from the revenues of numerous borrowings and restructurings. Because the government had agreed to harsh loan conditions (such as surrendering to foreign law and waiving sovereign immunity), the international bonds were declared void. Furthermore, it was discovered that in 2007, the amount of money spent by the government on health, welfare, housing and urban development, the environment, and education was less than the amount spent on debt servicing. President Correa made a selective default and ruled that two of the three foreign bonded loans were unlawful based on the Commission's conclusions; he also stopped paying coupons without formally repudiating the loans.[66] 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.[67]

Nonetheless, 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. 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.[68]

In their own ways, the HRC Guiding Principles and the UNCTAD Principles encourage national laws to recognize the concept of odious debt in their respective jurisdictions. The creation of a model law that may serve as a standard for national legislation could be a big step in this regard. UNCTAD may develop this model law as an extension of the Principles on Responsible Sovereign Borrowing and Lending. States are free to include all or some of the model law's features in their own laws, but it is not legally binding. A step like this could help close an objective gap. It is important to note in this regard that certain jurisdictions have passed laws to limit the activity of vulture funds in recovering their claims.[69] 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, which underscored that international precedents exist under which this

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[66] Arturo C. Porzecanski, **When Bad Things Happen to Good Sovereign Debt Contracts**: The Case of Ecuador, 73 Law & Contemp. Probs. 251, 266-267, 2010, p. 15.

[67] Michael Gruson, **Controlling Choice of Law in Sovereign Lending**: Managing Legal Risk 51, 59 (Michael Gruson & Ralph Reisner eds., 1984), p.29

[68] United Nations Commission on International 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).

[69] 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), p.39.

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, unjust enrichment, and agency. 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.[70] 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.

The Need to Formalize the Odious Debt Doctrine

There is a need to formalize the doctrine of odious debt beyond the boundaries of state or government succession. It should be noted that the formalization of the odious debt doctrine has been emphasized by the HRC Guiding Principles of Foreign Debt and Human Rights, empowering the national legislation to establish the odiousness or illegitimacy of a particular external debt based on the constitutive elements of the absence of consent by the debtor state's population, the absence of the benefit to the debtor state's population and the creditor's awareness of the above facts[71].

The fact that the Guiding Principles lack reference about how national legislations could establish these criteria, the instruments could be in forms of an international convention, a model law, a soft law instruments, a set of contractual clauses or a declaration of principles[72].

Convention: The fact that domestic legal systems have left the gap for the odious debt doctrine empty, the adoption of an international convention with binding force upon contracting states would fill that gap. Such a convention should be adopted by the United Nations General Assembly and then opened to signature to gain wide acceptance. However, due to the lack of political will mostly from the major powers, it is unlikely that

[70] Jeff A. King, **Odious Debt**: The Terms of the Debate, 32 N.C. J. INT'L L. CoM. REG. 605, 643, 2007, P.47.
[71] Mauro Megliani, **The Odious Debt Doctrine**: The Equitable Rule: German Law Journal (2024), 25, pp. 772–796, Milan, 2024, pp.785.
[72] Ibid. p.789.

such a convention could even one day be drafted and adopted by the United Nations General Assembly.

Model Laws: these are so flexible laws aiming at facilitating as appropriate the review and amendment of existing legislations and adopting new legislations at the national level. Soft Law Instruments: A more flexible approach characterizing international financial law than it is by hard law due to the fact that it lacks a formal institutional structure such as trade law, it is not rooted in international agreements as they involve complex negotiations and long ratification process, lastly it needs to adapt swiftly to the everchanging scenario of financial markets.

Contractual Clauses: Collective Action Clauses (CACs) may contribute significantly towards the formalization of the odious debt doctrine. They were first introduced in 2002 by the G-10 as a response to problems arising under the Argentina debt restructuring by establishing a Working Group on Contractual Clauses to draft a model of contractual clauses to be inserted into the terms of bond loans[73].

Declaration of Principles: the doctrine of odious debt may become the United Nations General Assembly's object of a declaration of principles because no international organizations constitution contains a reference to declarations as a specific category of act. During the conference of San Francisco in 1945, a proposal to enable the United Nations to adopt binding declarations of principles was advanced, however, it failed to gain the necessary consent[74].

The Uganda's Odious Debt and Its Implication

At the time of independence in 1962, after 68 years of British rule, Uganda had one of the most vibrant and promising economies in Sub- Saharan Africa. However, its potential for growth was curtailed by more than 20 years of civil strife, especially between 1966 and 1986. The resultant economic mismanagement and civil war have had disastrous effects on the once-promising country[75]. Currently, Uganda, a country in East Africa is facing one of the greatest financial crises of our time, where the country is beyond the point of bankruptcy after accumulating $29.1 billion in debt. As an East African nation ramped up in domestic borrowing, by December 2024, Uganda's total public debt stood at $29.1 billion (which is equivalent to UGX 106.22 trillion), marking a 17.8% increase from the

[73] Megliani, **ibid.** p. 792.
[74] **Ibid**., p.793.
[75] World Bank, **The Challenge of Growth and Poverty Reduction in Uganda**, 1996, P.6

previous year (2023). However, during the recent Budget Speech for Financial Year 2025/2026, the Minister for finance, planning and economic development affirmed that the stock of public debt was projected at USD 31.5 billion, equivalent to Shs 116 trillion, by end of June 2025. Of this, external debt accounted for USD 15.49 billion, equivalent to Shs 56.3 trillion, and domestic debt USD 16 billion, equivalent to Shs 59.77 trillion. As a ratio of GDP, Uganda's public debt was also estimated at 51.26 percent, which was consistent with the Charter of Fiscal Responsibility.[76]

Remarkably, this rise in odious debts is majorly attributed to increased domestic borrowing aimed at covering budget deficits and funding infrastructure projects intended to stimulate economic growth.[77] Over the last 10 years (2014-2024), the areas which public debt has financed included integrated transport infrastructure (29.3 percent), electricity infrastructure including power generation plants and transmission lines (27.6 percent), water for production and consumption (11.5 percent), agro-industrialization (5.1 percent), education and health (5 percent), housing and urban development (3 percent), and development of industrial parks (2 percent)[78]. Equally, ambitious targets as stipulated in both the National Development Plans and Vision 2040 have mainly driven Uganda's debt. Uganda aims to transform its citizenry from peasantry to lower middle income in the medium term, then to an upper-middle-income category by 2032 and attaining per capita incomes of USD 9500 in 2040. Achieving these targets thus have propelled the government to invest in tremendous infrastructural such as dams, railways, and airports to unlock the productivity of physical and human capital[79]. As a percentage of GDP, the debt stock increased to 52.1 % from 49.9% in the 2023/2024 period, and round half of the total public debt is external, with a significant portion of it owed to China, which in recent years has emerged as Uganda's single-largest bilateral lender[80]. However, President Yoweri Museveni stresses that the government intends to drastically curb external borrowing this financial year (2025/2026), starting in July, to bring down debt levels. Nevertheless, the opposition political parties have always criticized the government over rising public debt levels in recent years, and Uganda's central bank affirms that the cost of

[76] Matia Kasaija, **Uganda's Budget Speech Financial Year 2025/2026**, delivered at the 2nd Sitting of the 1st Meeting of the 5th Session of the 11th Parliament of Uganda: Thursday 12th June 2025, P.32. Available at: https://budget.finance.go.ug/library/697

[77] International Development Association (IDA) and the International Monetary Fund (IMF) (2020); **Joint World Bank-IMF Debt Sustainability Analysis**, 2020; Washington, D.C

[78] **Ibid.**

[79] Uganda Debt Network, Uganda: **Independent Public Debt Profile**, 2021, P.16.

[80] Accessed from: https://www.reuters.com/world/africa/ugandas-public-debt-stock-rose-nearly-18-2024-2025-04-02/?utm_source=chatgpt.com on 12/5/2025.

servicing the debt is putting pressure on public revenues. Though the government says the increased borrowing is needed to fund infrastructure projects that boost economic growth, which, at a forecast 6%-6.5% for 2024/25 fiscal year, increased borrowing in 2024, also covered a budget deficit in the 2024/25 (July-June) fiscal year. It is worth to note that Uganda projects a budget deficit of 5.7% of gross domestic product in 2024/25, up from 4.5% in the previous period (2023/2024), according to the finance ministry respectively[81].

In its annual Debt Sustainability Report FY 2023/24, released on February 7, 2024, the Ministry of Finance, Planning and Economic Development reported that Uganda's total public debt increased from $23.66 billion (Shs86.779 trillion) in FY 2022/23 to $25.59 billion (Shs 94.868 trillion) in FY 2023/24. The country's external debt rose from $14.24 billion (Shs52.206 trillion) to $14.63 billion (Shs54.236 trillion) between June 2023 and June 2024, while domestic debt grew from $9.43 billion (Shs34.573 trillion) to $10.96 billion (Shs40.633 trillion) over the same period. As a percentage of GDP, public debt showed a slight downward trend, decreasing from 47.41 percent in June 2023 to 46.8 percent in June 2024. Equally, the stock of public debt increased to 40.4 percent of GDP, up from 36.7 percent in the previous year (2023), largely due to the rise in domestic debt, which lacks concessionality. The Finance Ministry projects that Uganda's debt-to-GDP ratio will raise to 52.7 percent by June 2025 and peak at 53.0 percent in FY 2025/2026 before gradually declining. "The present value of debt is also expected to increase to a peak of 46.8 percent of GDP in FY 2025/26, just below the 50 percent threshold stipulated by the East African Monetary Union (EAMU) convergence criteria[82].

According to the recently concluded national population and housing census of 2024, Uganda was found to be a home to 45.9 million residents[83] and the homeland of roughly 8.3 million in the diaspora who are watching intently as the country tries to prevent its nation's collapse. The debt is not only unpayable, as Ministry of Finance and Economic Planning declared in 2025, it is also arguably the result of unscrupulous business practices largely on the part of hedge funds who bought junk-rated municipal bonds at extremely low prices and then charged excessively high interest rates. The debt-to-GDP ratio escalated to 52.1% by the end of 2024, up from 49.9% the previous year

[81] Accessed from https://parliamentwatch.ug/news-amp-updates/mps-express-unease-over-ugandas-soaring-public-debt/?utm_source=chatgpt.com, on 12/5/2025.
[82] Uganda Debt Network, Uganda: **Independent Public Debt Profile**, 2021. Available At: https://www.udn.or.ug/download/uganda-independent-public-debt-profile/?wpdmdl=1072&refresh=6843f72943d7f1749284649
[83] Uganda Bureau of Statistics, **the National Population and Housing Census 2024** – Final Report - Volume I (Main), Kampala, Uganda, 2024, p.128.

(2023/2024), indicating a growing debt burden relative to the country's economic output[84]. The Ministry of Finance's Debt Sustainability Analysis for FY2023/24 projects this ratio to peak at 53.0% in FY2025/26 before gradually declining, assuming effective fiscal policies and the anticipated commencement of oil production in Uganda[85]. It is worth noting that debt servicing has become a significant fiscal concern, consuming nearly a third of domestic revenue. This high cost limits the government's capacity to allocate funds to essential development programs, particularly in rural areas. As of September 2024, each Ugandan carried a debt burden of Shs 2.3 million, representing their share of the nation's staggering Shs 107 trillion public debt, a figure higher than the government's official estimate. "When you divide Shs 107 trillion by the total population of 45.9 million, it means that every Ugandan is currently indebted to Shs 2.3 million,". Approximately, Shs 20 trillion is allocated to debt servicing, funds that could otherwise be directed towards crucial development programs in rural areas of Uganda[86]. It is worth noting that the share of domestic debt in the total public debt stock amounted to 42.8 percent at end June 2024 from 39.8 percent the previous financial year. Consequently, the share of external debt in total public debt dropped further to 57.2 percent in financial year 2023/24 from 60.2 percent in financial year 2022/23.

Nevertheless, though FY2023/24 saw an increase in the share of external debt owed to multilateral creditors as Government held back on signing up commercial debt, which was available at very high costs. Consequently, the share of debt held by external commercial creditors slightly reduced to 11.8 percent in FY2023/24 from 13.6 percent the previous financial year. Bilateral creditors accounted for 23.5 percent of the total external debt stock in FY2023/24, with 16.5 percent of that owed to China alone. Table 1 presents the distribution (per centages) of external debt by creditor category and the trend over the last ten years.[87]

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[84] **Ibid**.

[85] Ministry of Finance, Planning and Economic Development, **Debt Sustainability Analysis Report FY2023/24, (December 2024)** Available at: https://www.finance.go.ug/sites/default/files/reports/final_report_debt%20sustainability%20analysis%20december%202024%2007_feb%c2%ad%c2%ad%c2%ad_2025_0.pdf?utm_source=chatgpt.com

[86] Martin Luther Oketch, **Every Ugandan carries debt burden of Shs2.3M,** Daily Monitor Publication, Monday March 17, 2025, p.10 Available at: https://www.monitor.co.ug/uganda/news/national/every-ugandan-carries-debt-burden-of-shs2-3m-4967386?u.

[87] Ministry Of Finance, Planning and Economic Development, **Debt Sustainability Analysis Report FY2023/24** , December 2024, P.4. Available at: www.mepd.finance.go.ug

Table 1: External debt by creditor category and the trend over the last ten years

Creditor Category	**2014/2015**	**2015/2016**	**2016/2017**	**2017/2018**	**2018/2019**	**2019/2020**	**2020/2021**	**2021/2022**	**2022/2023**	**2023/2024**
Multilateral Creditors	85.5	76.6	70.8	67.8	64.5	61.9	62.5	61.7	61.8	64.6
o/w IDA	55.8	48.9	45.2	42.2	40.1	34.6	35.3	34.5	31.9	32.7
Bilateral Creditors	14.5	23.4	26.6	31.5	33.7	30.9	28.6	27.9	24.6	23.5
Non-Paris Club	12.3	20.4	22.8	25.1	27.5	23.6	21.6	21.4	20.2	17.3
o/w China	9.7	17.0	20.4	24.6	22.0	20.0	20.0	18.0	18.0	16.2

	6	.8	.3	.2	.5	.6	.9	.7	.1	.5
Paris Club	2.2	3	3.8	6.5	6.2	7.3	7	6.5	4.4	6.2
o/w Japan	1.7	2.4	3	4	2.5	3	2.3	1.9	1.5	1.4
Commercial Banks			2.6	0.7	1.8	7.2	8.9	10.4	13.6	11.8

Source: Ministry of Finance, Planning and Economic Development

Whereas as far as external debt burden indicators are concerned, both solvency and liquidity (debt service) indicators are projected to remain below their respective indicative thresholds in the baseline scenario except for a one-time slight breach in FY2029/30 for the indicator of external debt service to exports ratio. This however, indicates increased vulnerabilities associated with external debt service and highlights the urgent need to scale back on external commercial debt, which typically bears short maturity periods and high interest rates compared to concessional debt, while at the same time supporting export growth which are the country's key source of foreign currency. It also underscores the need for the Central Bank to accumulate reserves to counter the risks that may be posed by the increasing external debt service burden.[88] However, Uganda's external debt is projected to remain sustainable over the medium and long-term accordingly. As in nominal terms, the external debt to GDP ratio is projected to increase from 26.8 percent in FY2023/24 to a peak of 27.4 percent the following financial year, before beginning to

[88] Ibid

decline. This ratio is forecast to remain below 30 percent of GDP over the projection horizon, in line with the overarching goal of minimizing debt accumulation.[89]

Conclusion and Recommendations

Odious debt doctrine was introduced to the world by a Russian émigré Alexander Sack in 1927. The doctrine was based on three elements: The making of a loan by a dictatorial government, the absence of benefit for the population, and the awareness of the creditors. The doctrine lacked formulization due to the fact that it emerged in a diplomatic context and it was not acknowledged in the final text of the 1983 Vienna Convention on the Succession of State in Respect of State Property, Archives, and Debts. The doctrine remained dormant until the Jubilee Campaign for debt reduction of poor countries and the settlement of the Iraqi debt following the second Gulf War. For the doctrine to be applicable in court, it should be formalized which is highlighted by the Guiding Principles of Foreign Debt and Human Rights affirming that the odiousness or illegitimacy of a loan must be established by national legislations.

Uganda's debt trajectory underscores the importance of prudent borrowing and fiscal responsibility. The prevalence of odious debts not only burdens the economy of Uganda but also erodes public trust. Meanwhile, as a share of GDP, Public debt declined to 46.8 percent at end June 2024 from 47.4 percent the previous financial year as nominal GDP growth outweighed the rate of increase of the public debt stock. However, Public debt to GDP is projected to increase to 52.7 in FY2024/25 and peak at 53.0 percent in FY2025/26. This ratio will decline thereafter supported by increased revenues from oil production; higher GDP growth; as well as Government's deliberate efforts towards fiscal consolidation through domestic revenue mobilization and reduction of public expenditures, which will reduce the budget deficit.

Even though Uganda's debt is still considered sustainable. The risk of external debt distress has moved to moderate from low, which has worsened existing vulnerabilities. Addressing the crisis requires a strong fiscal response from the Government that could lead to increased budget deficits. Consequently, a number of debt indicators worsened. External and public debt vulnerabilities also reflect the high deficits of the past, including

[89] Sejjaaka Kiva. After Privatization: The Role of Government', Makerere Business Journal, vol. 1(1), (1996), P.52

due to a decline in tax revenues as a share of GDP in recent years. The debt sustainability analysis suggests that Uganda is susceptible to export and market financing shocks, and more prolonged and protracted shocks to the economy would present downside risks to the debt outlook. Concessional borrowing should continue to play an important role in financing investment projects due to its lower cost and longer maturity profile, while non-concessional borrowing should be limited to financing those projects with high social and economic returns. To reduce payment of commitment fees on undisbursed funds and reduce reliance on commercial financing, measures are expected to be taken to unblock the low-cost financing. Regarding the future, public investment in infrastructure will be critical to raise growth and export potential, both of which will support Uganda's external debt sustainability.

To reduce the cost of debt, Government should continue to prioritize concessional financing to the extent possible before considering non-concessional credit. Government should also be committed to reducing domestic debt for deficit financing, to reduce on the high interest payments arising out of domestic debt and the crowding out effect on the private sector. Additionally, Government should focus on increasing export earnings, increasing returns to public investments and the overall efficiency of Government expenditure. In the same vein, by embracing transparency, accountability, and inclusive governance, Uganda can navigate its debt challenges and foster sustainable development.

Equally, to address the challenges posed by odious debt in Uganda, the following measures are recommended:

- ***Reduce reliance on risky and volatile debt sources.*** Uganda should develop innovative and alternative mechanisms of development financing such as Public Private Partnerships (PPP), securitization of infrastructure assets, privatization as recently demonstrated by Ethiopia. In addition, creation of an asset class for public projects, using the leverage afforded by safe capital from multilateral institutions is equally important. However, it is important to adequately quantify and mitigate the underlying fiscal risks from PPPs and government guarantees.
- ***Appeal to multilateral organizations for total debt cancellation.*** While debt relief in form of delayed repayment, restructuring of loan repayment or swapping of debts for equity have been proposed, they may not be sustainable for Uganda. Uganda is already revenue trapped which will consequently lead to debt default. Complete debt write-off

will bring substantial liquidity, and represents constructive collective action in building and protecting Uganda's financial safety nets.

- ***Greater transparency in debt management*****,** including commitment by governments to release in real-time all data on old and new debt from all sources. This will require efforts to standardize data gathering practices and developing data collection systems. Other measures include addressing data gaps, notably in the accounting of state-owned enterprises-related liabilities and contingent liabilities arising from sovereign guarantees to individual projects, and consolidate government accounts, agencies, ministries and institutions. At the same time, government should reveal all loan conditions including the required guarantees and collateral that put national assets at stake.
- ***Enhanced Transparency:*** All loan agreements should undergo thorough parliamentary scrutiny and be made accessible to the public.
- ***Strengthened Oversight:*** Institutions like the Auditor General's office should be empowered to monitor and evaluate the utilization of borrowed funds.
- ***Anti-Corruption Measures:*** Robust mechanisms should be implemented to curb corruption and ensure accountability in public spending.

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