

Transparency of loans to governments: The public's right to know about their debts

Tim Jones, Head of Policy, Jubilee Debt Campaign, Presentation to UNCTAD Debt Management Conference, Geneva, 18 November 2019

1. Introduction

Transparency is a mechanism to help get loans spent well. But it is not a solution to all the debt problems we face. We have a concern that while it is welcome that transparency is receiving increased attention following recent scandals of hidden loans. But it should not be used to avoid other mechanisms that are needed to ensure responsible lending and borrowing and resolving debt crises fairly when they arise.

Having said that, I want to talk about what could be done to increase transparency of loans and debt.

2. Why transparency is good

Transparency is good for borrowers. Transparency ensures all stakeholders have a clear idea of a country's debt burden, which decreases the risk attached to lending and could therefore in turn enable governments to secure lower interest rates. And the scrutiny which comes with transparency can enable loans to be well spent.

Transparency is good for lenders. Lenders need to know what debts a government has, and what guarantees it has given, in order to assess the likelihood of a loan they are giving being repaid. Similarly, buyers of debt can make better decisions if they know the true debt situation of the country whose debt they are buying. The more transparency there is over government debts, the better decisions lenders and investors can make.

Transparency is vital for parliaments, media and civil society to be able to hold lenders and governments to account. Transparency is 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 to account 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 people of a country have the right to know about debt being taken on by governments in their name.

The problem is one of collective action – transparency in general is good for everyone, but not necessarily individually when giving a loan. Therefore, we need mechanisms to incentivize transparency.

Much is needed across borrowers and lenders of all kinds, from governments to the private sector. One advantage is that while transparency is the responsibility of both borrowers and lenders, it only needs one side to be transparent for a loan to become public. If a lender or a borrower does not want a loan to be transparent, then that is a warning to the other side that something is going wrong.

3. What needs to be made transparent

What loans are being given.

What they are intended to be used for.

What are the costs of the loan – interest rates and charges.

Who is giving the loan and is it being traded.

Cover all forms of government guarantees.

And whether there is any security or collateral attached to the loan.

4. Where it needs to be disclosed

To make the information accessible to governments, debt managers, private markets and civil society, information needs to be disclosed in one place. One database searchable by lender and borrower would make the information accessible. Such a system needs to be housed in a public institution, such as UNCTAD or the IMF.

5. The IIF proposal

The group of private banks, the IIF, have agreed principals on disclosing loans to

government. We welcome this. However, it has not yet begun as there is no agreement on where the information will be disclosed. This has to be agreed soon, and banks need to start disclosing.

6. Limitations to IIF proposal

But there are some key limitations to this scheme.

1) It only applies to participating banks. Public lenders such as governments and multilateral institutions like the African Development Bank are less transparent than the private sector principals.

2) The IIF principles only apply on loans to 69 governments. It needs to be expanded to all governments.

3) The IIF principles exclude bonds, on the basis that these are already transparent. This is true for the financial sector, but many actors do not have access to expensive sources such as Bloomberg. Wherever the registry is housed needs to take the initiative to collate the information on all publicly disclosed loans.

4) The IIF scheme is voluntary – that's all the private sector can do. But the risk is more responsible lenders disclose but less responsible lenders don't. We hope those who are disclosing will join us in pushing for simple legal changes to incentivize disclosure.

7. Disclosure for enforceability

We propose that a simple legal change should be introduced into key jurisdictions that for a loan to be enforceable, it must have been publicly disclosed when it is given.

There are similar regulations for other financial products which already exist – this is just expanding the idea to loans to governments. Eg, in English law, if a debenture exists on a company – a security on its assets – then it has to have been publicly disclosed, otherwise it is not enforceable.

Our proposal to make disclosure a requirement of enforceability of a loan is not an attempt to make loans unenforceable, it is an attempt to create something

which is very easy for lenders to comply with, which incentivizes transparency. We are proposing it to incentivize transparency, rather than to lead to fewer loans being enforceable.

We think it is simple – it just requires disclosure of very basic information by the original lender. It does not require further action on the part of lenders. Lenders can be assured that if they have disclosed, their loan will be enforceable. Buyers of debt just need to add a simple check that the debt they are buying was properly disclosed, they do not need to disclose anything themselves.

It does not require any ongoing regulation. It creates an incentive structure that does not require policing.

It applies to all lenders, not specifically the private sector. For example, we know that sovereigns such as Russia and China use English law in their lending, and therefore it would apply to them as well.

8. In summary we need:

- 1) A publicly accessible registry when loans to governments are recorded in one place.
- 2) Multilateral institutions, governments and private companies to commit to disclosing loans on the database.
- 3) The registry to be empowered to collate publicly accessible information.
- 4) Legal changes in key jurisdictions that for loans to governments to be enforceable they have to have been publicly disclosed when they are given.