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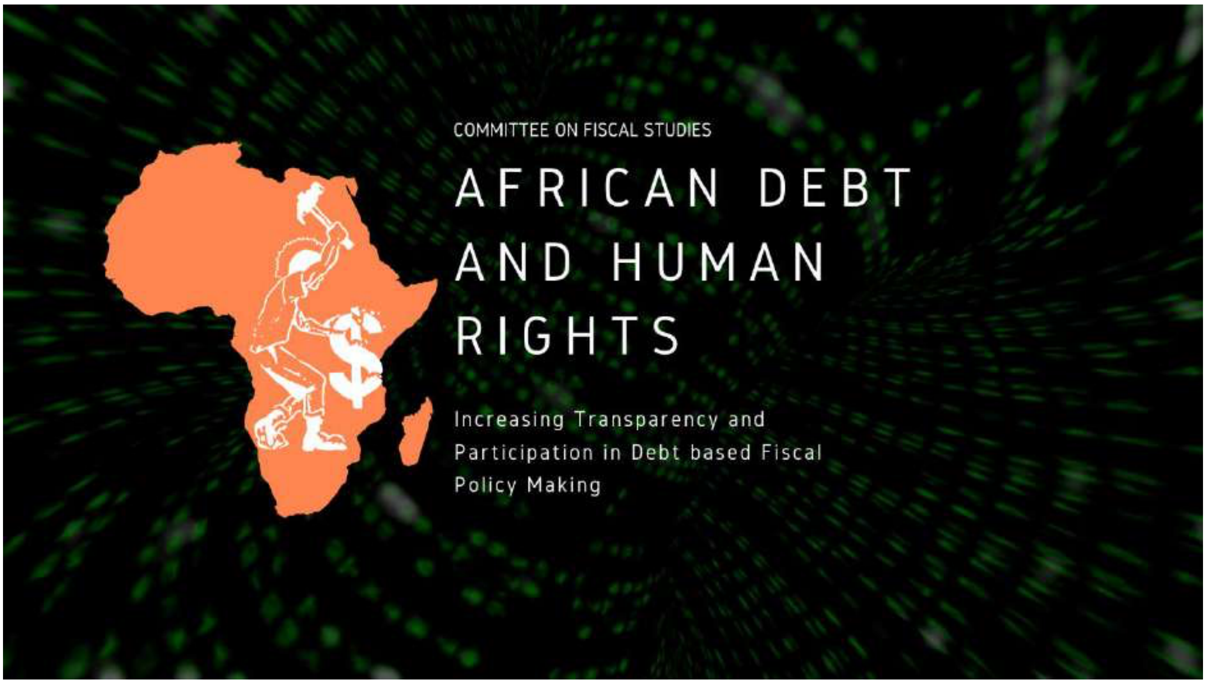
The Impact of Foreign Debt on Economic and Social Rights: A Case Study on the Right to Health in Kenya, Nigeria and Zambia



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The Impact of Foreign Debt on Economic and Social Rights: ***A case study of the right to health in Kenya, Nigeria and Zambia***

Abstract

While economic and social rights (ESR) are recognized in national and international law, their enjoyment in some African countries is constrained. This results out of corruption and mismanagement of available funds and is further impacted upon by foreign debt, which plays a substantial role in limiting access to resources needed to fund government services. The link between government services and human rights is evident particularly with respect to ESR. For example, the right to health can progressively be achieved if a government invests adequately in the healthcare sector by ensuring availability of adequate healthcare workers to cater for patients. Countries that take on significant foreign debt direct a large part of government resources towards its servicing which then reduces spending on essential public goods and services. This paper studies Kenya, Nigeria and Zambia to understand whether there is a connection between the amount of funds allocated to ESR, specifically the right to health, and the amounts spent servicing foreign debt. External debt has conditions attached which further erode progress towards implementing ESR. The primary remedies to address growing foreign debt discussed in this paper include restructuring the debt and ensuring the proper management of available resources. If the adverse impact of foreign debt is not recognized, the realisation of ESR will continue to be constrained in Africa.

Key words: *foreign debt, economic rights, social rights, debt servicing, health financing*

1. INTRODUCTION

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides for economic and social rights (ESR), which include: the highest attainable standard of health, accessible and adequate housing, adequate food, clean water, social security, and education.[1] These rights accrue to every person by virtue of their being human, and the government has the mandate to uphold these rights. The rights are quite a number, and the author will explore a targeted approach of discussing the right to health. The ICESCR requires states to recognize the right of everyone to the enjoyment of the highest attainable standards of health.[2] In particular, states are obligated to take steps including prevention, treatment, and control of epidemics, endemics, occupational and other diseases.[3] The Universal Declaration of Human Rights (**UDHR**) provides that everyone has the right to medical care and necessary social services.[4]

Further, the African (Banjul) Charter on Human and Peoples' Rights (**ACHPR**) provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.[5] The ICESCR and ACHPR require states to create conditions or take necessary measures to assure to all medical services and medical attention in the event of

[1] United Nations General Assembly, "International Covenant on Economic, Social and Cultural Rights," 1976.
[2] International Covenant for Economic Social and Cultural Right, 1976 art. 12(1).
[3] ibid, art. 12(2)(c).
[4] Universal Declaration of Human Rights, 1948 art. 25.
[5] African (Banjul) Charter on Human and Peoples' Rights, 1986 art. 16(1)

sickness.[6] From the above list of national and international law, the right to health, among several ESR, is firmly entrenched as a crucial human right which the state is obligated to protect. Laws of various countries such as Kenya,[7] Nigeria[8] and Zambia[9] have incorporated ESR in their national laws.

Government spending on healthcare compared to the amount spent on foreign debt shows that foreign debt is taking up a significant part of government expenditure. For the 2020/2021 financial year, the Auditor-General noted that the budgeted receipts from the Ministry of Health in Kenya showed spending at Kenya Shillings 121,748,688,866 (approximately USD 1,022,583,795.6) while the amount allocated was 93,850,411,784 (approximately USD 788,262,372.23).[10] This suggests that the budget allocated to the health sector overshot. At the same time, interest paid on foreign borrowing was at Kenya Shillings 106,265,999,668 (approximately USD 892,542,583.39) exceeding the amount allocated to the Ministry of Health.[11] Further, the total amount allocated to the 47 counties in Kenya, responsible for providing healthcare services was Kenya Shillings 316,500,000,000 (approximately USD 2,658,326,544.00).[12] The interest paid on foreign borrowing when compared to this amount was approximately 33.58% of the amount allocated to all 47 counties in Kenya. A substantial amount of money that could be allocated towards fulfilling the right to health was instead diverted towards the payment of interest on foreign debt.

The situation in Kenya can also be seen in other countries such as Nigeria and Zambia. In 2019, Nigeria allocated approximately USD 16,339,458.29 to the Federal Ministry of

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[6] Supra, n1, 12(2)(d); ibid, art. 16(2).
[7] The Constitution of Kenya, 2010 provides that every person has the right to the highest attainable standard of health which includes the right to health care services, including reproductive health care. The national government is assigned the responsibility for health policy and maintaining national referral facilities. The county governments are required to provide health services such as county health facilities, pharmacies, ambulance services, and primary health care.
[8] The Constitution of the Federal Republic of Nigeria, 1999 obligates the state to direct its policy towards ensuring that there are adequate medical and health facilities for all persons. Further, local government councils are obligated to provide and maintain health services.
[9] The Constitution of Zambia (1991) provides that provision of health services is a concurrent national and provincial function. As is evident, the three countries appreciate the importance of safeguarding economic and social rights such as the right to health and have taken the step of codifying it in their constitutions.
[10] Office of the Auditor-General, "Report of the Auditor-General for the National Government Ministries, Departments and Agencies for the Year 2020/2021" (Nairobi, 2021), https://www.oagkenya.go.ke/wp-content/uploads/2022/05/NATIONAL-GOVERNMENT-AUDIT-REPORT-2020-2021.pdf.
[11] ibid.
[12] Commission on Revenue Allocation, "How Much Is Your County Receiving in FY2021/2022?," cra.go.ke, July 19, 2021, https://cra.go.ke/2021/07/19/how-much-is-your-county-receiving-in-fy2021-2022/.

Health.[13] The service charge for external loans in Nigeria was assessed as USD 1,333,537,660 in 2019.[14] In 2019, despite requesting USD 481,253,349.46, the Ministry of Health in Zambia received funding of USD 288,828,809.74,[15] while the government allocated USD 1,442,380,788.00 towards debt servicing.[16] From the above, both Nigeria and Zambia allocated more funds to debt servicing than to financing health. This is indicative that funds are being taken away from financing the core obligations under ESR and instead diverted towards debt servicing. This paper examines the extent to which spending on foreign debt takes away money that could have been spent on health in Kenya, Nigeria, and Zambia. The author appreciates that the causes of under financing ESR in Africa are numerous, however, this paper focuses on foreign debt and spending on health.

The paper is divided into 5 sections. Section 1 is the introduction which set the context for the discussion in this paper with some claims emerging as crucial to this discussion. Section 2 outlines ESR, in particular the right to health and links this to the provision of essential government services such as hospitals and doctors. This provides the rationale for the discussion and allows the author to identify the fact that health only represents one of a larger group of ESR that all persons are entitled to receive from the government. Section 3 narrows down on healthcare expenditure in Kenya, Zambia, and Nigeria which is compared to the spending of the governments on foreign debt and debt service. This allows the author to demonstrate that at the very least the figures are significant and taking away the resources that should be made available for providing essential services to ensure people enjoy their rights. Section 4 provides recommendation such as the importance of debt restructuring, fiscal transparency, and ensuring foreign debt is not attached to oppressive conditions to allow some fiscal space for governments to provide essential services and implement ESR. Section 5 concludes the paper.

[13] Auditor-General for the Federation, "Auditor-General for the Federation's Annual Report on the Federal Government of Nigeria Consolidated Financial Statements for the Year Ended 31 December 2019" (Abuja, 2020), https://www.oaugf.ng/docman/33-augf-report-on-fgn-consolidated-financial-statement-for-2019/file.
[14] Debt Management Office, "Nigeria's Actual External Debt Service Payments in January - December, 2019 ," 2020, https://www.dmo.gov.ng/debt-profile/external-debts/debt-service/3118-actual-external-debt-service-payments-from-january-to-december-2019/file.
[15] Auditor-General of Zambia, "Report of the Auditor-General on the Accounts of the Republic for the Financial Year Ended 31 December 2019," 2020, https://www.ago.gov.zm/?wpfb_dl=207.
[16] PricewaterhouseCoopers, "What Next? Zambia Budget 2019," 2019, https://www.pwc.com/zm/en/assets/pdf/zambia-budget-2019.pdf.

2. LINKING ECONOMIC AND SOCIAL RIGHTS TO GOVERNMENT SERVICES

The ICESCR requires states to take steps to achieving the progressive realisation of ESR by leveraging the available resources to their maximum.[17] The rights include: the right to gain a living by being able to work, the right to safe and decent living conditions, the right to education with at least the primary education made compulsory and free for all, the right to have social security, the right to adequate food and the highest attainable standard of health care.[18] The UDHR and the ACHPR also protect the ESR while requiring states to take measures to ensure their realisation. The core obligation on the government is to take legislative action to guarantee the achievement of ESR.

The ICESCR acknowledges that developing countries may not be able to match the extent of government service provision of developed countries.[19] However, developing countries are still required to at least finance and immediately secure the minimum core content of ESR.[20] International and national law recognises that ESR accrues to human beings and need to be upheld by states. The mention of taking steps is intended to provide governments with a wide scope of discretion in seeking to achieve the human rights. Governments can ensure implementation through using their finances to provide essential services. This is particularly crucial in developing countries where citizens do not have access to employment or sources of income. However, if countries are using finances in foreign debt repayments, then their available resources are not being utilised to their maximum towards the realization of quality education, appropriate healthcare and provision of service delivery to the citizens.

The role of the state is discussed in various literature with some divergent views on the obligations of the government to provide services to its citizens. This is due to the ideological split between socialism and capitalism with each considering the role of the government in a different light. Socialism argues that the government needs to ensure minimum free services such as pensions, education, health, and government grants.[21] This paper does not fully

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[17] Supra, n1, art. 2(1).
[18] Supra, n1.
[19] Supra, n1, art. 2(2).
[20] Supra, n1 art. 2(3).
[21] George Esenwein, "Socialism," *New Dictionary of the History of Ideas*, January 2004, https://www.researchgate.net/profile/George-Esenwein/publication/311885000_Socialism/links/585ecbce08ae8fce49017e32/Socialism.pdf.

advocate for a socialist perspective because the author acknowledges the merits in capitalism's view on the importance of private ownership and free enterprise. Government policies around the world are influenced through the political ideology of the individuals in power. However, the inequality around the world is acknowledged in reports by institutions such as the United Nations.[22] If a government fails to provide the poor with minimum ESR, the welfare of individuals is likely to suffer.

Aristotle argues that a government needs to guarantee the welfare of society which envisions the state as providing for those that lack access to certain services.[23] While the private sector should provide opportunity for individuals to explore means of providing for themselves, a public sector is crucial. It is the public sector that guarantees availability of minimum resources which ensures stability and room for growth. The concept of minimum government involvement acknowledges that public works and institutions need to be funded to justify the existence of the government. Scholars such as Adam Smith and John Stuart Mill recognized that the private sector may not be willing to provide certain services due to lack of profitability.[24] Items such as free access roads, hospitals, schools, and other public works are unlikely to be availed through the private sector. This means that it is the duty of the government to ensure that individuals have access to schools, health, and other infrastructure. This duty can be based on myriad theories including the sole basis that human rights are inherent and must be safeguarded without needing economic or other justification.

Traditionally, human rights encompassed the protection from arbitrary interference with enjoyment through restricting state power. However, with codification of ESR in the contemporary era, the scope of the role of the state should be expanded.[25] ESR require resources to be dedicated to effectively discharge the state's obligation. Societal transformation requires acknowledging the inequality levels in society and seeking ways to provide equality of access and outcomes for individuals.[26] The present conditions are because of historical

[22] United Nations Department of Economic and Social Affairs, "World Social Report 2020 Inequality in a Rapidly Changing World," 2020, https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/01/World-Social-Report-2020-FullReport.pdf.
[23] Giovanni Giorgini, "Aristotle on the Best Form of Government," *Enthousiasmos*, 2019, 121–46, https://doi.org/10.5771/9783896658043-121.
[24] University of Pretoria, "The Role and Functions of Government ," in *The Role and Function of Government* (University of Pretoria), accessed July 31, 2022, https://repository.up.ac.za/bitstream/handle/2263/24808/03chapter3.pdf.
[25] ibid.
[26] ibid.

marginalization and oppression. The means of addressing the history lies in long-term plans for investing resources to rectify disproportionate outcomes. Government resources can be sourced from various avenues which includes foreign debt.

The Corporate Finance Institute defines foreign debt as money that a government borrows from another country's government or private lenders.[27] This also includes international organizations such as the World Bank and the International Monetary Fund. However, it is also important to note that regional lending organizations such as the Asian Development Bank lend money to finance country projects in its member states across Asia and a few non-regional states that are part of its membership.[28] The borrowed loans include non-concessional, semi-concessional, and concessional loans. Most country-to-country lending capitalize on concessional loans. The concessional loans, are loans made on more favorable terms than the market rates, taken from lenders and can either be short-term for 2 to 3 years or long-term for 20 years. On the other hand, semi-concessional loans have a positive grant element but do not meet the 35 percent grant element threshold.[29]

Governments borrow because foreign debt is crucial to financing investment which may not have been possible if the state only relied on domestic debt and revenue sources. The policy rationale behind the borrowing is that with sufficient investments, in the future, a developing country will create additional revenue streams.[30] Any foreign investment is bound to have additional benefits such as creating employment, additional income and tax revenue that can improve the economy and welfare of individuals in a country. Further, with access to foreign investors, governments are incentivized to ensure proper policy management to attract more funding.[31] This is because long-term policies that guarantee an ability to repay the loans builds a relationship with the creditor that provides an additional revenue source for the future. The positive benefits of foreign debt are evidently numerous and they supplement the provision of government services.

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[27] Corporate Finance Institute, "Foreign Debt - Overview, Impact, Sustainability Indicators," 2021.
[28] Biswa Nath Bhattacharyay, "Financing Asia's Infrastructure: Modes of Development and Integration of Asian Financial Markets," 2010.
[29] International Monetary Fund (IMF), "Debt Limits in Fund Programs with Low-Income Countries," *Policy Papers* 2015, no. 65 (2013), https://doi.org/10.5089/9781498341035.007.
[30] Philippe Beaugrand, Boileau Loko, and Montfort Mlachila, "The Choice Between External and Domestic Debt in Financing Budget Deficits: The Case of Central and West African Countries," 2002, https://www.imf.org/external/pubs/ft/wp/2002/wp0279.pdf.
[31] Beaugrand, Loko, and Mlachila.

Foreign debt is an important source of government revenue as even developed countries such as the United Kingdom and the United States have relied on debt since the 18th century.[32] However, the developed countries are able to raise larger amounts via domestic debt than developing countries which are considered less stable. Other aspects such as inflation rates, underdeveloped infrastructure, and insufficient capital make it increasingly difficult for developing countries to raise revenue through domestic debt.[33] Another aspect of foreign debt borrowing in developing countries that arises in comparison to developed countries is that investors are more willing to offer shorter term debt to developing countries.[34] The result is that the foreign debt becomes repayable in a shorter time frame for developing countries.

Increasing foreign debt repayments constrain a state's fiscal space by taking away resources from the country that could be utilized to improve lives of citizens. Fiscal space is a room in a government's budget that allows it to provide resources for the desired purpose without jeopardizing its financial position's sustainability or the economy's stability.[35] The fiscal space can be created by raising taxes which the government can do through broadening the tax base and improving tax administration, securing outside grants, cutting lower-priority expenditures, and borrowing resources.[36] For developing countries, the fiscal space continues to reduce as the government allocate debt to finance recurrent expenditure such as wages and salaries. This takes away from capital and development expenditure that is crucial for maintenance of existing infrastructure and capacity development.

3. GOVERNMENT SPENDING ON HEALTHCARE AND FOREIGN DEBT

The Kenyan government finances its national budget by raising revenue through taxes and borrowing. The borrowing could either be in domestic or foreign debt. According to the 2021 National Treasury's annual report on public debt, the country had 52% external debt and 48% domestic debt.[37] The external debt is taken up on concessional terms meaning that the agreement is at a lower interest rate than what would be incurred an arm's length transaction and can also encompass deferred payment periods. Foreign debt can help countries achieve

[32] Grace Walsh, "A DISCUSSION OF FOREIGN CURRENCY DEBT IN EMERGING MARKET ECONOMIES," 2011, https://www.tcd.ie/Economics/assets/pdf/SER/2011/Grace_Walsh.pdf.
[33] ibid.
[34] ibid.
[35] ibid
[36] ibid.
[37] Deloitte, "Kenya Budget Highlights 2022/2023" 6, no. 033020 (2022): 1–20.

their goals by providing the necessary finances to facilitate development.[38] Table 1 shows the levels of foreign debt in Kenya, Zambia, and Nigeria from 2019 to 2021.

Table 1: Foreign debt levels in Kenya, Zambia and Nigeria for 2019 – 2021 in USD				
No.	**Country**	**2019**	**2020**	**2021**
1.	Kenya	26,094,628,568.96[39]	31,860,318,617.55[40]	35,061,114,195.00[41]
2.	Nigeria	27,676,140,000.00[42]	33,348,080,000.00[43]	38,391,320,000.00[44]
3.	Zambia	11,658,700,000.00[45]	12,738,300,000.00[46]	13,041,200,000.00[47]

The implication of this amount of debt as shown above is that the government is required to allocate money to cater for debt service payments every year until the debts are repaid in full. In this regard, an examination of the amount of funds spent on debt service payments for 2019-2021 is shown in Table 2.

Table 2: External debt service Kenya, Zambia and Nigeria for 2019 – 2021 in USD				
No.	**Country**	**2019**	**2020**	**2021**
1.	Kenya	1,764,000,000[48]	2,381,736,000[49]	1,190,000,000[50]
2.	Nigeria	1,333,537,660[51]	1,556,211,630[52]	2,109,511,950[53]
3.	Zambia	1,196,200,000[54]	617,700,000[55]	206,700,000[56]

[38] Makau Justus and K A Lii, "External Public Debt Servicing and Economic Growth in Kenya: An Empirical Analysis," 2008.
[39] ibid.
[40] ibid.
[41] Central Bank of Kenya, "Public Debt | CBK," centralbank.go.ke, 2022, https://www.centralbank.go.ke/public-debt/.
[42] ibid.
[43] ibid.
[44] Debt Management Office Nigeria, "Nigeria's External Debt Stock as at December 31, 2021," 2021, https://www.dmo.gov.ng/debt-profile/external-debts/external-debt-stock/3852-nigeria-s-external-debt-stock-as-at-december-31-2021/file.
[45] ibid.
[46] ibid.
[47] Bank of Zambia, "Annual Report 2021 Bank of Zambia," 2022, https://www.boz.zm/2021_Bank_of_Zambia_ANNUAL_REPORT.pdf.
[48] Kenya Institute of Public Policy Research and Analysis.
[49] Kenya Institute of Public Policy Research and Analysis, "Kenya's Public Debt with the COVID-19 Pandemic – KIPPRA," 2021, https://kippra.or.ke/kenyas-public-debt-with-the-covid-19-pandemic/.
[50] East African Newspaper, "Kenya's Budget Proposes to Raise Debt Ceiling to Fund Recovery - The East African," accessed July 31, 2022, https://www.theeastafrican.co.ke/tea/business/kenya-budget-proposes-to-raise-debt-ceiling-to-fund-recovery-3779898.
[51] Debt Management Office Nigeria, "Nigeria's Actual External Debt Service Payments in January - December, 2019 ," accessed July 31, 2022, https://www.dmo.gov.ng/debt-profile/external-debts/debt-service/3118-actual-external-debt-service-payments-from-january-to-december-2019/file.
[52] Debt Management Office Nigeria, "ACTUAL EXTERNAL DEBT SERVICE PAYMENTS JANUARY - DECEMBER, 2020," 2020, https://www.dmo.gov.ng/debt-profile/external-debts/debt-service/3490-actual-external-debt-service-payments-from-january-to-december-2020/file.
[53] Nigeria Debt Management Office, "Actual External Debt Service Payments January-December 2021" https://www.dmo.gov.ng/debt-profile/external-debts/debt-service.
[54] ibid.
[55] ibid.
[56] Bank of Zambia, "Annual Report 2021 Bank of Zambia."

The above figures indicate that millions of USD are spent on debt servicing by the three countries which is a significant amount. For comparison, Table 3 shows the spending on health in Kenya, Zambia, and Nigeria between 2019-2021.

Table 3: Health Spending Kenya, Zambia and Nigeria for 2019 – 2021 in USD				
No.	**Country**	**2019**	**2020**	**2021**
1.	Kenya	635,515,378.94	897,295,731.18	788,262,372.23[57]
2.	Nigeria	2,863,875,622.50	3,198,114,675.00	3,553,995,105.00
3.	Zambia	488,942,640.00	574,507,602.00	592,842,951.00

The comparison of the three data metrics set out earlier in the three tables are compared in Figure 1.

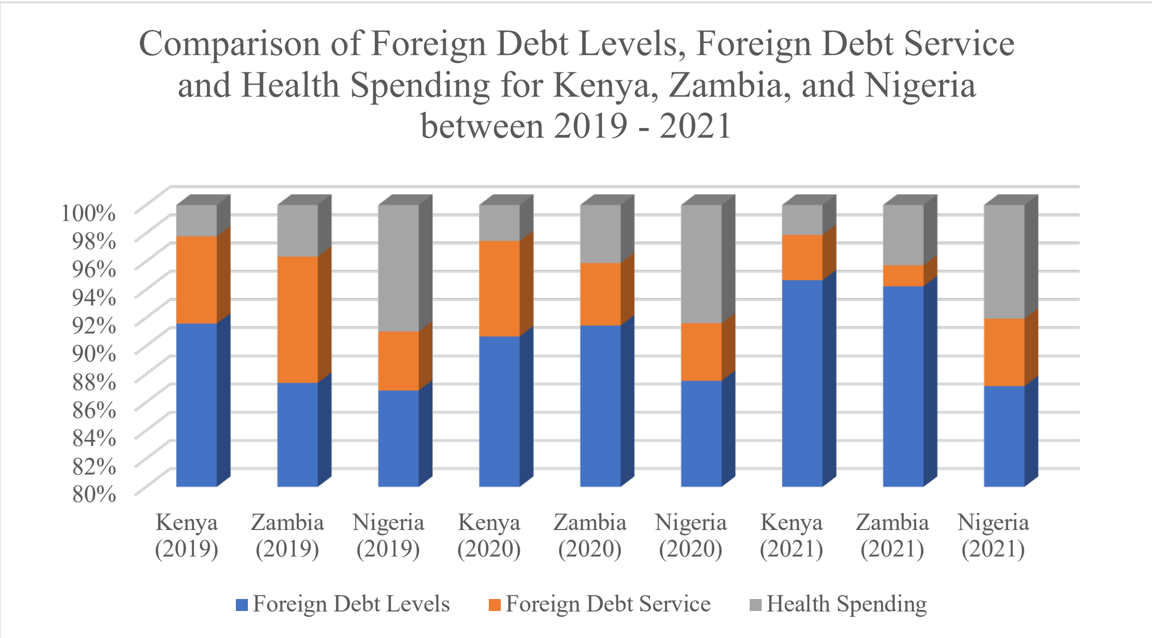

Figure 1 Comparison of Foreign Debt Levels, Foreign Debt Service and Health Spending for Kenya, Zambia, and Nigeria between 2019 – 2021

Separately, the pieces of data provide evidence that significant sums of money are being spent on foreign debt servicing that may have been allocated to government services such as health spending. Some of the key takeaways from the graph above should be the periods during which foreign debt service competed for the resources of the government with healthcare spending. For example, for Zambia in 2019, the foreign debt service was USD 1,196,200,000

[57] Office of the Auditor-General, "Report of the Auditor-General for the National Government Ministries, Departments and Agencies for the Year 2020/2021."

while the healthcare spending was 488,942,640.00. In Kenya for 2021, while healthcare spending was USD 788,262,372.23, the foreign debt servicing was allocated USD 892,542,583.39. In Nigeria for 2020, the healthcare spending was USD 3,198,114,675.00 compared to the spending on debt servicing which was USD 1,556,211,630. The statistics in Nigeria show an increased expenditure on health due to the global pandemic at the time however, the money used on debt servicing was still quite significant and could have been diverted to fund the healthcare system.

These disparities should be concerning and deserve more attention because human beings are competing for scarce resources with foreign debt servicing. What makes the situation more worrisome is the current state of healthcare in Kenya, Zambia, and Nigeria which is discussed below. Before examining the state of healthcare in Kenya, Zambia, and Nigeria, it is important to note that the figures only tell part of the story. However, they are crucial to demonstrating the extent of the underdevelopment of health sectors in the countries. In Kenya, the Ministry of Health reported that the various county governments in Kenya had severe disparities in health infrastructure.[58] Lamu County which has the best healthcare worker density as a proportion of the population had 19.6 healthcare workers for every 10,000 persons.[59] On the other hand, Kilifi which had less than 5 healthcare workers for every 10,000 persons.[60] For the entire country, the average was about 7.8 healthcare workers for every 10,000 persons showing that most countries had less than 10 healthcare workers for every 10,000 persons. The Ministry of Health noted that the WHO recommends a minimum threshold of 23 healthcare workers for every 10,000 persons.[61] The total number of healthcare workers registered in Kenya is 148,322 who work in both the public and private sectors. However, only 68% renewed their practicing licenses in 2019 which means that several healthcare workers are not providing healthcare services.[62]

Using the same metric for comparison purposes in Nigeria, the figures show that the people are equally underserved. The doctor patient ratio in Nigeria is estimated to be 2500:1.[63]

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58 Ministry of Health and World Health Organization, "Ministry of Health Mid Term Review of the Kenya Health Sector Strategic and Investment Plan 2018-2023: Statistical Report December 2020", Latif, LA, 'Health Finance in Kenya's Progress towards Universal Health Coverage' (2020) Journal on Financing for Development, vol 1, Issue 2, 41-67.
59 ibid.
60 ibid
61 ibid.
62 ibid.
63 United Kingdom Home Office, "Country Information Note Nigeria: Medical Treatment and Healthcare."

There are also reports that the actual ratio is one doctor per 5,000 people in Nigeria which increases uncertainty due to unavailability of accurate and verifiable data. Out of the 72,000 doctors registered in Nigeria, it is estimated that more than 50% practice outside Nigeria which means they do not provide services to Nigerians.[64] In Zambia, the healthcare density was 0.1 per 1,000 individuals in 2016.[65] The figures indicate a need for increased investment in the amount of funds spent on healthcare in the countries.

Debt can be leveraged to invest in healthcare and providing other ESR. However, where do we draw the line? The government must exercise caution to ensure that we are not borrowing unsustainably or in a manner that will keep the country in a debt cycle that is unsustainable. For every debt a country plans to accumulate, there needs to be a human rights impact assessment that identifies and measures whether the government will use the resources to promote the rights of the people or saddle the country with debt that takes away from important government resources.[66]

A dimension to foreign debt that is worrisome is that as a country continues to borrow where there are revenue leakages such as corruption and looting of funds by the political leaders, the debt borrowed is not used for the purpose it was acquired.[67] Between 2019-2021, Kenya, Nigeria, and Zambia substantially spent on debt repayment than advancing ESR. Kenya borrowed approximately Kshs 2.5 billion (20,969,285.00) every day while spending Kshs 2.4 billion (USD 20,130,513.60) a day on debt repayments.[68] This shows that only Kshs 0.1 billion (USD 838,771.40) was being injected back into the economy further evidencing the reduced fiscal space that hinders growth and development in a nation.

The rate of debt repayments continues to increase once we factor in the fluctuation of the foreign exchange rates as well as the disbursements of the loan facility. The exchange rate can also be used to gauge the economic performance of a country as we see the Kenyan shilling weaken against the US dollar. The fluctuation of the currency influences the repayment of debt

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[64] ibid.

[65] https://knoema.com/atlas/Zambia/topics/Health/Human-Resources-for-Health-per-1000-population/Density-of-other-health-workers

[66] Annalisa Fedelino, Martin Kaufman, and Marcello Estevao, "Kenya: Requests for an Extended Arrangement under the Extended Fund Facility and an Arrangement under the Extended Credit Facility- Debt Sustainability Analysis" 156, no. 20 (2021).

[67] Onyebuchukwu Orji, "The Effect of Foreign Debt on the Economic Growth of Nigeria," *Journal of Accounting and Financial Management* 7, no. 3 (2013): 291–306, https://doi.org/10.25019/mdke/7.3.01.

[68] Mburu Peter, "Inside Kenya's Loans Spree as It Borrows Sh2.5 Billion Daily | Nation," 2022.

as a significant amount of the Kenyan debt is in foreign currency. The difference between debt acquired and debt repayments already give us a sense of the borrow Peter to pay Paul analogy showing that Kenya is spending less on economic development and realizing ESR.

Similarly, across the border in Nigeria, it is reported that the country used 97% of its revenue in 2020 on debt servicing.[69] The report shows that out of the country's 3.42 trillion Naira (USD 8,081,271,900.00) generated as revenue, the federal government used 3.34 trillion Naira (USD 7,892,236,300.00) to pay off debt. The acquired debt was used to fund recurrent expenditure and overheads such as the Federal Government's salaries. The government did not use the money to invest in capital projects such as infrastructure. The redirection of the debt is another great example of how a lack of debt transparency and considering human rights can lead to a diversion of funds, that is, the debt acquired for development and economic growth.

In Kenya, foreign debt continues to rise, as evidenced by the public debt analysis on the Central Bank website.[70] The amount of debt has brought with it side effects such as reallocation of priority areas of spending when providing for citizens. To put it in perspective, since money is being used for debt repayments, the government reduces the money allocated to provide resources in schools that promote quality education and social protection to provide food and health centers.[71]

The trend of taking up unsustainable loans from external creditors can harm the economic and social development growth of a country. Taking an example of Uganda, though the loan financing agreements are not publicly available, reports have shown that under the loan agreement to modernize the Entebbe Airport,[72] the government must channel all the revenue emanating from the airport into a shared account held by the government and the lender. The money deposited in the shared account then acts as collateral for the loan.[73] This means that money that the government could have spent on hospitals and schools is not reaching the citizens. Once again, the available resources giving priority to debt repayments as opposed to the realization of social and economic rights.

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[69] Olawoyin Oladeinde, "Nigeria Spent 97% of Revenue On Debt Servicing in 2020 - Report - AllAfrica.Com," 2021.
[70] Central Bank of Kenya, "Public Debt | CBK," 2021.
[71] Kenya: External Debt 2020-2021 | Statista, n.d.
[72] Nelson Naturinda, "China-Uganda Loan Deal for Entebbe Airport Is Binding: MPs - The East African," n.d.
[73] ibid.

Closer to home in Kenya, the Auditor General reported through the audit of the Kenya Ports Authority that the authority's assets and revenues had been used to guarantee the loan from China's Exim bank to Kenya[74] to finance the standard gauge railway (SGR). This means that the lender may take over the authority's assets in a case where Kenya defaults on its loan payment. However, the news has been refuted stating that the former auditor general misread the contracts and that the port was not a collateral to begin with.[75] The information remains scanty as the contracts of the debt agreement remain inaccessible, posing another challenge for debt transparency. At the same time, reports of excessive procurement spending saw Kenyans lose a lot of money through looted funds. Furthermore, specifically for the SGR project, the loan came with conditions that the infrastructure would be developed by Chinese contractors and workers who would build the railway. This is problematic because it takes away employment opportunities from the Kenyan people. The trickling effect is that unemployed people cannot then pay taxes to raise income from the country, another hindrance to debt sustainability.

The government has in essence lost its financial independence of planning the country's finances and executing development projects from its development infrastructure. The government is forced to honor and prioritize debt repayments even though there is no commensurate income flowing from the investment projects. This trajectory already depicts a situation where the debt increases unsustainably. More people are likely to have a lower quality of education due to a lack of resources, lack of social security to cushion against emergencies such as the pandemic, a stretch on the healthcare system due to a freeze in the hiring of medical personnel and provision of medication. The acquisition of debt by the government should facilitate goals such as zero hunger yet with the growing rates of inflation and standards of living, a basic item such as maize meal has become too expensive to afford. A situation that threatens the right to be free from hunger and have adequate food.

[74] George Omondi, "Mombasa Port at Risk as Audit Finds It Was Used to Secure SGR Loan - The East African," n.d.

[75] Citizen, "Mombasa Port: How Kenya's Auditor-General Misread China's Standard Gauge Railway Contracts - The Citizen," n.d.

Domestic resource mobilisation is currently insufficient to ensure that Kenya's budget is well-financed. Therefore, there is a need to acquire external debt.[76] Country-to-country lending has also been adopted as the better approach as it offers concessional loans that the loan rate cannot compare to the market rates, which tend to be high and excessive. Moreover, bilateral loans allow countries to have deferred payment periods that span many years. However, the constant acquisition of debt is not sustainable. It places Kenya in a rat race where the country is constantly taking up debt and repaying the same in a way that the revenue never gets to the citizens it is meant to serve.

Taking an example of the advent of Covid-19, Kenya was already financially stretched that the government could not cushion the health system from the shocks of having many people require beds and medication when in isolation without the need for aid.[77] This is a challenge that was created by ineffective debt management and lack of social security measures. Noting that health provision is one of the economic and social rights, therefore, when a country cannot ensure the provision of health services and medication for their population, it signifies an alarming risk. Moreover, the government was clear that Covid-19 would not fall into the ambit of sicknesses that are catered for by the national health insurance fund.[78] This is a great challenge because many workers do not possess private insurance but rather depend on National Hospital Insurance Fund (NHIF) that they contribute monthly towards. NHIF is the avenue most people can access when seeking medical attention due to its mandatory contributions that are set at a low fee depending on one's income.

Further, when the country had to transition into remote learning as the Ministry of Health guidelines required social distancing and physical learning was no longer feasible, there were no resources to provide digital devices to learners. This is a challenge to the right to quality education as students were left behind while globally, other students moved forward. Moreover, even though in other urban areas, students could learn, their rural counterparts were affected due to a lack of connectivity, network infrastructure, and access to the internet. In addition, foreign debt lent out to countries by international financial institutions such as the World Bank or the IMF is usually coupled with conditions that must be met before the loan is

[76] International Monetary Fund (IMF), "Making Debt Work For Development and Macroeconomic Stability," *Policy Papers* 2022, no. 019 (2022): 1, https://doi.org/10.5089/9798400208591.007.
[77] Polet Njeri Ouma, Abednego Nzyuko Masai, and Israel Nyaburi Nyadera, "Health Coverage and What Kenya Can Learn from the COVID-19 Pandemic" 10, no. 2 (2020): 1–6, https://doi.org/10.7189/jogh.10.020362.
[78] ibid.

given to the country.[79] It is worth noting that government should be keener on assessing the effect of the conditions on human rights before entering into such agreements. The loan conditions usually state that a country must restrict its spending, privatize public goods and services, or raise its taxes. Therefore, the tax burden is placed on citizens who are forced to pay more or face inequality barriers when public services are privatized.

Therefore, the impact of foreign debt towards the realisation of ESR is further undermined when the burden is shifted back to the ordinary citizen. Further, where a condition of taking up the loan is placing a social spending floor it means that even when a country is in crisis and needs to spend more on providing food or shelter, they still must comply with the fiscal policies put in place thereby taking away a government's financial autonomy towards its citizenry. [80] For example, in Kenya, the IMF put a condition that Kenya must stop their fuel subsidy in order for a loan to be advanced.[81] If the country is to comply then the fuel prices which have already been cited to be too high for the citizens is likely to increase further and thereby increase the costs of goods and services. This has an impact on ESR as most Kenyans living in low-income areas use the fuel to power their homes and cook their meals again sidelining the right to food.

Having set out these discussions, it is evident that there needs to be some changes if ESR, in particular the right to health is to receive adequate funding. The next section offers some recommendations.

4. RECOMMENDATIONS

The recommendations discussed here attempt to balance practicality while seeking to uphold the norms as spelt out in the law.

i. First, the option of restructuring should be on the table as a means to provide African countries with appropriate fiscal space to fund essential government services. The conversation around debt restructuring has ordinarily emphasized that the debt restructuring is intended to apply to low-income countries at a high risk of distress.

[79] Gino Brunswijck, "Unhealthy Conditions IMF Loan Conditionality and Its Impact on Health Financing," n.d.
[80] ibid.
[81] "Expensive Fuel Looms as IMF Drops Support for Subsidy - Business Daily," accessed July 31, 2022, https://www.businessdailyafrica.com/bd/economy/expensive-fuel-looms-as-imf-drops-support-for-subsidy-3886832.

However, the author proposes that the fact that debt servicing takes away from the resources available for the funding of important ESR should be justification to restructure existing debts. The priority should be on ensuring citizens in low-income countries have access to ESR.

ii. Second, the World Bank has noted that debt servicing constrains economic development.[82] This conversation on debt restructuring is not meant to take away from the responsibility of leaders for allowing unsustainable debt to pile up in their countries. However, it is the citizens of the countries that should be the focus of any discussion on the impact of foreign debt. As has been shown in this paper, ESR and specifically the right to health remains unfulfilled due to inadequate expenditure. If the money spent on foreign debt could be allocated first towards helping the poor in the low-income countries, it would be possible for steps to be taken towards ensuring equality. This is a process that would be aided greatly through restructuring debt to allow countries fiscal space to invest in development.

iii. Third, foreign loans should not be pegged on conditions. If conditions must attach to the loan, then such conditions should be attuned towards the realisation of ESR. For example, foreign loans should only be taken where there is budget deficit in meeting the strategic development goals for example SDG 3 on access to healthcare.

iv. Fourth, African States should introduce legislation on fiscal transparency around debt and subject to public scrutiny all loan negotiations and subsequent transactions.

5. CONCLUSION

Foreign debt is necessary for developing countries to finance their development expenditure. For example, through building of hospitals, the government can create job opportunities for hospital staff which then trickles down to people who can be taxpayers. This means that there is increased tax revenue and therefore the country can then mobilize its own domestic revenue. However, the servicing of foreign debt takes away from the money that is available to finance public services. Additionally, foreign debt has conditions attached that

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[82] World Bank, "Managing Sovereign Debt," accessed July 31, 2022, https://openknowledge.worldbank.org/bitstream/handle/10986/36883/9781464817304_Ch05.pdf.

rarely take into account the lived circumstances of people in Africa. The inadequate access to critical infrastructure such as hospitals and schools needs to take center stage in future discussions of foreign debt. Individuals should not have their ESR sacrificed at the altar of foreign debt servicing.

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BIBLIOGRAPHY

Auditor-General for the Federation. "Auditor-General for the Federation's Annual Report on the Federal Government of Nigeria Consolidated Financial Statements for the Year Ended 31 December 2019." Abuja, 2020. https://www.oaugf.ng/docman/33-augf-report-on-fgn-consolidated-financial-statement-for-2019/file.

Auditor-General of Zambia. "Report of the Auditor-General on the Accounts of the Republic for the Financial Year Ended 31 December 2019," 2020. https://www.ago.gov.zm/?wpfb_dl=207.

Bank of Zambia. "Annual Report 2021 Bank of Zambia," 2022. https://www.boz.zm/2021_Bank_of_Zambia_ANNUAL_REPORT.pdf.

Beaugrand, Philippe, Boileau Loko, and Montfort Mlachila. "The Choice Between External and Domestic Debt in Financing Budget Deficits: The Case of Central and West African Countries," 2002. https://www.imf.org/external/pubs/ft/wp/2002/wp0279.pdf.

Bhattacharyay, Biswa Nath. "Financing Asia's Infrastructure: Modes of Development and Integration of Asian Financial Markets," 2010.

Brunswijck, Gino. "Unhealthy Conditions IMF Loan Conditionality and Its Impact on Health Financing," n.d.

Central Bank of Kenya. "Public Debt | CBK," 2021.

———. "Public Debt | CBK." centralbank.go.ke, 2022. https://www.centralbank.go.ke/public-debt/.

Citizen. "Mombasa Port: How Kenya's Auditor-General Misread China's Standard Gauge Railway Contracts - The Citizen," n.d.

Commission on Revenue Allocation. "How Much Is Your County Receiving in FY2021/2022?" cra.go.ke, July 19, 2021. https://cra.go.ke/2021/07/19/how-much-is-your-county-receiving-in-fy2021-2022/.

Corporate Finance Institute. "Foreign Debt - Overview, Impact, Sustainability Indicators," 2021.

Debt Management Office. "Nigeria's Actual External Debt Service Payments in January - December, 2019 ," 2020. https://www.dmo.gov.ng/debt-profile/external-debts/debt-service/3118-actual-external-debt-service-payments-from-january-to-december-2019/file.

Debt Management Office Nigeria. "ACTUAL EXTERNAL DEBT SERVICE PAYMENTS JANUARY - DECEMBER, 2020," 2020. https://www.dmo.gov.ng/debt-

profile/external-debts/debt-service/3490-actual-external-debt-service-payments-from-january-to-december-2020/file.
———. "Nigeria's Actual External Debt Service Payments in January - December, 2019 ." Accessed July 31, 2022. https://www.dmo.gov.ng/debt-profile/external-debts/debt-service/3118-actual-external-debt-service-payments-from-january-to-december-2019/file.
———. "Nigeria's External Debt Stock as at December 31, 2020." Accessed July 31, 2022. https://www.dmo.gov.ng/debt-profile/external-debts/external-debt-stock/3489-nigeria-s-external-debt-stock-as-at-december-31-2020/file.
———. "Nigeria's External Debt Stock as at December 31, 2021," 2019. https://www.dmo.gov.ng/debt-profile/external-debts/external-debt-stock/3117-nigeria-s-external-debt-stock-as-at-december-31-2019/file.
———. "Nigeria's External Debt Stock as at December 31, 2021," 2021. https://www.dmo.gov.ng/debt-profile/external-debts/external-debt-stock/3852-nigeria-s-external-debt-stock-as-at-december-31-2021/file.
Deloitte. "Kenya Budget Highlights 2022/2023" 6, no. 033020 (2022): 1–20.
East African Newspaper. "Kenya's Budget Proposes to Raise Debt Ceiling to Fund Recovery - The East African." Accessed July 31, 2022. https://www.theeastafrican.co.ke/tea/business/kenya-budget-proposes-to-raise-debt-ceiling-to-fund-recovery-3779898.
Esenwein, George. "Socialism." *New Dictionary of the History of Ideas*, January 2004. https://www.researchgate.net/profile/George-Esenwein/publication/311885000_Socialism/links/585ecbce08ae8fce49017e32/Socialism.pdf.
"Expensive Fuel Looms as IMF Drops Support for Subsidy - Business Daily." Accessed July 31, 2022. https://www.businessdailyafrica.com/bd/economy/expensive-fuel-looms-as-imf-drops-support-for-subsidy-3886832.
Fedelino, Annalisa, Martin Kaufman, and Marcello Estevao. "Kenya: Requests for an Extended Arrangement under the Extended Fund Facility and an Arrangement under the Extended Credit Facility- Debt Sustainability Analysis" 156, no. 20 (2021).
Giorgini, Giovanni. "Aristotle on the Best Form of Government." *Enthousiasmos*, 2019, 121–46. https://doi.org/10.5771/9783896658043-121.
International Monetary Fund (IMF). "Debt Limits in Fund Programs with Low-Income Countries." *Policy Papers* 2015, no. 65 (2013). https://doi.org/10.5089/9781498341035.007.
———. "Making Debt Work For Development and Macroeconomic Stability." *Policy Papers* 2022, no. 019 (2022): 1. https://doi.org/10.5089/9798400208591.007.
Justus, Makau, and K A Lii. "External Public Debt Servicing and Economic Growth in Kenya: An Empirical Analysis," 2008.
Kenya Institute of Public Policy Research and Analysis. "Kenya's Public Debt with the COVID-19 Pandemic – KIPPRA," 2021. https://kippra.or.ke/kenyas-public-debt-with-the-covid-19-pandemic/.
Latif, L.A., Centralized Revenue Redistribution as a Potential Cause of Internal Conflict in Kenya. *Modern Africa: Politics, History and Society 4 (1), 2016, 91-105*
Latif, Lyla A, (2022), Study: Intensifying the fight against corruption and money laundering in Africa. United Nations, Office of the Special Adviser on Africa.
Latif, LA, 'Health Finance in Kenya's Progress towards Universal Health Coverage' (2020) Journal on Financing for Development, vol 1, Issue 2, 41-67
Ministry of Health, and World Health Organization. "Ministry of Health Mid Term Review of the Kenya Health Sector Strategic and Investment Plan 2018-2023: Statistical Report

December 2020." Nairobi, December 2020. https://www.health.go.ke/wp-content/uploads/2022/05/1.KHSSP-MTR-Statistical-report-1-1_compressed.pdf.

Naturinda, Nelson. "China-Uganda Loan Deal for Entebbe Airport Is Binding: MPs - The East African," n.d.

Office of the Auditor-General. "Report of the Auditor-General for the National Government Ministries, Departments and Agencies for the Year 2020/2021." Nairobi, 2021. https://www.oagkenya.go.ke/wp-content/uploads/2022/05/NATIONAL-GOVERNMENT-AUDIT-REPORT-2020-2021.pdf.

Oladeinde, Olawoyin. "Nigeria Spent 97% of Revenue On Debt Servicing in 2020 - Report - AllAfrica.Com," 2021.

Omondi, George. "Mombasa Port at Risk as Audit Finds It Was Used to Secure SGR Loan - The East African," n.d.

Orji, Onyebuchukwu. "The Effect of Foreign Debt on the Economic Growth of Nigeria." *Journal of Accounting and Financial Management* 7, no. 3 (2013): 291–306. https://doi.org/10.25019/mdke/7.3.01.

Ouma, Polet Njeri, Abednego Nzyuko Masai, and Israel Nyaburi Nyadera. "Health Coverage and What Kenya Can Learn from the COVID-19 Pandemic" 10, no. 2 (2020): 1–6. https://doi.org/10.7189/jogh.10.020362.

Peter, Mburu. "Inside Kenya's Loans Spree as It Borrows Sh2.5 Billion Daily | Nation," 2022.

PricewaterhouseCoopers. "What Next? Zambia Budget 2019," 2019. https://www.pwc.com/zm/en/assets/pdf/zambia-budget-2019.pdf.

United Kingdom Home Office. "Country Information Note Nigeria: Medical Treatment and Healthcare." London, December 2021. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1050022/NGA_CIN_Medical_treatment_and_healthcare.pdf.

United Nations Department of Economic and Social Affairs. "World Social Report 2020 Inequality in a Rapidly Changing World," 2020. https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/01/World-Social-Report-2020-FullReport.pdf.

United Nations General Assembly. "Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights._0," 2020.

University of Pretoria. "The Role and Functions of Government ." In *The Role and Function of Government*. University of Pretoria. Accessed July 31, 2022. https://repository.up.ac.za/bitstream/handle/2263/24808/03chapter3.pdf.

Walsh, Grace. "A DISCUSSION OF FOREIGN CURRENCY DEBT IN EMERGING MARKET ECONOMIES," 2011. https://www.tcd.ie/Economics/assets/pdf/SER/2011/Grace_Walsh.pdf.

World Bank. "Managing Sovereign Debt." Accessed July 31, 2022. https://openknowledge.worldbank.org/bitstream/handle/10986/36883/9781464817304_Ch05.pdf.

World Health Organization. "Medical Doctors (per 10 000 Population)." Global Health Observatory, 2018. https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-(per-10-000-population).