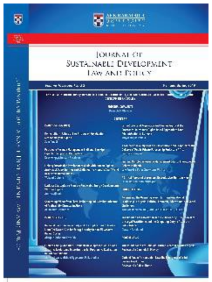

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Legal and Economic Perspectives to Sustainable Sovereign Debt Management in Nigeria: Energy Poverty in Perspective

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Legal and Economic Perspectives to Sustainable Sovereign Debt Management in Nigeria: Energy Poverty in Perspective

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In recent times, Nigeria's total debt stock and its debt management strategies have been a thorny fiscal policy issue in the academia and the media. This is made worse by the fact that the debt profile continues to increase with no infrastructure to show for the increasing debt profile. With contrasting views being canvassed in different circles as to the economic impact of these loans, it has been difficult to state what the exact impact Nigeria's debt stock has on its economy and how effective the debt management strategies put in place have been. The debates notwithstanding, the fall in oil prices and the impact of the novel corona virus pandemic on the economy leaves the government with extraordinarily little options to address its budget deficit. Despite the dire economic situation, the energy poverty level in the country continues to rise; thereby increasing the need to deploy resources to address energy access in Nigeria.

This article therefore undertakes a legal and economic analysis of Nigeria's debt profile and the debt management strategies. The article does so by comprehensively analysing the economic implications of Nigeria's debt profile, the impact of its debt management strategies on its economy, and a legal analysis of its debt management strategies and policies. The article also analyses the impact of the total debt stock and the sovereign debt management strategies on energy poverty in the country. The article concludes by arguing that although available data suggests that Nigeria's public debt is sustainably managed given the low debt to GDP ratio, the high cost of servicing these debts have adverse economic implications on development generally (and energy poverty in particular) and necessitates a thorough review of its legal and policy foundations for managing sovereign debt.

Keywords: Debt Management Strategy, Sovereign Debt, Debt Crisis, Sustainable Debt Management, Debt Servicing, Energy Poverty

1. INTRODUCTION

The covid-19 pandemic has caused a severe strain on the global economy. The ways in which this economic strain has manifested are multifaceted and include; a reduction in aggregate demand, decline in global trade, fall in commodity prices, significant reduction in the volume of remittances,[1] sharp decline in exports, to mention but a few.[2] The resulting economic impact of the pandemic has made it difficult for most countries to meet their external debt service obligations and caused even more to take more debt from the international financial market. This practice is rooted in the Keynesian economic theory that public debt is a potent engine for mobilizing resources, raising employment, improving aggregate demand and economic output.[3] While sovereign debt may be justifiable on this ground, for poorer nations with weak debt management structures; it presents complex economic and debt management issues. It is often argued that for developing countries, the absence of savings to match investment and developmental needs[4] leads these nations to incur external debt that often comes with stringent repayment terms. These debts in turn may lead to a debt crisis where a large percentage of government revenue is often used to service external debt service obligations.[5] Eventually, this accumulation of debt causes these poorer nations to experience current account deficits, which is also refinanced

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1 Particularly for developing countries which has been occasioned, greatly, by the rise in unemployment in most developed countries. See; Samik Adhikari, 'Covid-19 is Reducing Domestic Remittances in Africa: What does it mean for Poor Households,'(*World Bank Blogs,* 9 June 2020) <https://blogs.wor-ldbank.org/africacan/covid-19-reducing-domestic-remittances-africa-what-does-it-mean-poor-households>accessed 7 March 2021.

2 Hernández L, and Gamarra B. 'Debt sustainability and debt distress in the wake of the ongoing financial crisis: The case of IDA-only African countries' Sovereign debt and the financial crisis: Will this time be different. (2011)129- 72. <http://documents1.worldbank.org/curated/en/217391468151502378/pd f/Sovereign-debt-and-the-financial-crisis-will-this-time-be-different.pdf>accessed 7 March 2021.

3 Ujuju LE, and Oboro JO, 'Nigeria debt structure and its effects on economic performance'(2017) 5 International Journal of Business and Management Review 88.

4 As well as the absence of social and economic capital and strategic industries such as iron and steel which are critical for development.

5 ML Jhingan, *The Economics of Development and Planning*, (39th ed, Vrinda Publications2008) 439.

by more debt from the international financial market,[6] thereby imposing huge debt burdens on the economy.

This picture of the complexity of debt management problems for developing economies is the current situation in Nigeria. Stakeholders and economic commentators have identified the country's external debt problem as the biggest economic issue in the country, with Nigeria's total debt profile amounting to over USD85 Billion as of June 2020.[7] Similarly, these reports have underscored the fact that this increase in the external debt has effectively taken Nigeria back to the pre-2005 state where the country was the beneficiary of the massive debt relief program.[8] This retrogression makes it disappointing that there is no tangible developmental and infrastructural growth in the Nigerian economy to show for the increased debt burden.[9]

This increase in the debt burden in the economy has also resulted in an increased use of governmental revenue to service the debt burdens.[10] Additionally, the current debt levels raises some serious economic considerations such as; the worrying level of the current external debt relative to the external reserves of the country.[11] Ancillary to this is the fact that the effect of the covid-19 pandemic on the economy, the fall in oil prices in the international oil market and the

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6 Comprising of foreign banks, international credit institutions, wealthier nations, private institutions, etc.

7 Ike Brannon, 'Nigeria's Deceptively Largely External Debt Could Threaten its Economy,' (*Forbes*, 6 August 2019)<https://www.forbes.com/sites/ike-brannon/2019/08/06/nigerias-deceptively-large-external-debt-could-threaten-its-economy/?sh=1f151e142491>accessed 11 March 2021.

8 This was received from the World Bank, Paris Club, International Monetary Fund (IMF) and the African Development Bank.

9 See, Nairametrics, 'Nigeria's Foreign Debt has Breached a 15-year Trigger ,'(*Nairametrics,* 11 April 2020 <https://nairametrics.com/2020/04/11/nigerias-foreign-debt-has-breached-a-15-year-trigger/>accessed 14 March 2021. The reality has been far worse than the national expectation as the mismanagement after the debt relief led to higher spending on recurrent expenditure, low capital expenditure, stealing of the collective wealth of the nation.

10 Andrew Roche, 'Rising cost of Government Debt Unsettles Investors in Nigeria,'(*Financial Times,* 6 May 2019) <https://www.ft.com/content/a8140736-6db2-11e9-80c7-60ee53e6681d>accessed 14 March 2021.

11 Thereby making the external debt which currently stands at USD 27 Billion to account for about 75% of external reserves of USD 35 Billion.

increasing debt service obligations may lead the economy into another financial crisis. One worrisome fact is that the external reserves may not be able to provide a buffer to the economy and the country may risk further devaluations to its currency.

Against the backdrop of all these, Nigeria continues to borrow from the international financial markets and justifies it by stating that this borrowing is needed for economic growth. This justification has been supported publicly by its Finance Minister, with proponents for increased sovereign borrowing insisting that the opponents to sovereign borrowing merely canvass their arguments on emotional grounds; despite claims to the contrary by experts and members of its Government's opposition.[12] Despite the increased debt profile and the demand for more public debt, the failure of the government to invest in the required infrastructure and capital expenditure that will boost investments continue to plague Nigeria's debt management system. Another problem is the fact that the debt incurred may be stolen by government officials without repercussion from the state. All these point to the fact that Nigeria's sovereign debt management framework may be unsustainable and fail to deliver on development promises. This forms the focus of this article as it seeks to answer salient questions in relation to the debt management problems in Nigeria, such as; what is the economic impact of Nigeria's debt management problems?[13] How does the total debt stock and the debt management strategies in place impact energy poverty in the country? What is the legal and policy framework for managing sovereign debt in Nigeria and how can this be made more effective?

It is important to consider how the debt management strategies in place impact on energy access in the country. Access to modern energy is key to every country's economic

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12 See, Chike Olisah, 'Nigeria's Debt Rises to $79.5 Billion, as Debt to Revenue Ratio Worsens,'(*Nairametrics,* 4 July 2020) <https://nairametrics.com/2020/07/04/nigerias-debt-rises-to-79-5-billion-as-debt-to-revenue-ratio- worsens/>accessed 14 March 2021.

13 This is important as the Government continues to justify sovereign bo-rrowing despite calls by local and international experts for more caution in its borrowing given the current economic situation in the country.

growth,[14] as such, it has become a key aspect of development with the potential to impact the lives of Nigerians. As the situation with energy poverty continues to worsen nationally, it begs a consideration of whether the dire economic situation occasioned by the management of sovereign debt may somehow have a role to play in it.

Following this introductory section, the second part of the article discusses the history of Nigeria's debt and some of the noted causes of its debt management problems. The third section examines the economic impact of Nigeria's sovereign debt management problems by reviewing the existing literature. The fourth section of the article examines the legal and policy framework for sovereign debt management in Nigeria. The fifth section discusses the impact of the debt management strategies and the total debt stock on energy poverty in Nigeria. The sixth and final section offers recommendations for the sustainable management of Nigeria's debt to ensure that Nigeria is not held back from achieving economic development by its debt management problems.

2. HISTORY AND CAUSES OF DEBT MANAGEMENT PROBLEMS IN NIGERIA

If any other country were the subject of this article, it might not be as important for a comprehensive academic discussion of sovereign debt management to look into the history and causes of sovereign debt management problems as it is for Nigeria. This is simply because one would expect that given Nigeria's history with poor debt management, we would not be seeing some of these figures again. Unfortunately, this is not the case.

Nigeria has had a long history with sovereign debts which goes back to the times before independence. The debts incurred in the early days were largely insignificant.

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[14] Nalule VR, *Energy poverty and access challenges in sub-Saharan Africa: The role of regionalism.* (Springer; 2018)

However, the country began to incur large debts from the 1970s. This was between the late 1970s and early 1980s when the country borrowed about USD1 billion at a non-concessional rate.[15] The country was constrained to take the loans at this time due to the fall in oil prices and oil receipts. The loans were taken from the international capital market for the purpose of addressing the infrastructural deficit in the country. From that time onwards, the debt levels in the country have been rising constantly. From the NGN1 billion taken out in the late 1970s, the debt had risen to so high that by 1987, the external debt taken out by the Federal Government amounted to NGN40.5 billion.[16]

This rise in the external debt led to the increase in the total debt of the country to about NGN137.58 billion, which was the equivalent of a 96.9 percent rise in the total debt of the country.[17] This astronomical increase in the amount of public debt in the country led to the country being described and listed as one of the heavily indebted countries in the world with a debilitating debt profile. This is a radical shift from just a decade before where the country was described by the international capital markets as under borrowed with creditors being eager to borrow to Nigeria.[18] This geometric rise in sovereign debt led to a number of economic issues in the country at the time, such as; deficit in government finances, geometric mounting of the external debt, low external reserves, and deficit in balance of payment.[19] These would eventually lead Nigeria into a complicated debt crisis

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15 Onuoha JI, *Beyond diplomacy: Contemporary issues in international relations.* (Great AP Express Publishers Limited; 2008)

16 Okoye EI, 'The Nigeria Debt Problem-Causes, Consequences and Policy Option (2010)1 African Banking and Finance Review 57-64.

17 Essien SN, Agboegbulem N, Mba MK, Onumonu OG. An empirical analysis of the macroeconomic impact of public debt in Nigeria. CBN journal of applied Statistics. 2016;7(1):125-45.

18 Cf Okoye(n 15).

19 Nwogbaga DM, and Onwa DO, 'Sustainability analysis of Nigeria's foreign debt profile and management strategies (2016) 16 Global Journal of Human-Social Science 35-47.

that will be extremely difficult for the country to manage in the early 2000s.[20]

Nigeria eventually adopted various debt management strategies such as the creation of a Debt Management Office (DMO) with the objective to centrally manage the debt of all three tiers of government. The debt to total government revenue by 2005 was about 400 percent.[21] Nigeria was regarded as a heavily indebted country at the time, and the debt was 152 percent of the country's total exports. This placed Nigeria in an exceedingly difficult situation that eventually necessitated a debt relief from the Paris and London Clubs in 2005. Essentially, per the terms of the debt relief agreement, Nigeria was given the opportunity to buy back USD30 billion of its external debt by paying just N12.4 billion.[22] This was undoubtedly a great deal at the time, and it was believed that this debt relief will provide the country the opportunity to experience economic growth with the freedom brought by the debt relief. The debt relief also led to the total and external debts reducing drastically in Nigeria. Unfortunately, this was not the case as total public debt continued to rise until 2007, despite the debt forgiveness extended to the country in 2005.[23] This surge in public debt was driven principally by domestic debt in the country which accounted for over 80 percent of total debt in the country by 2012.[24] At this time also, most of the debts were short term contributing to the debt burden at the time.

The total public debt rose continuously so that between 2013 and 2017 it had increased from NGN8.32 trillion to NGN22.7 trillion. Development organisations such as the International Monetary Fund (IMF) and the World Bank

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[20] Ibid.

[21] Ogunyemi AO, 'Rethinking the origin of Nigeria's debt burden: A historical reconstruction'(2011) Journal of the Historical Society of Nigeria. 26- 44.

[22] Ibid. The external debt captured in the debt relief program was USD32.6 Billion.

[23] Senibi V, Oduntan E, Uzoma O, Senibi E, and Oluwaseun A, 'Public Debt and External Reserve: The Nigerian Experience (1981–2013)'(2016) Economics Research International.

[24] Cf Essien, Agboegbulem, Mba and Onumonu(n16).

advised Nigeria to be more cautious of its borrowing.[25] Yet, Nigeria did not heed these calls as between 2015 and 2020, the external debt again rose from USD9.7 Billion to a total of USD27 Billion.[26] The current debt levels show that Nigeria's external debt to GDP remains at just 10 percent. However, the current debt service obligations of about USD1.5 Billion, which the current debt level triggers is a cause for concern.[27] With Nigeria's history of sovereign debt, it is troubling that she is experiencing the current debt levels with no end in sight. This begs a consideration of some of the causes of Nigeria's debt management problem.

Undoubtedly, there are numerous factors responsible for the debt management problems in Nigeria. But the major factors responsible for the problem are best considered within the context of Nigeria's political economy. The usual prompters include a fall in oil prices in the international oil market to increased borrowing from the international capital markets at non-concessional rates.[28] These factors have influenced the need to borrow excessively from the international capital markets particularly for capital expenditure and investment in the country's infrastructure. Unfortunately, there have been instances where the funds borrowed have not been used for the specific projects they were borrowed for. Therefore, justifying a future need to borrow for projects that external or domestic debt have been incurred for in the past.

In recent times, out of a need to provide a boost for the economy, which has been hit by the ruinous impact of the pandemic and economic recessions, the federal government took out several loans. The oil price crash that resulted from the lock down of economic activities in a bid to contain the pandemic only worsened the economic recession.[29] The

25 Urama NE, Ekeocha Q, Iloh EC. Nigeria's Debt Burden: Implications for Human Development., <https://media.africaportal.org/documents/Nigerias_debt_burden.pdf> accessed 30 March 2021.

26 Cf Nairametrics(n 9).

27 Ibid.

28 Samuel Falegan, *Nigeria's External Debt Burden,* (Ibadan Foundation Publication 1992) 67.

29 Cf Olisah (n12)

resulting 2020 budget deficit necessitated the government's borrowing to finance the budget.

Nigeria's debt situation has raised serious questions about the economic impact of her current debt profile. Media accounts have been mixed with some reports stating that it adversely impacts development and economic growth while the government officials and some economists argue that there is a positive relationship between Nigeria's debt and economic growth. The next section of this article addresses the economic perspectives to Nigeria's debt profile as well as the impact the current debt management strategies have on the economy.

3. ECONOMIC PERSPECTIVES TO NIGERIA'S DEBT PROBLEM

This section seeks to address the economic perspectives to Nigeria's debt problem by answering the question; what exactly is the economic impact of Nigeria's debt profile? In answering this question, the section will undertake an analysis of the existing literature on the subject based on empirical research. The answer to this question is important as Nigeria's total debt profile continues to balloon with reports from 2020 stating that debt service to revenue peaked to more than half of the country's total earnings.[30] This is so despite the fact that debt to GDP remains within the benchmark for countries in Nigeria's category.

In examining the impact of public debt on Nigeria's economy, the desk review revealed that Nigeria's public debt is helpful in explaining economic performance in the country.[31] While the total public debt had a positive impact on GDP, the desk reviewrevealed that external debt had a negative relationship with GDP. This is presumably due to the fact that external debt tends to come with difficult repayment terms that have a counterproductive effect on

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[30] Proshare, "Nigeria's Ballooning Debt Profile," *Proshare,* November 5, 2020, available at; https://www.proshareng.com/news/NIGERIA%20ECONO MY/Nigeria-s-Ballooning-Debt-Profile/54146 (accessed March 30, 2021).

[31] Cf Hernandez and Gamarra(n 2) 87.

economic growth.[32] This accords with the position of Keynesian economists who believe that public debt provides leverage thatis important for positive economic performance in any economy. This result is, however, only achieved where the debt is used for investment in the appropriate manner and not siphoned as is often the case in developing markets. It will also be important if the total cost of the goods and services to be produced by the debtfar outweighs the total cost of the debt and the cost for servicing the debt.

The current debt situation has an inverse effect on the commercial banks in the country. With the commercial banks buying a large chunk of sovereign bonds issued by the government, it has the twin effect of; depriving the private sector of the capital it needs for growth and investments; and posing a systemic risk to the banking sector in Nigeria.[33]

In relation to the impact of public debt on the external reserves of the country, available data suggests that total public debt constitutes over three-quarters of external reserves in the country.[34] How does the total debt stock impact the external reserves? One study which examined the relationship between external reserves and public debt, revealed[35] and posited that total public debt and monetary supply had a significant and long run positive effect on the country's external reserves.[36] There is also evidence of high debt servicing costs[37] relative to total revenue in the country, which has the effect of making investors cautious about investing in Nigeria's sovereign debt. High debt servicing costs negatively impact on human development as it reduces available funds to invest in developmental projects in the country.[38] This is more so in a situation where a large percentage of total revenue is spent servicing debts reduces the available amount to be spent on; education, healthcare, public infrastructure, etc. This also underscores the

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32 Ibid.
33 Cf Brannon(n 7).
34 Cf Nairametrics (n 9).
35 Cf Senibi, Oduntan, Senibi and Oluwaseun (n 22).
36 Ibid.
37 Cf Brannon (n 7).
38 Cf Okoye(n 15).

importance of borrowing with long-term repayment terms and on concessionary terms.[39]

Furthermore, the impact of Nigeria's debt management strategy on the economy is an issue that is also worth considering. Accordingly, research[40] conducted on the impact of the debt management strategy in Nigeria on the economy revealed that debt refinancing has a positive impact on total public debt as it substantially reduces the total debt in the economy. Additionally, although debt relief is difficult to achieve, where it is achieved it has the impact of providing relief to the economy and freeing up funds in the economy.[41] The research also revealed that debt conversion could lighten the debt burden in the economy and create opportunities for economic growth and development.

Thus, while an examination of the existing literature reveals that sovereign debt (where carefully applied) provides leverage for economic growth and development, the need to ensure that debt service costs remain sustainable and do not restrict funds available for investment in human development is critical. A proper framework for debt management is therefore important to ensure that sovereign debt is sustainable and does not negatively impact the economy. The next section therefore examines the legal, institutional and policy framework for debt management in Nigeria.

4. LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK FOR SUSTAINABLE SOVEREIGN DEBT MANAGEMENT IN NIGERIA

While economic and political factors have the potential to affect debt management practices, the law plays a critical role in the management of public debt. A comprehensive legal

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39 Cf Essien, Agboegbulem, Mba and Onumonu (n 16).

40 Rafindadi AA, Musa A, 'An empirical analysis of the impact of public debt management strategies on Nigeria's debt profile' (2019)9 International Journal of Economics and Financial Issues.125.

41 Ibid.

framework is consequently important for effective and efficient debt management in any jurisdiction.[42] Sovereign debt management therefore refers to the system established by the government to ensure; proper management of the country's debt in the bid to improve the government's funding, attain cost and risk objectives of the country, while also meeting other critical debt management objectives identified by the government of the country.[43] This section of the article therefore seeks to examine the legal, institutional and policy framework/ regime for sustainable debt management in Nigeria.

4.1 Legal framework for sustainable sovereign debt management in Nigeria

As the foundation of our laws,[44] we turn to the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)[45] for the foundational provisions on the legal framework for debt management in Nigeria. Items 7 and 50 of the exclusive legislative list vests in the National Assembly the exclusive power and authority to legislate on the regulation of external and domestic borrowing for the federation, i.e. all three tiers of government. These provisions are to the effect that the authority to legislate on sovereign debt management lies with the Federal Government through the National Assembly. Consequently, there are various legislations by the National Assembly that seek to regulate and ensure proper management of sovereign debt in Nigeria, viz; the Fiscal

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42 Elsie Awadzi, 'Designing Legal Frameworks for Public Debt Management,' (IMF Working Paper WP/15/147) <https://www.imf.org/external/pubs /ft/wp /2015/wp15147.pdf> accessed 30 March 2021.

43 Ibid.

44 Attorney General of Abia State and 35 Others v. Attorney General of the Federation, (2002) 4 SC (Pt I) 1; (No 2) (2002) 6 NWLR (Part 764) 542 per Niki Tobi JSC where the learned Justice of the Supreme Court noted: "the Constitution of a nation is the fons et origo, not only of the jurisprudence but also of the legal system of the nation. It is the beginning and the end of the legal system. In Greek language, it is the alpha and the omega. It is the barometer with which all statutes are measured. In line with the kingly position of the Constitution, all three arms of government are slaves of the constitution…in the sense of total obeisance and loyalty to it…All the arms of Government must dance to the music and chorus that the Constitution beats and sings, whether the melody sounds good or bad…"

45 Cap. C23, Laws of the Federation of Nigeria, 2004.

Responsibility Act, 2007, the Debt Management Office (Establishment) Act, 2003, Treasury Bills Act, etc.[46] This is important as Principle 4 of the Principles on Promoting Responsible Sovereign Lending and Borrowing[47] on responsible credit decisions provides that:

> A lender is responsible to make a realistic assessment of the sovereign borrower's capacity to service a loan based on the best available information and following objective and agreed technical rules on due diligence and national accounts.

This underscores the point that the borrower's capacity to service a loan is an important consideration in responsible sovereign debt management.

There are certain provisions of the Fiscal Responsibility Act, 2007 that seek to regulate sovereign debt management in Nigeria. For instance, Section 41 of the Act provides as follows:

(1) The framework for debt management during the financial year shall be based on the following rules:

(a) Government at all tiers shall only borrow for capital expenditure and human development, provided that, such borrowing shall be on concessional terms with low interest rate and with a reasonably long amortization period subject to the approval of the appropriate legislative body where necessary; and

(b) Government shall ensure that the level of public debt as a proportion of national income is held at a sustainable level as prescribed by the National Assembly from time to time on the advice of the Minister.

This restricts government borrowing to only borrowing for capital expenditure and human development. This is good policy and by seeking to ensure that borrowing is done at

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46 Adeola A. Oluwabiyi, 'Legal Appraisal of Nigeria's External Debt,' (2018) 9(18) RJFA 94.

47 United Nations Conference on Trade and Development, Amended January 10, 2012.

concessional terms with low interest rate and reasonably long amortization, it seeks to ensure that the servicing of the loans do not place undue pressure on the government in the short term. The Act also seeks to ensure compliance with this provision by stating in subsection (3) of the section that failure to comply with this requirement for taking loans will constitute an offence. This is important as Section 43 provides that servicing of the external debt shall be the responsibility of the government incurring the debt and deductions for servicing the debt shall be made directly from the disbursements to be made to the debtor government from the federation account.

Furthermore, section 42 of the Act provides that the President has the power to set the borrowing limits, subject to the approval of the National Assembly and on the advice of the Minister of Finance. The limits imposed shall be with respect to the overall limits of the amounts of consolidated debt of the federal state, and local governments. The Fiscal Responsibility Commission is also empowered by the section to ensure compliance with the borrowing limits on a quarterly basis. The section further provides that violators of the borrowing limit shall be prohibited from taking out new loans except for the purpose of refinancing existing debt obligations and shall bring the debts within the prescribed limit by placing a restriction on funding commitments.

Additionally, the Act provides for certain conditions for borrowing. It states in Section 44 of the Act that any government of the federation or any agency seeking to borrow shall state the purpose for which the borrowing is intended and accompany it with a cost-benefit analysis that states in clear terms the social and economic benefits of the purpose for which the debt is to be applied. The borrowing is to comply with the following conditions; authorization in the Appropriation Act or Law, the proceeds of the borrowing are to be applied solely towards long-term capital expenditures, and that nothing in the Act shall be construed to provide an authorization over any loan, which is taken out in excess of the borrowing limit imposed.[48]

The imposition of a condition for authorization in the Act or Law is to prevent secret loans in the country and loans that fail to meet the necessary preconditions laid down by the law. Although there is yet to be a decided case in Nigeria on the subject, inspiration can be drawn from the recent decision of the Mozambique Constitutional Council,[49] where the Court ruled in favour of the government by stating that loans taken from Credit Suisse and VBT were unconstitutional, and null and void for failure to comply with the requirement for sovereign debt captured in the country's budget law. This is based on the fact that the loans taken out were not presented to parliament for approval as is envisaged by the law. This decision would appear to be the end goal of section 44(3) of the Act, although the Nigerian Courts are yet to have the opportunity to decide on the issue of an illegally obtained loan.

In relation to the grant of guarantees for loans taken, Section 47 of the Act provides for the power of the Minister of Finance to grant guarantees, with the approval of the Federal Executive Council, on behalf of any government in the Federation. It also provides that any guarantee provided for a loan in excess of the debt limit imposed by the President pursuant to the Act shall be an offence. This helps to ensure that loans taken in excess of the debt limit apart from being a violation of the provisions of section 44, will not be provided with a guarantee. Where the Minister provides a guarantee for such a loan, it will be tantamount to acting ultra vires the scope of powers conferred on the Minister.[50]

The Act further prohibits the local and state governments from borrowing on their own externally and mandates that the federal government guarantee shall be a requirement for such loans. These provisions are also

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[48] The requirement for the loan to be approved by the National Assembly (for external loans) has also been captured in *section 21* of the *Debt Management Office (Establishment) Act, 2003.*

[49] Case No: 05/CC/2019.

[50] Stitch v A.G. Federation (1986) 5 NWLR pt 47, p. 1007 SC.

underscored in section 22 of the Debt Management Office (Establishment) Act, 2003.

In addition to the debt management framework identified above, section 19 of the Debt Management Office (Establishment) Act, 2003 provides that the Debt Management Office (DMO) shall advice the Federal Government on any financing gap in a succeeding fiscal year and the amount to be borrowed to bridge the gap both internally and externally. The DMO is also required to participate in the process of negotiating and acquiring the loan.

Other legislations that have provisions regulating certain aspects of sovereign debt in Nigeria include; Local Loans (Registered Stock and Securities Act), Treasury Bills Act, the Treasury Certificate Act, Investment and Securities Act 2007, Central Bank of Nigeria Act 2007, etc.

4.2 Institutional Framework for Sustainable Sovereign Debt Management in Nigeria

The Debt Management Office (Establishment) Act, 2003 ("DMO Act") establishes the DMO as the body responsible for managing the country's debt. The DMO Act in section 7 confers powers on the DMO to issue and manage federal government loans in Nigeria on terms to be agreed between the DMO and the Federal Government. It also states that the DMO shall have the power to issue guidelines for the Federal Government for the effective operation of its debt conversion programme. The DMO Act in section 6 also confers a long list of responsibilities on the DMO such as;the obligation to maintain a reliable database of the loans guaranteed or taken by the governments in the federation, obligation to advise the federal government on the restructuring or refinancing of its debt obligations, establish and maintain relationships with international and local financial institutions/ investors in government debt, verify and service external debts taken directly by the Federal Government, etc.

In addition to the DMO, there are other Debt Management bodies like the Monetary and Fiscal Policy Coordinating Committee (MFPCC), and the Bond Market

Steering Committee with the responsibility to manage various aspects of Nigeria's debt.[51] The most significant federal body is the Federal Ministry of Finance, Budget and National Planning.

4.3 Policy Framework for Sustainable Sovereign Debt Management in Nigeria

There are currently two policy documents that provide the framework for sovereign debt management in Nigeria. They are the Nigeria's Revised Debt Management Strategy, 2020 to 2023; the Medium-Term Expenditure Framework and Fiscal Strategy Paper, 2019 to 2021 and the National Debt Management Framework, 2018 to 2022. This section of the article analyses these policy documents and their efficacy in managing debt for the period covered.

4.3.1 Nigeria's Revised Debt Management Strategy, 2020 to 2023

This is often referred to as the Medium-Term Debt Management Strategy ("MTDS") 2020 to 2023 and it was issued by the Debt Management Office after the MTDS 2016 to 2019 expired. The MTDS, 2020to 2023 has been issued for the purpose of guiding the government's borrowing and debts in the medium-term. It was prepared by the DMO in conjunction with other stakeholders (financial institutions and development institutions). It notes that while the recommended threshold of debt to GDP ratio for countries in Nigeria's category is 55 percent as noted by the World Bank and IMF; Nigeria's debt to GDP ratio as at December 2019 was 19 percent. This seems to suggest that from the perspective of total debt to GDP, Nigeria appears to be performing creditably compared to other countries in its category. It also notes that the total interest payment to revenue of the Federal Government was 37.49 percent during the same period.[52]

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51 Okonjo-Iweala NG, Soludo CC, and Muhtar M, 'Managing Nigeria's debt; institutional and governance aspects. The Debt Trap in Nigeria' (*Trenton NJ: Africa World Press Inc.* 2003)

52 Nigeria's Revised Debt Management Strategy, 2020 -2023.

The MTDS, 2020 to 2023, recognized that the country failed to meet its target debt composition of 60:40 for external to domestic debts due to the constraint in accessing external debts from the international capital market occasioned by the late passage of the Appropriation Act in 2019.Domestic debt also experienced an improved structure due to the issuance of the thirty-year Federal Government of Nigeria bond in 2019.[53] In preparing the MTDC, 2020 to 2023, there are certain features of Nigeria's political economy which have been considered such as;

i. a remarkable drop in the price and demand for oil in the international oil market occasioned by the covid-19 pandemic, thereby resulting in reduced government revenues;
ii. difficulty in accessing the international capital market due to the covid-19 pandemic;
iii. reduced access to concessional funding due to Nigeria's classification as a lower middle-income country in 2016; and
iv. poor performance of domestic rates due to expected increase in inflation figures.[54]

In drafting the MTDS, 2020 to 2023, there were certain fiscal policy objectives which influenced the new policy such as:

i. borrowing for domestic and external debts should comply with the Funding Structure for New Borrowings captured in the revised Appropriation Act, 2020 and the Medium-Term Expenditure Framework, 2021 to 2023;
ii. reducing the cost of servicing governmental debts;
iii. managing the level of debt-related risks related to foreign exchange and refinancing risks;
iv. while recognizing the limited envelope Nigeria has access to due to its income-level classification, ensuring access to long-tenor and substantially cheaper external funds from multilateral and bilateral sources is maximized;

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[53] Ibid.
[54] Ibid.

v. ensuring debt sustainability which is to be measured by debt to GDP ratio and interest payment to revenue ratio; and

vi. ensuring that long-tenor debt instruments are issued in the domestic and international capital markets.[55]

To ensure that sovereign debt is managed during the lifetime of the new policy, certain alternative debt management strategies were proposed based on their cost and risk implications on total sovereign debt. They are; ensuring that borrowing is based on the revised Appropriation Act, 2020 and the Medium-Term Expenditure Framework 2021 to 2023; maximising domestic debt by using longer-tenor debt instruments; and maximizing external borrowing by ensuring a marginal increase in external borrowing.[56]

The benefits of the alternative strategies proposed are simply to ensure that maximizing domestic debt while reducing external debt will have the effect of driving an increase in investments in infrastructural development, limit exposure to foreign exchange shocks in the economy, and issuing longer-tenor debt instruments in the international capital markets with a twenty-to-thirty-year timeline will help reduce the risks of refinancing and reduce the debt service to revenue ratio.[57] In the new debt management strategy, the target total debt composition by the end of fiscal year 2023 is 70 (maximum): 30 (minimum) for external to domestic debt and 75 (minimum): 25 (maximum) for external to domestic debt.[58]

4.3.2 Medium Term Expenditure Framework and Fiscal Strategy Paper, 2021 – 2023

The Medium-Term Expenditure Framework and Fiscal Strategy Paper, 2021 to 2023 ("MTEF") was issued by the Budget Office of the Federation in the Federal Ministry of Finance, Budget and National Planning. The MTEF provides a statement on consolidated debt and contingent liabilities

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[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] Ibid.

which appraises Nigeria's debt management strategy. It notes that while total public debt to GDP remains sustainable in light of benchmarks issued by international development institutions, the high debt service payments is expected to improve due to the reforms initiated by the government in the various sectors of the Nigerian economy.[59]

The MTEF also notes that although the specific targets and benchmarks in relation to total debt composition were not met in the MTDS, 2016 to 2019 the outcome of implementing the policy framework showed an improvement from the figures before the period covered by the MTDS, 2016 to 2019.[60] Generally, the implementation of the debt management strategy in the country has helped in the effective management of total public debt.

4.3.3 National Debt Management Framework, 2018 - 2022

The National Debt Management Framework (NDMF) is a compilation of Nigeria's most important debt management strategies, frameworks, and policies. The objective behind preparing the document is to ensure that sovereign debt practices in Nigeria comply with the extant laws, regulations and international best practices.[61] Some of the other objectives of the NDMF, 2018 to 2022 are as follows;

i. To review the total debt portfolio in the country in light of the risks and costs against the backdrop of the goals in the NDMF, 2013 to 2017;
ii. To ensure the implementation of goals in the NDMF, 2013 to 2017, which are still important today;
iii. To incorporate developments in the domestic and international financial markets;
iv. To assess the guidelines for external and domestic debts for all the governments in the federation and their agencies; etc.[62]

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59 Medium Term Expenditure Framework and Fiscal Strategy Paper, 2021 – 2023.

60 Ibid.

61 Ibid.

62 Ibid.

Accordingly, some of the objectives in the NDMF, 2013 to 2017 that are still important today are; improving the capacity of staff of the debt management departments, deepening the secondary market for Federal Government of Nigeria securities by using securities lending to improve the liquidity in the market., achieving the debt composition of 60:40 (domestic and external) and 75:25 (long-term and short-term).[63] It states that the overarching objective of Nigeria's debt management plan is; "to use debt and debt-related instruments to support Nigeria's development goals, while ensuring that public debt is sustainable."[64]

Additionally, some other objectives of public debt management identified in the NDMF are as follows; encourage sub-nationals to adopt the best practices in managing public debt in order to achieve debt sustainability in the economy, manage the risks and costs associated with public debt portfolio and credit risks linked to loans that have been on-lent, help in building strategic relationships between the DMO and key stakeholders, etc.[65]

The scope of public debt covers external debts, domestic debts and contingent liabilities related to sovereign guarantees issued by the government. The external debt management strategy for external debts is to improve external financing in order to rebalance public debt portfolio, manage debt costs and lengthen the maturity profile for the total debt stock. The strategy is similar for domestic debts as it aims to reduce the stock of short-term debts through refinancing and lengthening the debt stock maturity. For the sub-national governments, the DMO intends to work on improving the capacity and strength of the sub-national public debt management institutions.[66]

To ensure macroeconomic stability, public debt management will also be coordinated with monetary and fiscal policy. Despite the fact that the institutions responsible for achieving both objectives are different, high-level stakeholder forums will be convened to ensure that there are engagements at

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[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] Ibid.

strategic and operational levels.[67] Effective risk management frameworks will also be put in place to ensure effective management of the risks, the following areas pose to the total debt portfolio; refinancing risk, exchange rate risk, interest rate risk, liquidity risk, etc.[68] It also underscores the need to continually conduct the Debt Sustainability Analysis to ensure that Nigeria's total public debt remains sustainable and immune to economic and financial shocks, which it may become exposed to.[69]

5. THE IMPACT OF SOVEREIGN DEBT MANAGEMENT ON ENERGY POVERTY IN NIGERIA

In order to effectively address energy poverty, it is important for the government to facilitate investment in developmental projects that have the potential to improve energy access.[70] This is because energy poverty negatively affects the ability of citizens to live above the poverty line, access to food, personal finance, education, to mention but a few. It has emerged as an important aspect of development, which can increase poverty levels tremendously and slow development.[71] Unfortunately, it will be impossible for a nation to improve energy access without the adequate financing.[72] It is in this lack of resources for adequate financing for development that the nexus lies between poor

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67 Ibid.

68 Ibid.

69 Ibid.

70 Allwell Nwankwo, 'Lighting Nigeria: Tackling Energy Poverty Despite Co- vid-19' (*Lighting Global*, 16 July 2020) <https://www.lightingglobal.org /news/nigeria-tackling-energy-poverty-during-covid-19/> accessed 15 July 2021.

71 Ozughalu UM, and Ogwumike FO, 'Extreme energy poverty incidence and de terminants in Nigeria: A multidimensional approach'(2019) Social Indicators Research. 2019 Apr;142(3):997-1014.

72 Nnaji CE, Uzoma CC, and Chukwu JO, 'The role of renewable energy resources in poverty alleviation and sustainable development in Nigeria' (2010) Continental Journal of Social Sciences 31-7.

sustainable debt management and energy poverty in Nigeria.[73]

As with other aspects of development, the total debt stock and the debt servicing obligations in the country appear to have an impact on the energy poverty situation in Nigeria. The analysis of the economic impact of Nigeria's situation on development above reveals that two factors account for the negative relationship between Nigeria's debt and sustainable development.[74] The first is the failure by government officials to use the debt incurred for the investments for which they were originally meant for thereby necessitating the continued borrowings for similar projects and invariably increasing the total debt stock. The second factor is that the rising debt servicing costs reduces the amount of money available to be directed towards development.

The challenges posed by debt management to energy access notwithstanding, Nigeria's energy poverty is in a critical state. The Rural Electrification Agency (REA) notes that about fifty percent of Nigerians are unable to access electricity while a large percentage of those with access to electricity have less than 12 hours of electricity supply daily.[75] There is an urgent need for investment in the infrastructure that will improve energy access, such as investment in renewable energy to assuage the hardship occasioned by the absence of grid electricity.[76] These investments can also be deployed to harness the potentials that currently exist in alternative energy sources in Nigeria through the thermal and hydropower stations.[77]

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73 Johnbosco Ozigbu, 'Public Debt Sustainability and Incidences of Poverty: Empirical Evidence from Nigeria,' (2018) 6(3) IJDES 26.

74 Cf Okoye (n 15).

75 Cf Nwankwo (n 68).

76 This can be achieved through renewable energy sources such as; subsidized solar house systems (SHSs). See, Monyei CG, Adewumi AO, Obolo MO, and Sajou B, 'Nigeria's energy poverty: Insights and implications for smart policies and framework towards a smart Nigeria electricity network' (2018) Renewable and Sustainable Energy Reviews. 582-601.

77 Nwozor A, Oshewolo S, and Ogundele O, 'Energy poverty and environmental sustainability in Nigeria: an exploratory assessment' (InIOP Conference Series: Earth and Environmental Science September 1 2019)

This need to deploy financing towards improving energy access underscores the need for efficient and sustainable debt management policies to ensure that the sovereign debt incurred for investment in Nigeria's energy sector is utilized efficiently. In this way, inefficient debt management strategies will continue to affect development and more specifically, energy access by the average Nigerian. There is truly no way that Nigeria can achieve sustainable development unless energy poverty is obliterated.[78] Additionally, it is important that the government is able to manage its debt servicing obligations sustainably to prevent a situation where it will be difficult for the government to invest in the energy sector because of a cash crunch occasioned by the huge debt service obligations.

6. CONCLUSION AND RECOMMENDATIONS

This article has provided a brief history of Nigeria's debt profile, its debt management strategies and examined the legal and economic implications of Nigeria's debt management strategies. The existing literature reveals that sovereign debt provides leverage for economic growth and development. The total debt profile appears to have a positive impact on GDP and the external reserves while the huge debt service costs appear to restrict funds otherwise meant for investment in human and infrastructural development in the economy. Additionally, the debt management strategies in place appear to be effective when applied although there is no policy on the prevention of huge debt service costs on revenue before they arise. The debt management policy framework as well as the debt management institutions in the country appear to comprehensively address all aspects of debt management in Nigeria. It will however be important to ensure that all activities in relation to debt management are principally

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78 Ogwumike FO, Ozughalu UM, 'Analysis of energy poverty and its implications for sustainable development in Nigeria'(2016)21 Environment and development economics.

performed by the DMO with other stakeholder acting in partnership with the DMO.

It appears that the provisions of the Fiscal Responsibility Act capture almost every aspect of sovereign debt management and responsible lending by the government of Nigeria. The Fiscal Responsibility Act lays down the framework for what sovereign debts should be taken for (capital expenditure and human development) and also states the terms upon which they should be taken, yet it does not place a limit on the percentage of governmental revenue to be used to service debt at any point in time. The borrowing limits and terms of loans to be taken as provided for in the Fiscal Responsibility Act, 2007 has failed to address this issue.The implication of this is that while the President imposes a debt limit on the consolidated debt to be taken out by any arm of government, the failure to place a limit on debt servicing relative to government revenue has placed severe constraints on the government of the federation such that a large percentage of government revenue is now being used to service government debt. For Nigeria, beyond the obligation of the lenders to carry out due diligence when making the decision to lend to it, the government can ensure that there are rules in place to prevent a situation where over 90 percent of government revenue is used to service debts as is the case with some sub-national governments in the country.

While ensuring that sovereign debt is taken on concessionary terms and long repayment terms may positively impact debt service costs, placing a benchmark for debt service costs relative to total revenue may be helpful in ensuring sustainability in that regard. This does not replace the need to adopt concessionary and long repayment terms in sovereign debt management, but merely provides an additional layer of protection. Thus, while it may be difficult to predict with precision what governmental revenue may be in any fiscal year (for the purpose of benchmarking debt service costs to total revenue) rough estimates (based on a predetermined formula to be captured in the debt management policy to be released by the DMO) may provide a useful guide in the negotiation of loans to ensure that debt service costs do not have a negative impact on investment in human and infrastructural development. It is also worth mentioning that by merely improving revenue in the country and investing wisely with borrowed funds, economic growth will substantially affect debt service to revenue. This is so as increased revenue reduces ratio of debt servicing to revenue. Ancillary to this is the point that beyond effective debt management, debt service to GDP and total debt to GDP ratios will improve significantly when the economy is performing optimally.

Management of sovereign debt to ensure that they are used for the purpose for which they are obtained is critical. While large amounts appear to have been taken in the past for specific investments in infrastructure, the experience with this has been that public officials do not always use the loans for the purpose for which they were borrowed. Accordingly, a process of ensuring proper monitoring of loans taken out with stiff criminal sanctions may be helpful. Although this is part of the larger problem with corruption in Nigerian political life, a system which ensures that the DMO supervises and monitors the use of borrowed funds to prevent abuse may help to prevent looting of the funds. This will however require improvement of the manpower and operational capacity of the DMO to ensure that it performs optimally.

Multiplicity of debt management policies, which tend to conflict in minor areas, and all issued by the same set of agencies leads to a lack of coordination in sovereign debt management policy. It will be helpful to have one comprehensive document issued by the DMO in partnership with all the stakeholders and for the same cycle as opposed to different documents for similar but different cycles.

Finally, the total debt stock and debt management strategies in place have a negative impact on the quest to improve energy access in Nigeria. The efficient management of the nation's sovereign debt will have the effect of freeing up cash in the economy, which can be directed towards sustainable development projects geared at improving energy access.