BRIEF 2

Debt Management Legal Frameworks

A Primer for Parliamentarians

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Geoff Dubrow, MA, MPA | March 2022

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Developed by the National Democratic Institute (NDI) and the Westminster Foundation for Democracy (WFD), this publication is one in a series of four briefs on public debt management intended for parliamentarians and parliamentary staff.

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The views expressed in the paper are those of the author, and not necessarily those of or endorsed by the parliaments or independent institutions mentioned in the paper, nor of NDI or WFD.

About the Author

Geoff Dubrow is a WFD Associate-Expert and Principal Consultant at Nexus PFM Consulting Inc. Geoff has 20 years' experience strengthening the nexus between Public Financial Management (PFM) and parliamentary oversight. Areas of focus and expertise include the roles of parliament in public debt management and gender-responsive budgeting as well as strengthening the role of parliament in all stages of the budget process.

Table of Abbreviations

Abbreviation	Meaning
CG	Central Government
DeMPA	The Debt Management Performance Assessment
DPI	Debt Management Performance Indicator
MFMLP	Medium- to Long-Term Fiscal Framework
MoF	Ministry of Finance
MTDS	Medium-Term Debt Strategy
PAC	Public Accounts Committee
PDM	Public Debt Management
PEFA	Public Expenditure Framework Accountability
PFA	Public Finance Act
PFMA	Public Financial Management Act
PFR	Public Finance Regulation
PIM	Public Investment Management
SAI	Supreme Audit Institution
SOE	State-Owned Enterprise

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1 Elsie Addo Awadzi, Designing Legal Frameworks for Public Debt Management, (International Monetary Fund (IMF), July 2, 2015), https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Designing-Legal-Frameworks-for-Public-Debt-Management-43045; Arindam Roy and Mike Williams, Government Debt Management: A Guidance Note on the Legal Framework, (Commonwealth Secretariat, October 2010), http://www.mj-w.net/pdfs/Legal%20Guidance%20Note%20Oct10.pdf; and Marcello De Moura Estevao Filho, Doerte Doemeland, Andre Proite, et al., *Debt Management Performance Assessment (DeMPA) Methodology: 2021 Edition (English)*, (Washington, D.C.: World Bank Group), http://documents.worldbank.org/curated/en/526391628746190611/Debt-Management-Performance-Assessment-Methodology-2021-Edition.

Executive Summary

While most countries in the world have a financial administration act, public debt should be regulated by more specific legislation. Passing legislation related to public debt is a key task of parliament that falls under its legislative role in public financial management. Setting a **legal framework** for public debt management ensures that parliament "provides strategic direction to borrowing decisions and clearly specifies the roles and responsibilities for the institutions involved in debt management."[2]

The role of parliament in debt management varies from country to country, but after the global pandemic, it is vital that parliament assert its formal role in overseeing debt management. This brief supports the strengthening of parliamentary oversight by outlining lessons and good practices in the implementation, drafting and monitoring of a legal debt management framework.

This brief provides background information on legal frameworks for debt management and discusses six key elements that should be included in a debt management law. The six elements are:

1. The legal framework clearly sets out the authority to borrow;
2. The parliament retains the authority to ratify and issue loan agreements;
3. The parliament is required to approve contingent liabilities;
4. The government is required to report to parliament annually on the government's debt management activities;
5. The government is required to draft and table parliament a strategy that sets out the medium-term debt strategy; and
6. An external auditor or the Supreme Audit Institution (SAI) provides annual audits of debt management activities.

The brief also includes a number of case studies to demonstrate how principles and frameworks of debt management legislation are applied in practice. Entry points for parliamentary engagement in the debt management process appear in the conclusion of the brief.

2 Damien King, Christine Clarke, Brian Francis, et al., *Public Sector Debt in the Caribbean: An Agenda for Reduction and Sustainability*, (Caribbean Development Bank, April 1, 2013), https://www.caribank.org/publications-and-resources/resource-library/thematic-papers/study-public-sector-debt-caribbean-agenda-reduction-and-sustainability.

1. Debt Management Frameworks in an Era of Increasing Debt: Why Are They Important?

1.1 Overview

Developing and modernizing debt management legislation is essential for ensuring that governments provide parliament and the public with the necessary information for public debt to be effectively scrutinized.

Parliament can enhance transparency and accountability by adopting a single integrated debt management law. This is crucial as the "absence of modern public debt management legislation undermines the transparency and accountability of fiscal and debt management operations."[3] Absent effective modern public debt management legislation, citizens will be unclear on how state finances are being managed which can lead to an erosion of the social contract.

It is clear that there are significant risks associated with leaving governments to effectively manage public debt without proper oversight. These risks include not regulating the amount of borrowing, not setting a debt ceiling, imprudent borrowing, improper borrowing practices, as well as taking on debt from inappropriate lenders. All of these risks can lead to unsustainable borrowing, difficulties servicing debt and ultimately debt distress.

1.2 Primary vs. Secondary Legislation

The legal framework for debt management comprises both: primary legislation, which are laws enacted with approval of the parliament; and secondary legislation, often referred to as subsidiary or delegated legislation, (executive orders, decrees, ordinances and so forth), which is determined by the executive branch of government.

Primary legislation usually arranges for the delegation of borrowing power from the legislative to the executive branch (i.e., to the president, cabinet or council of ministers, or directly to the minister of finance).

Secondary legislation delegates the debt management function to the civil service, usually to a debt management unit within the ministry of finance. The distinction between primary and secondary legislation is summarized below in Table 1.

3 Ibid.

Table 1:
Primary vs. Secondary Legislation

Primary Legislation	Secondary Legislation
Authorization by the parliament to the executive branch of government (to the president, cabinet or council of ministers, or directly to the minister of finance) to approve borrowings and loan guarantees on behalf of the central government	Authorization within the executive branch of government to one or more debt management entities to borrow and, where applicable, undertake debt-related transactions (for example, debt exchanges and currency and interest rate swaps)
Specified borrowing purposes	Authorization within the executive branch of government to one or more guarantee entities to issue loan guarantees after the political decision to support a certain activity by the use of loan guarantees has been made
Debt management objectives	
Requirement to develop debt management strategy	
Mandatory annual reporting to the parliament of debt management activities covering evaluation of outcomes against stated objectives and debt management objectives	

Parliament plays an important role in adopting and modernizing the development of a legislative framework for debt management. This includes debt management legislation as well as secondary legislation.

The World Bank's Debt Management Performance Assessment (DeMPA) is a methodology for assessing public debt management performance through a comprehensive set of indicators spanning the full range of government debt management functions. The DeMPA recommends that to assess the state of debt management practices, the following indicative questions be posed:

- Is there authorization in primary legislation to approve borrowings and loan guarantees on behalf of the central government assigned to the cabinet or directly to the minister of finance? If so, which legislation provides authorization, and what are the relevant sections or clauses?
- Who signs the loan documents and other documents necessary for borrowing? Which legislation provides this authorization, and what are the relevant sections or clauses?

- Is there authorization in secondary legislation to undertake debt-related transactions and to issue loan guarantees on behalf of the central government? If so, which legislation provides authorization, and what are the relevant sections or clauses? Which sections or clauses in the legislation cover specified borrowing purposes; the formation of clear debt management objectives?

1.3 Key Elements of a Robust Debt Management Framework

The key elements of a debt management law that parliamentarians may want to ensure are included in their debt management framework are listed in Table 2. Column 2 provides a justification for the element in question. Column 3 provides the risk associated with not having that element included in the debt management framework.

Table 2:
Key Elements of a Debt Management Law[4]

Element	Justification	Risk, If Excluded
1. The legal framework clearly sets out the authority to borrow. This borrowing power is regulated by a statement of purpose, which establishes eligible borrowing objectives, and may be restricted by a borrowing limit defined in terms of a debt ceiling or an annual borrowing limit.[5]	Specifying the borrowing purpose safeguards against borrowing for speculative investments or to finance expenditures that have neither been included in the annual budget nor approved by the parliament or congress in some other fashion.[6]	Failing to specify purposes for borrowing can result in government incurring debt for expenses that are not prudent or cost-effective.
2. The parliament retains the authority to ratify and issue loan agreements, particularly loans contracted abroad and classified as treaties.	Deters the occurrence of imprudent borrowing without the appropriate government accountability; and supports the accountability of the government for all public liabilities.	There have been cases in which the government illegally bypassed parliament's ratification role, which have had negative impacts for both the economic health of the country and the political reputation of those who negotiated these loans in secret.
3. Parliament approves contingent liabilities or information on contingent liabilities is provided to parliament.	Helps to ensure that parliament and the public are aware of the contingent liabilities that are being taken on by the government.	The risk associated with lack of parliamentary approval or control of contingent liabilities is that unrecorded debt suddenly needs to be paid when an unexpected event occurs. This can alter a country's actual debt burden leading to debt distress or high risk of debt distress.

4 Elsie Addo Awadzi, Designing Legal Frameworks for Public Debt Management, (International Monetary Fund (IMF), July 2, 2015), https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Designing-Legal-Frameworks-for-Public-Debt-Management-43045; Arindam Roy and Mike Williams, Government Debt Management: A Guidance Note on the Legal Framework, (Commonwealth Secretariat, October 2010), http://www.mj-w.net/pdfs/Legal%20Guidance%20Note%20Oct10.pdf; and Marcello De Moura Estevao Filho, Doerte Doemeland, Andre Proite, et al., *Debt Management Performance Assessment (DeMPA) Methodology: 2021 Edition (English)*, (Washington, D.C.: World Bank Group), http://documents.worldbank.org/curated/en/526391628746190611/Debt-Management-Performance-Assessment-Methodology-2021-Edition.

5 Arindam Roy and Mike Williams, Government Debt Management: A Guidance Note on the Legal Framework, (Commonwealth Secretariat, October 2010), http://www.mj-w.net/pdfs/Legal%20Guidance%20Note%20Oct10.pdf.

6 World Bank Group. Debt Management Performance assessment (DeMPA), Methodology". 2015. https://openknowledge.worldbank.org/bitstream/handle/10986/21962/96671.pdf;jsessionid=28D05D082E963EE30BFF4F101E6D0B19?sequence=3.

Element *(Continued)*	Justification	Risk, If Excluded
4. Government is required to report to parliament annually on the government's debt management activities including plans for the upcoming fiscal year and activities of the previous year.	Improves fiscal transparency and provides information on how the government's budget will be financed.	The risk associated with the government's non-reporting of its debt management activities is that corrective action (or the opportunity for corrective action) is not taken to address imprudent borrowing on the part of the government or its debt management unit. Consequences could include excessive external debt, high levels of short-term borrowing and failure to obtain the best possible terms of a loan.
5. Government is required to draft and table a strategy that sets out the medium-term framework for how the government will achieve its debt management objectives. The Medium-Term Debt Strategy (MTDS)[7] should be updated or revised regularly.	Raises the profile of debt management activities and objectives, prevents ad hoc and frequent changes and strengthens transparency.	In the absence of a medium-term debt strategy, governments may not be properly analyzing or tracking the following key information, which may result in a higher debt burden: (a) tracking the cost and risk of existing debt; (b) analyzing potential sources of finance; (c) analyzing alternative debt management strategies; (d) analyzing the medium-term macro-policy and market environment.
6. Debt management activities are audited annually by an external independent auditor or the SAI, including performance and financial audits. Debt managers' performance, systems and control procedures are audited regularly.	Ensures that debt management objectives comply with procedures and policies and that all borrowing is appropriately recorded and financially accurate.	Audit risk is the risk that an auditor gives an unmodified audit opinion even if financial statements are materially misstated.[8] Should the government represent its debt position inaccurately or in a manner that does not comply with international standards, the external auditor or SAI needs to point this out. Otherwise, parliament will not have an accurate understanding of the government's financial position, including its actual debt levels.

7 The MTDS is a framework designed to help governments implement sound debt management for the three-to-five-year horizon. The MTDS process can clarify a government's cost and risk trade-offs.

8 Pisey Daung, "What Are the Three Types of Audit Risk?" Accounting Hub, n.d., https://www.accountinghub-online.com/what-are-the-three-types-of-audit-risk/.

2. The Role of Parliament in the Debt Management Framework

It is essential that parliament play a central role in setting the legal framework for debt management that "provides strategic direction to borrowing decisions and clearly specifies the roles and responsibilities for the institutions involved in debt management."[9] Each of the six key elements of a debt management framework identified in Table 2 is further elaborated upon below.

2.1 The Borrowing Power and Statement of Purpose

Stemming from its constitutional power to approve central government tax and spending measures, the parliament has, as a rule, the ultimate power to borrow on behalf of the central government. Parliament therefore delegates the borrowing function down to the executive branch (for example, to the president, to the cabinet or council of ministers, or directly to the minister of finance). In turn, the president, cabinet or minister of finance will delegate the debt management responsibilities, including the mandate to borrow, to a debt management office or unit, which is generally housed in the ministry of finance.[10]

The delegation from congress or parliament to the executive is found in the primary legislation, normally in a separate law on public debt or similar law; in the budget system law together with the annual budget act; or in a fiscal responsibility act.

The delegation from the legislative to the executive branch is not intended as a "blank check" and is therefore often restricted by a statement of purpose, which provides the reasons for which the executive is allowed to borrow. According to good practice, this information should also be provided in legislation. Part of the statement of purpose is to ensure that the government is not using borrowing as a back door to finance investments or expenditures that have not been approved in the annual or supplementary budget. "If the latter were allowed, the budget process would lose its meaning and could eventually force the parliament or congress to raise taxes or cut expenditures to service the debt contracted to finance such expenditures."[11] It is also general good practice for debt laws to expressly state that loans borrowed should not finance **current expenditure** as loans are intended to fund investment projects.

Examples of borrowing purposes found in legislation are to finance:

- Budget and cash balance deficits;
- Investment projects approved by the parliament or congress outside the budget process; and
- Honoring of triggered guarantees.

Borrowing purposes found in legislation can also be used to:

- Refinance and prefinance outstanding debt;
- Fulfill requirements by the central bank to replenish foreign currency reserves; and
- Eliminate the effects caused by natural or environmental disasters, as well as other emergencies such as the COVID-19 pandemic.

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9 Staffs of the IMF and the World Bank, Guidelines for Public Debt Management, (IMF, last modified December 9, 2003), https://www.imf.org/external/np/mae/pdebt/2000/eng/index.htm.

10 World Bank Group. "Debt Management Performance Assessment (DeMPA) Methodology". 2015. https://openknowledge.worldbank.org/bitstream/handle/10986/21962/96671.pdf;jsessionid=28D05D082E963EE30BFF4F101E6D0B19?sequence=3.

11 Ibid.

Country Examples

Maldives

The Legal framework for conducting debt management operations and functions in the Maldives is spread across multiple pieces of legislation. The constitution, the Public Finance Act (PFA) and Public Finance Regulation (PFR) stipulate clear authority of the president to borrow and lend public resources, as well as approve government guarantees, on behalf of the government. No further delegation of such authority is included in the legal documents, even though *de facto* domestic borrowing decisions for issuance of government securities are delegated to the ministry of finance (MoF).

Borrowing is authorized by the PFA in section 5 and initiated by the MoF with approval from the president. The document states, "The Maldivian government or a state-owned company through the Maldivian government and on behalf of the state shall acquire a loan or borrow moneys only after the president submits the proposal to the people's Majlis as per article 5(a)(2) and after the Majlis approves it via a majority vote amongst the MPs in attendance, following the minister's request to the president and the president's subsequent approval."

Moldova

The constitution of the Republic of Moldova, adopted in 1994, stipulates that parliament adopts all external borrowing and decides on purposes of external loans.

Article 14 of the Debt Law outlines the purposes of government borrowing which include:

- Support investment activities;
- Export promotion;
- Debt repayment;
- Buy-backs;
- Refinancing; and
- Budget deficit financing.[12]

Uganda

In Uganda, the borrowing power is delegated to the minister of finance, who is required to seek parliamentary approval:

- To finance a budget deficit;
- For the management of a monetary policy;
- To obtain foreign currency;
- For on-lending to an approved institution; or
- For defraying an expenditure which may lawfully be defrayed.[13]

2.2 The Role of Parliament in the Loan Ratification Process

To deter the occurrence of imprudent borrowing without the appropriate government accountability, parliaments should retain the authority to ratify loan agreements.

12 World Bank, *Debt Management Performance Assessment*: Moldova, (Washington, D.C.: World Bank, December 2018), https://openknowledge.worldbank.org/handle/10986/31518.

13 Parliament of Uganda, *The Public Finance Management Act, 2015*, (Republic of Uganda, March 6, 2015), Section 36. https://www.ugandainvest.go.ug/wp-content/uploads/2016/02/Uganda_Public_Finance_Management_Act_2015_3.pdf.

According to a study by the Inter-Parliamentary Union (IPU) and the World Bank:[14]

- Just under 60 percent of respondents (out of 99 total parliaments) have laws requiring parliament to ratify loan agreements before they become effective;
- While 64 percent of respondents are not involved in the loan approval process (as distinct from the ratification process), 24 percent are involved in the final stage;[15] and
- Further, 65 percent of parliaments responding stated that the loan approval process is designed to go through the committee system. Twenty percent of parliaments rely only on a single committee, primarily the finance, budget or economic committee, while 45 percent have two or more committees involved, with the additional committees focusing on specific areas, such as infrastructure, agriculture, health or transport.

Figure 1 below describes key findings from the global survey on parliamentary oversight of international loan agreements.

Figure 1: Key Findings from "Parliamentary Oversight of International Loan Agreements: A Global Survey[16]

Is parliament required by law to ratify loans or credits negotiated by the government?	- A relative majority (64%) of parliaments have laws in place requiring parliamentary ratification of loan agreements	- Only few parliaments have clear authority to request amendments
Is parliament involved at any stage of the loan approval process?	- The majority of parliaments are not involved in the loan approval process	- Parliaments that are required to ratify loans are more likely to be involved in the loan approval process
Is there a process in place which allows for parliamentary involvement in policy dialogue prior to loan negotiations?	- Few parliaments are involved in formal pre-negotiation policy dialogues	- Parliaments that are involved in the loan approval process are more likely to have been involved in pre-negotiation policy dialogue
Which parliamentary committee(s) is normally involved in loan approvals at any stage of the process?	- In most parliaments, loan approvals go through at least one committee	

14 The Inter-Parliamentary Union & The World Bank, Parliamentary Oversight of International Loan Agreements & Related Processes: A Global Survey, (Inter-Parliamentary Union, 2013), http://archive.ipu.org/PDF/publications/PARLOVER2013EN.pdf. This study was conducted in 2011 and represents the most recent publicly available comprehensive survey on this topic.

15 The survey states that "Among the countries where the law gives parliament ratification authority, a large number, 58 percent, are also involved in the loan approval process at some stage (i.e., either before, during, or in the final stages)".

16 The asterisks are intended to explain that the term 'loan approval process' refers to the very early stages of loan negotiation (led by the executive branch) until final ratification by parliament. This is distinct from parliament's role in simply ratifying a loan agreement once it has been approved by the executive branch. The mention of "policy dialogue prior to loan negotiations" refers to a policy dialogue that takes place prior to the launch of the loan approval process.

Parliamentary involvement in loan approval or in the ratification process enables parliament to verify that the government has undertaken rigorous economic appraisal, selection, costing and monitoring of any public investment project and that the terms of the loans (interest rate, repayment schedule, etc.) are appropriate. These four steps underpin an approach known as Public Investment Management (PIM). Put simply, PIM is an "approach to managing government expenditures for public infrastructure strategically and efficiently."[17] Table 3 below spells out the four stages of PIM.

In ratifying loan agreements, parliaments can use PIM criteria to verify that the government has undertaken rigorous economic appraisal, selection and costing of any public investment project that requires borrowing, and that the government has put a monitoring strategy in place. This can be done either ex ante or ex post, with ex post denoting scrutiny after the loan has been ratified.

Table 3:
Four Stages of Public Investment Management and Potential Lines of Inquiry

Stage of PIM	Description[18]	Potential Lines of Inquiry[19]
Appraisal[20]	The use of robust appraisal methods to conduct feasibility or prefeasibility studies for major investment projects and the publication of the results.	Which type(s) of appraisal methods were used to conduct a feasibility or pre-feasibility study for the proposed investment project(s)? Were the results of analyses published? Did the appraisal include a review of the social or economic costs and policy benefits — including health and environmental impacts? What about gender impacts? Was a cost-benefit analysis, cost-effectiveness analysis or multi-criteria analysis conducted? Was the analysis reviewed by an entity other than the sponsoring entity?
Selection	A project-selection process that prioritizes investment projects against clearly defined criteria.	How was this investment project selected? Was it ranked and selected against clearly defined criteria? Did the government publish and adhere to standard criteria for project selection?[21]
Costing	"Projections of the total life-cycle cost of major investment projects, including both capital and recurrent costs together with a year-by-year breakdown of the costs for at least the next three years, are included in the budget documents."[22]	Are projections of the total life-cycle cost of the investment project(s) included with both capital and recurrent costs? Is there a year-by-year breakdown of the costs for at least the next three years, included in the budget documents?

17 Japan International Cooperation Agency, *Public Investment Management Handbook for Capacity Development*, (Japan International Cooperation Agency, September 2018), https://www.pefa.org/resources/public-investment-management-handbook-capacity-development.

18 Public Expenditure and Financial Accountability (PEFA) Program, *Framework for Assessing P*ublic Financial Management, 2016. https://www.pefa.org/sites/pefa/files/news/files/PEFA-Framework_English.pdf ,p. 36.

19 Public Expenditure and Financial Accountability (PEFA) Program, Framework for *Assessing Public Financia*l Management, February, 2016.

20 PIM is a public financial management process for which the executive branch is responsible.

21 Standard criteria refer to "a set of formal procedures adopted by government that are used for every project or group of related projects with common characteristics within and across central governmental units".

22 Life-cycle cost, or whole of life costing, includes all phases of a project life cycle such as design, construction, management, operation and maintenance; Kopo Mapila, Florian Mölders, and Morten Lykke Lauridsen, *Toward a Framework for Assessing Private vs Public Investment in Infrastructure,* (International Finance Corporation, January 2017), https://openknowledge.worldbank.org/handle/10986/30355.

Stage of PIM *(Continued)*	Description	Potential Lines of Inquiry
Monitoring	Prudent project monitoring and reporting arrangements are in place both for physical and financial progress.	Are there any monitoring arrangements in the loan agreement? Will the total cost and physical progress of the investment project be monitored during implementation by the implementing government unit? Will information on the implementation of the investment project(s) be published in the budget documents or in other reports annually?

Ex Ante Approval

There is no universally agreed-upon process that governs how parliament should go about ratifying loan agreements.

When determining a process for ratifying loan agreements, parliament must achieve a proper balance between completing the **timely ratification** of loan agreements with ensuring **transparency and accountability.** Parliament must also consider how to permit the debt managers who negotiate loans on behalf of the government a certain degree of flexibility and autonomy from undue political interference, such that debt managers are able to negotiate the best terms for a loan. (From the perspective of public debt, this means that the debt managers will pursue the lowest cost of financing possible in a given agreement while also establishing the most favorable repayment terms possible from the perspective of the government.)

There is a wide range of options available to parliaments when it comes to the ratification of loan agreements, with greater or lesser degrees of involvement in the process. Figure 2 below outlines a few illustrative examples of differing levels of parliamentary engagement.[23]

Figure 2: Range of Options for Parliamentary Ratification

High degree of ex ante parliamentary involvement
Every borrowing transaction must be approved by parliament (i.e., Mauritania)
Specific approvals for certain transactions only (i.e., above a specified threshold [Belize, Ethiopia, Tonga] or for external borrowing only [Bosnia-Herzegovina])
Blanket approval for borrowing under certain standard terms and conditions (Ghana)
Legislative approval of government borrowing granted on an annual basis (Grenada, Japan)
Parliamentary delegation of all loan approvals to the executive branch
Low degree of ex ante parliamentary involvement

On one end of the spectrum, parliament can be involved in ratifying all transactions. For example, in Mauritania, all loans are subject to a committee review and ratification by the plenary.[24] Further along the spectrum is Bosnia-Herzegovina, where loan agreements are subject to parliamentary approval if an external lender[25] is proposed. At the lower end of the range of parliamentary involvement, parliament may delegate the responsibility for negotiating loan agreements to the executive branch — oftentimes, this power is specifically granted to the minister of finance.

23 Elsie Addo Awadzi, Designing Legal Frameworks for Public Debt Management, (International Monetary Fund (IMF), July 2, 2015), https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Designing-Legal-Frameworks-for-Public-Debt-Management-43045.

24 The Inter-Parliamentary Union & The World Bank, *Parliamentary Oversight of International Loan Agreements & Related Processes: A Global Survey*, (Inter-Parliamentary Union, 2013), http://archive.ipu.org/PDF/publications/PARLOVER2013EN.pdf.

25 External lenders refer to foreign lenders while internal would be domestic.

Where parliament does not play a direct role in ratification of loan agreements, it is important that the legislative and governance arrangements surrounding the executive's handling of loan agreements merits the confidence of the legislative branch. The Commonwealth Secretariat offers the following advice on government debt management:

"Parliament will be reassured by sound legislation and a strong governance framework with clear objective-setting, borrowing authority, reporting, accountability and audit provisions. These opportunities and requirements should be sufficient to meet parliament's need for consultation or accountability to compensate for its delegation of responsibilities to the executive."[26]

Similarly, in situations where a parliament effectively gives the government an ex ante "carte blanche" to borrow, a "clear articulation of medium- to long-term objectives of PDM in the primary legal framework"[27] can help to assuage concerns by ensuring that government decisions have proper guidance.

Some countries also include domestically determined objectives to reflect national priorities within their public debt management legislation. In Jamaica, for example, objectives stated in the Public Debt Management Act include:

- Developing and maintaining an efficient market for government securities;[28]
- Ensuring that the debt is managed consistent with fiscal sustainability;
- Promoting the development of the domestic debt market; and
- Ensuring that the Medium-Term Public Debt Management Strategy is compatible with the targets of the macroeconomic objectives of the government.[29]

Clear articulation of medium- to long-term objectives of [Public Debt Management] PDM in the primary legal framework, helps to facilitate effective debt management and to promote accountability. Such objectives guide the conduct of debt managers, and help stakeholders measure the effectiveness of the debt management strategy. Typical objectives include: ensuring that the government's financing needs, and its payment obligations are met at the lowest possible cost over the medium to long run, consistent with a prudent degree of risk.[30]

—Elsie Addo Awadzi, "Designing Legal Frameworks for Public Debt Management"

26 Arindam Roy and Mike Williams, Government Debt Management: A Guidance Note on the Legal Framework, (Commonwealth Secretariat, October 2010), http://www.mj-w.net/pdfs/Legal%20Guidance%20Note%20Oct10.pdf.

27 Elsie Addo Awadzi, Designing Legal Frameworks for Public Debt Management, (International Monetary Fund (IMF), July 2, 2015), https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Designing-Legal-Frameworks-for-Public-Debt-Management-43045.

28 Securities consist of bills, bonds, certificates of deposit, commercial paper, debentures and similar instruments normally traded in the financial markets. OECD Glossary of Statistical Terms, "Securities Other Than Shares," (OECD, last modified November 22, 2001), https://stats.oecd.org/glossary/detail.asp?ID=2416.

29 Parliament of Jamaica, Public Debt Management Act, (Jamaica, 2012), https://japarliament.gov.jm/attachments/341_The%20Public%20Debt%20Management%20Act,%202012.pdf.

30 Elsie Addo Awadzi, Designing Legal Frameworks for Public Debt Management, (International Monetary Fund (IMF), July 2, 2015), https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Designing-Legal-Frameworks-for-Public-Debt-Management-43045.

Ex Post Oversight of Ratification of Loans [31]

Whether parliament plays a significant role in the ratification of loan agreements or delegates that authority to the executive, every parliament can still play an ex post oversight role.

Many annual debt reports provide a list of new loan commitments that can be scrutinized by one of more parliamentary committees. For example, Ghana's 2019 Debt Report contains an appendix that provides a list of loans signed in 2019.[32] The report also outlines:

- The total number of loans taken in 2019;
- The total amount borrowed in 2019 compared to the previous year; and
- Whether the 2019 loans were on concessional or non-concessional terms.[33]

Box 1 below examines how parliamentary committees can scrutinize new loan agreements signed by the government and the implementation of these investment projects.

Box 1: Ex Post Oversight of Loan Agreements – Committee Roles

In addition to ratifying loan agreements, parliaments can play a role in monitoring the implementation of investment projects financed by loan agreements. Here are some examples of possible committee roles:

- The PAC, as part of its strategic planning process, can meet with the ministry of finance and the SAI to determine a list of high-cost, high-risk projects and monitor their implementation on a regular basis with reports from both;
- The same applies for PICs, which can monitor investment projects of SOEs; and
- Depending on the number of public investment projects, sectoral committees could also monitor projects under their remit.

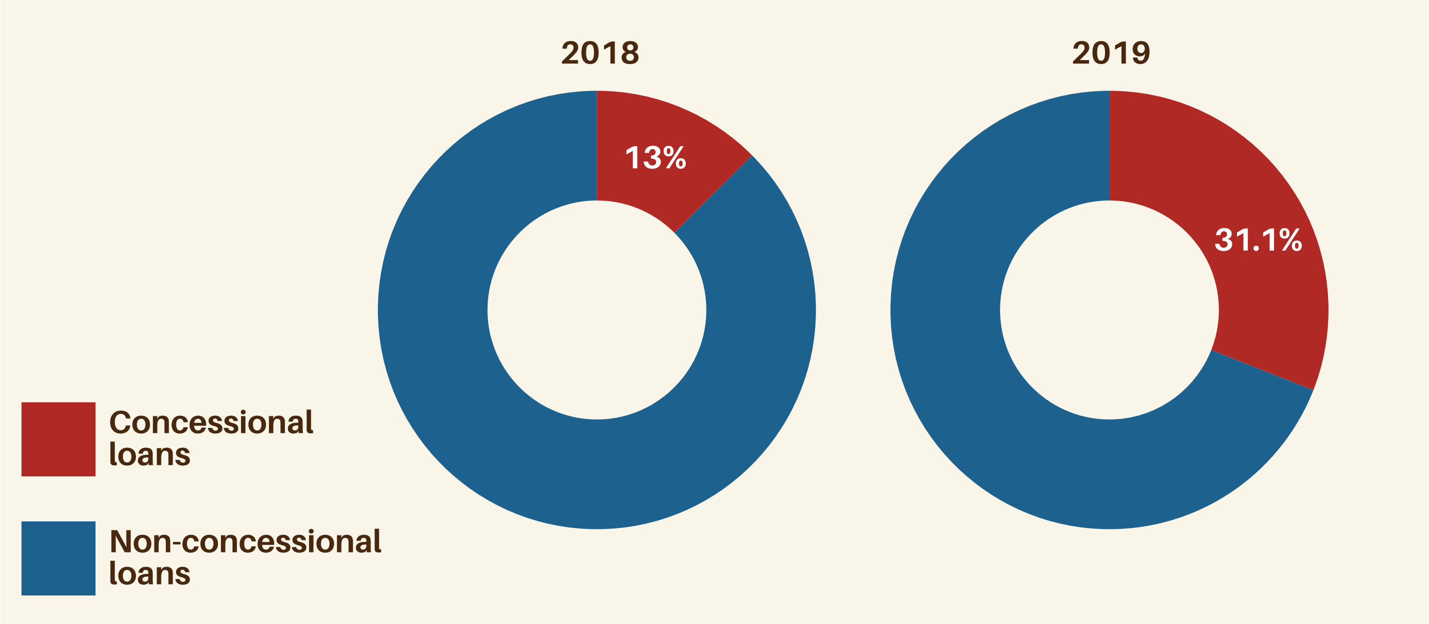
The aforementioned parliamentary committees in Box 1 can pose the following questions to scrutinize loan agreements ex post:

- Has all borrowing undertaken by the government been consistent with the appropriate sources specified in the legal framework?[34]
- Are loan agreements consistent with the stated purposes of borrowing? (Recall that government borrowing can either be limited to specific borrowing purposes or it may be left open to any reason that the government deems appropriate);
- What processes are in place to ensure that loans are obtained on the terms that are the most prudent and cost effective?
- What efforts were made to obtain loans on concessional terms? For example, in Ghana's 2019 Annual Debt report, the ratio of non-concessional to concessional loans was 69:31 as seen below in Figure 3. This represented an improvement over 2018, when the ratio was 87:13. How did the government succeed in

31 More information on parliamentary oversight can be found in Brief 3.
32 Parliament of Ghana, The Annual Public Debt Report for the 2019 Financial Year, (Republic of Ghana, March 30, 2020), https://mofep.gov.gh/sites/default/files/reports/economic/2019-Annual-Public-Debt-Report.pdf, Appendix 4.
33 Ibid.
34 Sources of borrowing could include resident and non-resident individuals, institutions and governments.

obtaining a higher ratio of concessional loans in 2019? What are the cost savings associated with obtaining concessional loans vs. non-concessional loans? Does the government have a strategy to continue to increase the ratio going forward? Is this reflected in the government's MTDS?

Figure 3: Ghana Annual Debt Report: Concessional vs. Non-Concessional Loans Signed in 2018 and 2019



2.3 Parliamentary Approval of Contingent Liabilities or Information on Contingent Liabilities Provided to Parliament

Contingent liabilities refer to "obligations whose timing and magnitude depend on the occurrence of some uncertain future event outside the control of the government."[35] Contingent liabilities include lines of credit, letters of credit and loan commitments.[36] In that respect they are 'off-balance sheet', because they are not recognized as part of the debt until they are called. Contingent liabilities are only paid when an unexpected event occurs.

Parliamentary approval of contingent liabilities, the publication by government of significant contingent liabilities, or both, helps to ensure that parliament and the public are aware of the contingent liabilities that are being taken on by the government.

According to international best practices, annual borrowing, contingent liabilities and guarantees should either be approved by parliament directly or approved by government and reported to parliament in a timely and detailed manner. Best practice dictates that an annual report "quantifies and consolidates information on all significant contingent liabilities and other fiscal risks of central government."[37]

More than two-thirds (69 percent) of countries that have participated in a Public Expenditure and Financial Accountability (PEFA) assessment since 2016 (42 of 61) undertake annual approval of borrowing approved by either parliament or government, but only 18 percent (11 of 61) produce an annual report outlining all or most significant contingent liabilities.[38]

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35 Aliona Cebotari, "Contingent Liabilities: Issues and Practice," *International Monetary Fund* 2008, no. 245 (2008). https://www.elibrary.imf.org/view/journals/001/2008/245/article-A001-en.xml.

36 International Monetary Fund Statistics Dept., "External Debt Statistics: Guide For Compilers and Users," IMF eLibrary. 2014. Online at: https://www.elibrary.imf.org/view/books/069/20662-9781484366622-en/20662-9781484366622-en-book.xml?redirect=true&result=3&rskey=0qsU0G

37 PEFA, "Dimension 10.3. Contingent Liabilities and Other Fiscal Risks," in *PEFA Assessment Handbook Volume 1* (Washington, D.C.: PEFA, n.d.), https://www.pefa.org/node/4786; PEFA, "Dimension 13.2. Approval of Debt and Guarantees," in *PEFA Assessment Handbook Volume 1* (Washington, D.C.: PEFA, n.d.), https://www.pefa.org/node/4803.

38 61 countries that undertook a national-level PEFA survey, 2016 or later.

There are also important differences between explicit and implicit contingent liabilities as described in Box 2 below.

Box 2: Explicit and Implicit Contingent Liabilities[39]

Some contingent liabilities are explicitly recognized by a law or contract, such as:

- State guarantees for non-sovereign borrowing by, and other obligations of, sub-national governments, public infrastructure banks, public-private partnerships, and public and private sector entities;
- Umbrella state guarantees for various types of loans (mortgage loans, student loans, agriculture loans, small business loans); and
- State insurance schemes (deposit insurance, crop insurance and flood insurance).

Some contingent liabilities will not be recognized in a contract or law, but government may have an implicit or moral obligation, reflecting public and interest group pressures. Implicit contingent liabilities may include:

- The default of a sub-national (i.e., municipal) level of government or a public/private entity on debt obligations that were not guaranteed by the state;
- Banking failure (support beyond government insurance, if any); and
- Clean-up of liabilities of entities being privatized.

According to an analysis of the Debt Management Performance Assessments (DeMPA) conducted by the World Bank, "few countries (25 percent) undertake external financial audits on an annual basis, or have conducted compliance audits in the past two years; hardly any country has had a debt management performance audit. Where audits are conducted, 56 percent of the countries address the outcomes of the audits."[40]

Country Examples

- In Malawi, the constitution (section 176) requires an act of parliament to grant authority to the minister responsible for finance to borrow and issue guarantees on behalf of the government and the Public Financial Management Act (PFMA) section 54 grants the government the authority to borrow money. The minister of finance is recognized as the sole authority to contract borrowing on behalf of the government and issuing guarantees subject to the approval of Parliament;[41] and
- In El Salvador, the legislative assembly approves every loan operation of the government or loan that is guaranteed by the government.[42]

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39 Geoff Dubrow, *The Role of Parliament in Public Debt Management*, (London: Westminster Foundation for Democracy, June 2020), https://agora-parl.org/sites/default/files/agora-documents/The%20Role%20of%20Parliament%20in%20Public%20Debt%20Management%20-%20Weathering%20the%20COVID-19%20Crisis%20and%20Beyond.pdf.

40 Doerte Doemeland, Diego Rivetti, Emre Balibek, et al., *G-20 Note: Improving Public Debt Recording, Monitoring, and Reporting Capacity in Low and Lower Middle-Income Countries: Proposed Reforms*, (World Bank Group & International Monetary Fund, June 13, 2018), https://documents1.worldbank.org/curated/en/645621532695126092/pdf/128723-repo-For-VP-IMPROVING-PUBLIC-DEBT-RECORDING-clean.pdf.

41 Government of Malawi, the World Bank & Development Partners, *PEFA Assessment 2018: Malawi*, (PEFA, November 23, 2018), https://www.pefa.org/sites/pefa/files/assessments/reports/MW-Nov18-PFMPR-Public-with-PEFA-Check.pdf.

42 World Bank. "PEFA Assessment 2019: El Salvador" https://www.pefa.org/sites/pefa/files/2019-10/SV-Jul19-PFMPR-Public%20with%20PEFA%20Note_0.pdf.

Regarding contingent liabilities reporting directly to parliament:

- In Botswana, explicit contingent liabilities of central government (CG) are published in the Annual Statement of Accounts. Explicit government contingent liabilities cover loan guarantees to parastatals, mortgages and car advances for public officers;[43]
- In Bhutan, the Department of Public Accounts in the ministry of finance consolidates and reports contingent liabilities in detail in the Annual Financial Statements of the government which are tasked in parliament;[44] and
- In Fiji, the constitution prevents the government from providing a guarantee to an individual or body without the authorization of parliament and also establishes a reporting mechanism back to parliament. The ministry of the economy has established an internal guarantee policy for managing fiscal risks arising from guarantees.[45] In the case of contingent liabilities in Fiji, the annual financial statements of the government and the supplementary budget paper identify all significant contingent liabilities, including explicit guarantees of loans raised by all government entities, including financial and non-financial public corporations.[46]

2.4 Debt Report

Best practices call for annual government reporting against debt management objectives to be provided to parliament. This should be included in the debt management law. This often takes the form of a separate **annual debt report**. Alternately, government can report against its debt management objectives in its annual financial report. Such a report should include:

- An evaluation of the debt management operations — including borrowing, liability management operations such as debt exchanges, loan guarantees extended, and on-lending made; and
- "Enough information to enable the parliament or congress to evaluate how successful the debt management operations — including new borrowings and debt-related transactions — have been in meeting the (debt management) objectives."[47] The Public Accounts Committee (PAC) or other competent budget-related committee should also review the government's annual debt report.

Country Examples

- In Ethiopia, a quarterly (and annual) public debt report is generated and submitted to the legislature;
- In Pakistan, an annual debt review and public debt bulletin is tabled in parliament; and
- In Jamaica, an annual report compares the debt management objectives and borrowing plan against actual outcome. The strategy and the annual report are both published on the government's website and submitted to parliament.

2.5 The Medium-Term Debt Strategy

Having a regularly reviewed strategy raises the profile of debt management activities and objectives, prevents ad hoc and frequent changes and strengthens transparency. It is incumbent on parliament to ensure the government has a legally defined obligation to provide an MTDS. In Kenya for example, section 33 of the Public Finance

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43 Republic of Botswana, *Public Expenditure and Financial Accountability Report*, (PEFA, March 11, 2020), https://www.pefa.org/sites/pefa/files/2020-07/BW-Mar20-PFMPR-Public%20with%20PEFA%20Check_0.pdf.
44 Royal Government of Bhutan & World Bank Group, *Public Financial Management Performance Report*, (PEFA, September 2016), https://www.pefa.org/sites/pefa/files/assessments/reports/BU-Sep16-PFMPR-Public-with-PEFA-Check.pdf.
45 Celeste Kubasta, Richard Neves, John Short, et al., *Public Expenditure and Financial Accountability (PEFA) Assessment*, (IMF, February 2020), https://www.pefa.org/sites/pefa/files/2020-04/FJ-Feb20-PFMPR-Public%20with%20PEFA%20Check.pdf.
46 Ibid.
47 Marcello De Moura Estevao Filho, Doerte Doemeland, Andre Proite, et al., *Debt Management Performance Assessment (DeMPA) Methodology: 2021 Edition (English)*, (Washington, D.C.: World Bank Group, n.d.), http://documents.worldbank.org/curated/en/526391628746190611/Debt-Management-Performance-Assessment-Methodology-2021-Edition.

Management Act of 2012 requires the cabinet secretary to submit the debt management strategy to parliament annually. The cabinet secretary is also responsible for ensuring that the MTDS is aligned to the broad strategic priorities and policy goals set out in the Budget Policy Statement.[48]

According to PFM standards, the MTDS should be publicly reported, encompassing "existing and projected government debt, with a horizon of at least three years" and including "target ranges for indicators such as interest rates, refinancing and foreign currency risks."[49]

Nearly half (44 percent) of countries that have participated in a PEFA assessment since 2016 (27 of 61) release their MTDS annually and publicly.[50]

Country Examples

- El Salvador's five-year development plan establishes borrowing guidelines, while the medium- to long-term fiscal framework shows the status and 10-year projections of debt indicators. "The documents are public and since 2016, the MFMLP is submitted to the legislative assembly together with the General State Bill for the corresponding fiscal year."[51]
- In Ethiopia, the MTDS is published on the ministry of finance's website and consists of a robust presentation of debt-related figures including the addition of State-Owned Enterprises' borrowing strategy and requirements. "Government's borrowing is consistent with its strategy and approved by parliament".[52]
- In Bangladesh, the Medium-Term Debt Management Strategy was first introduced in 2014, to be updated annually, and including several important elements:
  - "Domestic and foreign debt over a three-year horizon";
  - "Target levels for interest rates, refinancing and exchange rate risk based on thorough sustainability analysis," and
  - "A cost-risk analysis of alternative debt management strategies."

In Bangladesh, "The Medium-Term Debt Management Strategy is available on the MoF website" and the Medium-Term Macroeconomic Policy Statement, which is presented before parliament with the budget documents, reports on the status of debt."[53]

2.6 Role of Supreme Audit Institutions

While parliament delegates the borrowing power to the executive branch, the government must account to the parliament for its use of the delegated authority. Public debt management is highly technical and "many potentially significant debt-related transactions are not public."[54] As a result, "the members of the legislature and the public must rely on the independent audits performed by the SAI to determine whether the executive's public debt reports show the true condition of public debt and its most relevant details."[55]

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48 Parliament of Kenya, *Act No. 18: Public Finance Management*, (Kenya Law, 2012), http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2018%20of%202012.

49 World Bank. "Framework for Assessing Public Financial Management", Second Edition, 2019. https://www.pefa.org/sites/pefa/files/resources/downloads/PEFA%202016_latest%20version_with%20links%20%282%29.pdf.

50 Covers 61 countries that undertook a national-level PEFA survey, 2016 or later.

51 World Bank. "PEFA Assessment 2019: El Salvador" https://www.pefa.org/sites/pefa/files/2019-10/SV-Jul19-PFMPR-Public%20with%20PEFA%20Note_0.pdf.

52 World Bank, *Performance Assessment 2019: Federal Democratic Republic of Ethiopia (Federal Government)*, (PEFA, November 13, 2019), https://www.pefa.org/sites/pefa/files/2020-05/ET-Nov19-PFMPR-Public%20with%20PEFA%20Check.pdf.

53 Government of the People's Republic of Bangladesh, PEFA Public Financial Management Performance Report, (World Bank, June 2016), https://www.pefa.org/sites/pefa/files/assessments/reports/BD-Jun16-PFMPR-Public-with-PEFA-Check_0.pdf.

54 International Development Initiative. Audit of Public Debt Management. A Handbook for Supreme Audit Institutions, Version 1. August 2020.

55 Ibid.

Box 3: Role of the SAI in Public Debt Management

"The SAI plays a central role in exercising independent external oversight on public debt management and in publicly reporting on audit results (and to parliament in the Westminster system). The SAI audits the government's consolidated financial statements, examining the government's compliance with rules and regulations, and conducting value-for-money or performance audits."[56]

The ability of the SAI to audit debt and public debt management will depend heavily upon the SAI's legal mandate. To illustrate:

"Some SAIs may have the legal authority to conduct compliance audits of budget resources but not financial and performance audits of public debt. A clear and explicit legal mandate helps SAIs to gain access to debt officials and records."[57]

Some countries have a piece of stand-alone legislation that outlines the SAI's mandate, such as an Auditor General Act. Others include reference to the SAI in their Financial Administration Act.

Table 4 below outlines three key types of audits as well as their relevance to public debt management.

Table 4: Types of Audits Related to Debt Management

Type of Audit	Relevance to public debt management[58]
Financial Audit	Seeks to assess the risk of material misstatement of public debt information disclosed in financial reports, whether due to error or fraud, to issue an opinion on the fairness of the public debt assertions.
Compliance Audit	Identifies the direct and materially significant provisions of laws and regulations, and then perform tests to determine whether the debt management function has been compliant with these laws and regulations.
Performance Audit	Audits the effectiveness and efficiency of debt management operations. Effectiveness involves checking the achievement of the stated objectives and the actual impact of activities compared with their intended impact. It also includes an examination of internal controls and management of operational risks. The efficiency aspect looks at the efficient use of resources, including examination of information systems as well as performance measures and monitoring arrangements.

56 Geoff Dubrow, The Role of Parliament in Public Debt Management, (London: Westminster Foundation for Democracy, June 2020), https://agora-parl.org/sites/default/files/agora-documents/The%20Role%20of%20Parliament%20in%20Public%20Debt%20Management%20-%20Weathering%20the%20COVID-19%20Crisis%20and%20Beyond.pdf.
57 Ibid.
58 Marcello De Moura Estevao Filho, Doerte Doemeland, Andre Proite, et al., *Debt Management Performance Assessment (DeMPA) Methodology: 2021 Edition (English)*, (Washington, D.C.: World Bank Group, n.d.), http://documents.worldbank.org/curated/en/526391628746190611/Debt-Management-Performance-Assessment-Methodology-2021-Edition.

3. Entry Points for Parliamentary Action

The focus of this paper is on the added value of having a clear legal framework under which public debt is approved, monitored and audited with a specific role for parliament in all three aspects. However, it is important to specifically consider how a parliament can be engaged in the adoption of such legislation. For this, there are a number of options:

- Where the ministry of finance or other ministry **produces and introduces a draft law for debate in parliament on debt management**, the parliament can play an effective role by providing scrutiny and analysis of the draft law before approval. Scrutiny will most likely be provided through the committee system. Assuming that draft laws go to a committee for review at some point in the parliament's review process, the committee should be provided with sufficient time and resources to be able to conduct a full, evidence-based and participatory review of the draft law. This should include accessing stakeholders and technical experts for their perspective and an opportunity for civil society and the public to also provide their inputs. The criteria provided in Table 2 can be used to assess whether the draft law covers some of the international best practices described therein;

- An alternative, though rarely used, would be for the **introduction of debt management legislation by a source other than the executive**. In many parliaments this may mean introduction by an MP, but in some jurisdictions a committee or even some independent oversight institutions have the right to propose laws for debate in parliament. Some jurisdictions allow citizen initiatives to be debated as draft laws as well. Once introduced as a draft law, the parliament can treat the draft law as it would any other draft law and should review via the committee system as noted above;

- A slightly different entry point is to **introduce amendments** to the annual appropriations bill/draft law or another piece of financial legislation that introduces debt management through other laws that are debated within the parliament. This would require the drafting of specific content that would be introduced for debate at the appropriate stage in parliament's review of the draft law;

- If no draft law has been introduced, the **parliament can initiate a policy discussion** on the topic with recommendations for the contents of a draft law on debt management. In this case the parliament could use different oversight tools – interpellation, question time – to raise the issue. But if the parliament is to produce concrete recommendations for a draft law this work will need to be conducted by a committee – perhaps the budget and finance or PAC. Again, the work should include a comprehensive, evidence-based and participatory process that results in a full analysis and report that has specific recommendations for the content of a draft law in accordance with the key points raised in this paper.

- A fifth entry point is for parliamentarians to **advocate for debt management legislation**. This would be of value where the topic of a debt management law is not even on the government's radar. Through the various tools of the parliament – interpellation, question time, supply debate, etc. – individual MPs, party groups or cross-party caucuses can implement an advocacy strategy that presses the executive to draft such legislation. This type of work by parliament is more effective where civil society is brought on board and is able to amplify the efforts of parliament outside of the institutional setting.