

How to get to the bottom of a country's debts?

A short briefing on debt audits

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Introduction

In the wake of a new debt crisis triggered by the Covid-19-related economic downturn, many civil society groups have increased their interest in debt and, particularly, in how they can better understand, oversee and challenge the debt accumulation process in their countries. Debt audits can be a powerful tool to support civil society engagement in citizen assessment of debt impacts but also to increase citizens' participation in public finance governance. These can lead to an increase in accountability and transparency and allow for the identification of illegitimate debts at the national, regional and municipal level. They can also include a review of lending and borrowing policies and practices and develop an agenda for changing these policies and practices. Furthermore, by examining both creditor and debtor responsibility, debt audits are also an important counter-narrative to the focus by International Financial Institutions and lenders on debt management that tends to place responsibility mainly on debtor countries.

Beyond civil society, governments at high risk of debt distress can also benefit from debt audits, as countries like Ecuador¹ have done in the past. An official debt audit can support a government's arguments in the face of a debt restructuring process or in their claims for debt cancellation, also pointing to the responsibility of reckless lenders. Debt audits can also support the definition and implementation of a responsible lending and borrowing strategy, by identifying and eliminating malpractices from the past. Lender governments and multilateral institutions can also carry out debt audits, focusing on the evaluation of their lending practices, as the Norwegian¹ government did.

This briefing is a general introduction to debt audits, what they can contribute and their main characteristics, while also providing references to manuals and articles on debt audits. It is intended to support civil society organisations (CSOs) and government officials that are thinking about promoting a debt audit by providing some initial ideas about how to initiate this kind of process.

What is a debt audit?

A debt audit is an assessment of a country's public debts. It is a tool that facilitates an examination of the sovereign debt accumulation process. It allows an analysis of why and how debt was contracted, under what conditions, for what purposes, how the financed projects were managed and what the impacts of that process were – both in terms of the public finances and the wellbeing of the population, including impacts on human rights. It can also serve as an instrument for the oversight of a debt restructuring process, the assessment of how a government uses the proceeds of debt relief or the overall lending or borrowing policy of a government.

The debt audit (objectives, scope, timeframe, methodology, participation) can be adapted to the needs of the public administration or group promoting it, and the context of the country driving the process. The experiences so far vary, from institutionally promoted official audits to citizens' debt audits, from comprehensive analysis of debt contracted over a long period to the evaluation of one single project or loan.

In general, although there's a wide diversity of experiences, we distinguish between two general types of audits: an independent citizens' audit or a governmental audit. In the case of a governmental audit, it can be pursued and implemented by the government itself or by the parliament, and it can involve CSO participation.

What can you expect from a debt audit?

A debt audit can pursue different, non-exclusive outcomes:

- Find actions in the debt management process that are contrary to the law and/or due diligence principles.
- Identify debts that can be defined as illegitimate (see Box 1).
- Reveal and provide evidence of corruption or lack of due diligence in debt management.

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- Identify good and bad practices, and (re)define internal rules for future borrowing, including responsible lending and borrowing criteria in line with the UN Conference on Trade and Development (UNCTAD) principles.²
- Promote or demand depending whether it is promoted by the government or by civil society – transparency, accountability and good governance.
- Pursue a critical analysis of the indebtedness process to be used to frame a narrative that supports the country's interests in debt restructuring, cancellation and/or (re) financing discussions.
- Engage with civil society and academics, locally and internationally, in a process to gain and widen support for the country's claims for a fair resolution of a debt crisis.

What exactly is analysed under a debt audit?

The type of analysis that is carried out under a debt audit process will vary depending on who is promoting the audit (government or civil society) and who is undertaking that analysis (as it can be done by specialised auditors or by grassroots activists). However, there are several issues that can be considered in all types of audits:

- Debt issuance process: We can analyse the circumstances surrounding the issuance of the debt; the nature of the contracting parties and the relationship between them (including the imbalance of power that shapes the financial relationships); the terms of the contracts (financial conditions, but also other conditions such as policy conditionalities; obligation of contracting corporations from the donor country; guarantees and liabilities; penalties and contingent clauses); whether access to the credit was used to impose non-written conditionalities.
- The object of the lending: How the funds were used, misused or abused; the social, economic, gender, cultural or environmental impacts of the financed projects; the implications and impact of attendant conditionalities (including impacts on human rights, gender equality and climate vulnerabilities, among others); other policy and financial contexts that help towards understanding the indebtedness process (fiscal policy and fiscal deficits, tax system, tax breaks and illicit financial flows, private sector bailouts, corruption, etc.).
- The impacts of servicing debt: How the prioritisation
 of debt payments impact the government budget and
 capacity to provide quality universal and gender-sensitive
 public services or to invest in climate change adaptation
 and mitigation.

Box 1: Investigating illegitimate debt

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The concept and notion of illegitimate debt is based on a systematic articulation and analysis of actual experiences in the South. The term "illegitimate debt" generally refers to debt with features that are irregular, inappropriate, irresponsible, dubious or fraudulent — those that go against widely accepted legal, political, financial, economic, environmental and particularly ethical standards and principles.

These features can be seen either in the terms and conditions of the lending agreements, the purpose and impacts of what was financed, the circumstances under which the debts were contracted, the nature of the contracting parties and their power relations, or a combination of any and all of the above. There is no firm consensus yet as to the precise definition of illegitimate debt, its coverage, application and translation into policy.

When defining illegitimacy, the first thing we need to take into account is that there is more than just legality at stake. There is support and resonance to be found in current laws (national and international), but laws do not yet adequately cover and address all the issues being raised in the work on illegitimate debt. Hence the need to review, change, develop and expand laws, as we cannot presume that something that is legal is necessarily legitimate. However, there is value in using legal instruments, including international law principles, to explain the concept, gain recognition of the problem, and compel action.

There is a misconception that illegitimate debt largely refers to the nature, misconduct and irresponsibility of the borrowers. Movements in the South would be the first to refuse to exempt our governments and government officials from blame as we know first-hand their crimes and the flaws of our political systems and economic structures. However, illegitimate debt is also, in many cases, primarily about the responsibility and culpability of lenders.

In conclusion, we can summarise that illegitimate debts are those that: involve the gross violation of basic assumptions of public debt contracts, as well as widely accepted ethical, social, political, economic, environmental values, standards and principles; cause harm to the wellbeing of the people and communities in whose name the debts were incurred and who are the ones paying for these debts.

The scope of the audit when it comes to which loans to analyse can be defined depending on the circumstances under which the process is undertaken. The audit process can be comprehensive, covering an established period of time and looking at all the debt and related processes and projects financed during that time; or it can be a very specific exercise of analysing a concrete debt operation, or a few operations that occurred within a short period of time.

While a comprehensive analysis that audits debt operations contracted over a long period – which could be a decade or longer – can provide more information and a global understanding of the indebtedness process, it can become a lengthy and complex process. Access to information, even for institutionally led debt audits, is not always granted, particularly when there has been a change in government. The longer and broader the analysis, the more complex the task becomes.

On the other hand, the debt audit can be planned as a permanent mechanism or a sequenced process in which a concrete loan operation or small section of the indebtedness process is analysed in each phase. The process can start with a very general overview of the debt situation and indebtedness process, which would help plan the different phases. Once there is a general overview available, one can establish concrete sections of the indebtedness process or concrete loans or bond emissions to be examined in each phase of the process. In this scenario, we can identify the most relevant cases (i.e. those where there are signs of irregularities or those that are quantitatively most relevant) to be examined first. This way the audit process can produce concrete outcomes in a shorter period of time that could support a narrative in favour of the claims for debt cancellation, restructuring or even debt repudiation.

How do we start and continue the process?

Again, experiences are diverse regarding the definition of the process and methodology, as well as in relation to who takes the lead and who does the actual analysis for the debt audit. Below you will find some recommendations regarding how to start and how to proceed with the audit process:

- Creation of a debt audit committee: Appointing a group of people who can oversee the whole process and evaluate the results of the different analyses should be a first step. This committee would be in charge of defining the process roadmap, including scope, priorities and timeframe, as well as assigning specific analyses or "audit tasks" to specific sub-teams of the committee or external teams. If the audit is official or has the support of the government, it is recommended that the committee includes representatives from the government and from relevant overseeing departments in the public administration, as well as external civil society representatives, academics and experts, both local and international. When promoting a citizens' audit, the committee can include not only activists, but also academics and experts in different areas (not just financial or juridical, but also experts on social, cultural, environmental and gender impacts, for instance).
- Initial overview to identify priorities and define a roadmap: If a phased approach is adopted, it is recommended that the process starts with a general overview that can inform the committee of the indebtedness situation in the country and identify the most relevant events throughout the indebtedness process. Existing analysis produced by academia or civil society can serve as a solid basis. This can be complemented or updated, but this should not be a long exercise, as it is only intended to inform the identification of priorities and the definition of phases and timeline of the roadmap. With this overview, the debt audit committee should discuss and decide which debt operations would constitute the first to be audited and identify which ones would follow. The roadmap can be revisited after each phase or specific analysis is finalised.

- Externalisation of the analysis to interdisciplinary teams: The actual auditing of debt operations and debt management can be done by the committee, by government officials (in the case of an official audit), by members of the civil society organisations participating or promoting the process (in case of a citizens' audit) or by external experts. It can also be a combination of those. Our recommendation would be to set up specific sub-teams for each phase, including representatives from the committee (to oversee the process), from the administration (to ensure access to information – in cases where there is government participation in the process), from the CSOs promoting the process (in the case of citizens' audit) and external experts, including - depending on what is the object of the specific analysis – professional auditors (can include those from supreme audit institutions), experts on financial market (advisors or journalists), law, sovereign debt and other academics and/or civil society representatives. It is also important to incorporate in these interdisciplinary teams or the debt audit committee experts on human rights, gender and environmental or climate. It should be noted that experts are not only those who have achieved professional excellence, but experts can also be grassroots activists who accumulate broad experience in their area of expertise/action.
- Access to information: A key factor in the success of the process is access to information. Without access to loan contracts and other documentation generated during the debt operations or management, the debt audit will remain a superficial analysis. That is why it is essential that, in governmental audits, officials from the public administration participate in the process, so they can ensure access to digital information and archives. In citizens' audits, government cooperation can facilitate access to information. Otherwise, CSOs will have to explore freedom of information acts and other information petition mechanisms that might exist in their countries. Sometimes, information can be accessed through petitions to the lender (in cooperation with CSOs in lending countries, for instance) or international institutions.
- Audit reports and accountability: Each phase of the audit process would produce a report on the case or cases analysed. These reports, once revised and signed-off by the debt audit committee, should be made public and accessible. A public presentation would be advised. The debt audit committee can also define a communication strategy that will differ depending on the actual results of the audit process. It is key that the results of the audit process are not kept in a close circle of government officials, experts or CSOs, as the wider the dissemination of those results, the broader the support for the countries' claims in relation to a fair resolution of the debt crisis.

- Legal action: If the audit process was to find evidence of irregularities, illegalities and lack of due diligence, the debt audit committee could propose actions to be taken by the government, public prosecutor or the courts.
- **Lessons learned:** The result of the audit process can be turned into recommendations for better debt management and a more responsible lending and borrowing policies.
- Resources: Depending on the options, the debt audit process will require more or less resources in order to be implemented. An interdisciplinary team with international experts could benefit from voluntary participation of academics and CSO representatives, who can find ways to fund their own contributions to the audit process. Sometimes, if the advancement of the work depends on the availability of volunteers, the process can suffer delays, so it is important to count on some resources to make sure the core of the process is covered by people who can commit a minimum amount of time to the audit.

Are there any difficulties we can expect in the audit process?

The process can also encounter difficulties, as several previous experiences have taught us:

- Lack of recognition of illegitimate and odious debt concepts by international financial institutions.
- Lack of an independent debt resolution framework, a "debt court", to take the audit's results (which supports our claim of a multilateral debt resolution framework under UN auspices – to a debt workout mechanism⁴).
- Lack of recognition of the debt audit process by the international community and by the country's institutions (when it involves a citizens' audit).
- Risks of intimidation or repression, particularly when
 the audit focuses on or provides evidence of corruption
 or illicit acts, and in a situation where the relevant
 parts that contacted the debt (government officials,
 administrative bodies or public companies, and the
 private counterparts) are not supportive of the process.
- Access to information can be difficult, as administration officials can see this as an examination of their past actions – the importance of including those officials that can facilitate access to documentation at early stages of the process.
- A debt audit can be a lengthy process therefore it is important to focus on what is key, instead of more comprehensive and overambitious processes.

 Lack of resources can make the process slower, depending on volunteers' availability and leading on occasion to interruptions in the audit, which can put the whole process at risk.

Where has this been done this before?

There have been several experiences of debt audit processes in the past. The most relevant ones would be:

- Ecuador official debt audit⁵ (2007-2008) implemented by interdisciplinary Debt Audit Commission, including CSOs, administrative bodies representation, academics and international experts. It led to an operation of debt buy-back⁶ that saved the country around US\$ 7 billion on debt payments.⁷
- Brazil Parliamentary Commission on Public Debt⁸
 (2009-2010) plus an ongoing citizens' debt audit.⁹
- Norway an official debt audit by lender¹⁰ (2013) that was conducted by private audit company Deloitte.¹¹ See also Debt Justice Norway (Slug) paper evaluating "The Norwegian Debt Audit from an International Perspective".¹²
- Greece parliamentary initiative¹³ (2015) implemented by academics and CSO based "Greek debt truth committee". After the publication of the Preliminary report,¹⁴ the committee continued work on publishing articles and statements.¹⁵ Even when it was an officially led audit, the Greek government decided not to use the results of the audit in the restructuring negotiations with the European institutions and International Monetary Fund (IMF). There is a short film on the Greek debt audit experience "L'Audit". ¹⁶
- Spain several processes of municipal debt audits were implemented between 2015 and 2019, both officially and citizen-led. One of the most relevant is the citizens' debt audit in Madrid.¹⁷ The different experiences inspired a guide for municipal debt audits (available only in Spanish)¹⁸ or an ongoing process of auditing public health finances.¹⁹
- Mozambique official externalised debt audit (2017) requested by the Public Prosecutor of the Republic of Mozambique (after a request by the IMF) and conducted by risk management firm Kroll²⁰ and financed by the embassy of Sweden in Mozambique. The audit revealed that several irregularities, including US\$500 million gone missing.²¹ Several court processes have followed that audit and there have been different findings in relation to the scandal of the hidden debts in Mozambique.²²
- Philippines official initiative by the President²³ (2017) that was not fully implemented. It was preceded by an Independent Citizens' Debt Audit²⁴ (2008).

Argentina – the country has seen several initiatives,²⁵ including the judicial process started by Alejandro Olmos in 1982 that ended in a court sentence in 2000 by Judge Ballesteros. ²⁶ In 2009, an audit commission was approved and created at the nation's congress.²⁷ The first report of that commission was published in February 2020 as an overview of the Argentinean indebtedness process.
 ²⁸ More recently, newly appointed president Alberto Fernandez asked for a debt audit process to the Central Bank of Argentina²⁹ focusing on the previous government indebtedness, before facing the negotiations with the IMF.

It is also worth mentioning the recognition of the debt audit as a useful tool for improving debt management by UNCTAD's Principles of Responsible Sovereign Lending and Borrowing³⁰ and by UN independent experts on debt and human rights reports. ³¹ Debt audit was also recommended in the European Parliament resolution on enhancing developing countries' debt sustainability. ³²

Where can we find more information?

Civil Society Organisations resources on Debt Audits:

- Maria Lucia Fattorelli (Brazil experience) handbook
 "Citizen Public Debt Audit Experiences and methods"
 (2013) ³³ one of the most comprehensive approaches.
- Yago Álvarez (Spanish municipal experience) handbook "Descifra Tu Deuda: Guía de auditoría ciudadana municipal" (2016).
- Debt Justice Norway report "The Norwegian Debt Audit from an International Perspective" (2011).
- Committee for the Abolition of Illegitimate Debt (CADTM) compilation of articles on Debt Audit. 36

Private and official sector resources:

- Supreme Audit Institutions handbook for "Audit of Public Debt Management" (updated in 2020) including UNCTAD principles. 37
- Deloitte conclusions of the Norwegian experience as technical approaches "Sovereign debt audit. A way to mitigate future debt crises" (2015).

Other resources:

- Eurodad and CSOs' proposal for a multilateral debt workout mechanism, "We can work it out: 10 civil society principles for sovereign debt resolution" (2019).
- Jubilee Debt Campaign "Guide to understanding and accessing debt information" (2020). 40

Endnotes

- See more on the debt audit experiences of Ecuador and Norway at the end of this document
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- 14 VVAA (2015) Truth Committee on Public Debt Preliminary Report. Hellenic Parliament https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce-6a27c8/Report web.pdf
- 15 See CADTM webpage with several of these works https://cadtm.org/Commission-pour-la-verite-sur-la,2224?lang=en
- 16 See the film "L'audit" available in French with English subtitles here https://youtu.be/ uXaeviSMbe0
- 17 See the "Madrid audita Madrid" webpage https://madridauditamadrid.org/
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- 27 See the Law Project for the "Creation of a bicameral comission for the investigation of the Argentinean External Debt" (in Spanish) https://www.hcdn.gob.ar/proyectos/ proyectoTP.jsp?exp=3140-D-2009
- 28 See the press release on the presentation of the report "Argentinean External Debt" (in Spanish) https://www.argentina.gob.ar/noticias/se-presento-el-primer-infor-me-de-la-comision-bicameral-de-la-deuda-en-la-biblioteca-de
- 29 See here the report by the Argentina Central Bank http://www.bcra.gov.ar/PublicacionesEstadisticas/Informe-mercado-cambios-deuda-formacion-activos-externos-2015-2019.asp
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- 31 OHCHR (2018) Guiding Principles for human rights impact assessments for economic reform policies. Independent Expert on the effects of foreign debt on human rights report A/HRC/40/57. December 2018 https://www.ohchr.org/en/issues/development/ iedebt/pages/debtandimpactassessments.aspx
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