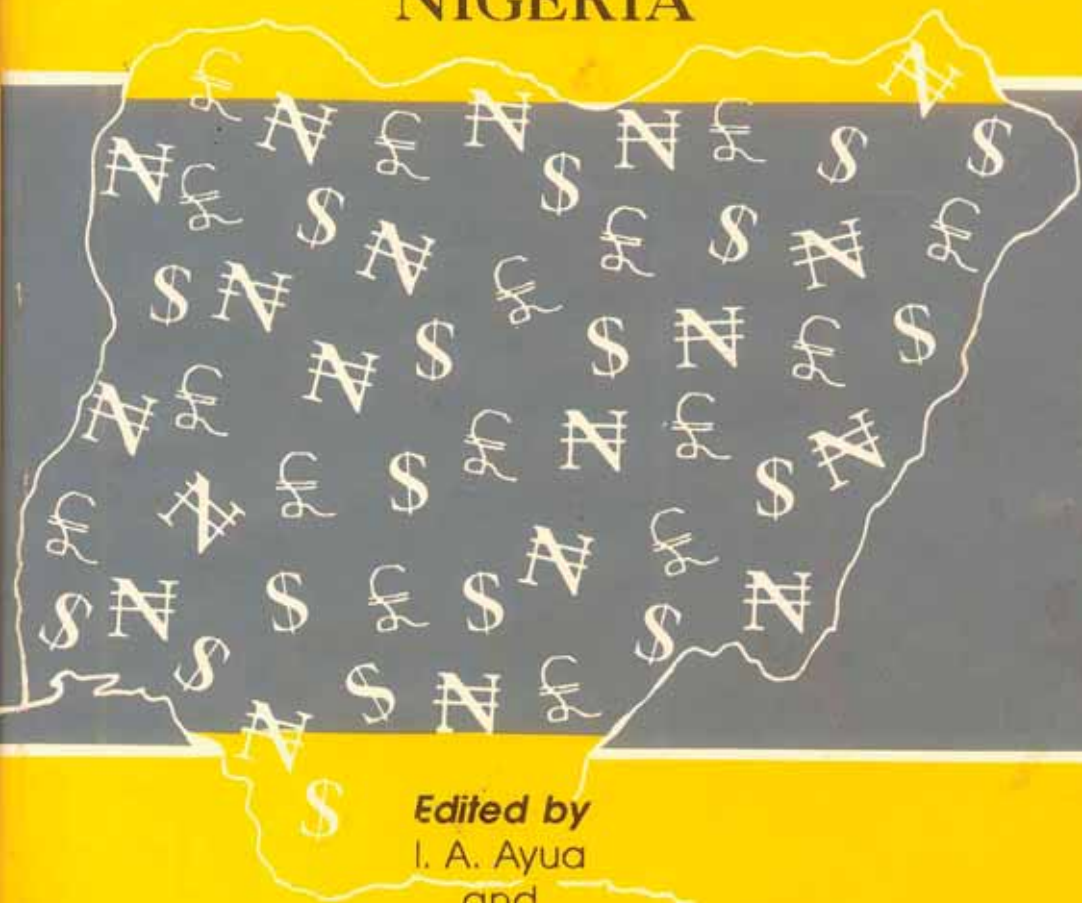


**EXTERNAL DEBT  
AND  
FINANCIAL MANAGEMENT  
IN  
NIGERIA**



*Edited by*  
I. A. Ayua  
and  
Bolaji Owasanoye



**Nigerian Institute of Advanced Legal Studies**

Others in the series

## External Debt and Financial Management in Nigeria

By  
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# External Debt and Financial Management in Nigeria

edited by

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(Director-General,  
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and

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## Foreword

by

Chief M.A. Agbamuche SAN,

*Hon. Attorney-General of the Federation  
and Minister of Justice.*

It gives me great pleasure to write the foreword to this book on External Debt and Financial Management in Nigeria which is outcome of the Second National Workshop on Debt and Financial Management. A debt is an obligation owed by one party to another pursuant to a contractual agreement. The agreement is usually detailed in a document called the Loan Agreement as clear indication of the legal liabilities of the parties. The sovereign debt of developing countries including Nigeria were contracted in the expectation of beneficial ability of the debt in relation to development objectives. Unfortunately, the lofty hopes and ideals tied to implementation of these agreements turned sour for a myriad of reasons such that African countries are heavily weighed down by the attendant debt crisis.

The time has come for developing countries to re-appraise the legal basis of these arrangements which have contributed in no small measure to our under-developed status. This re-appraisal must of necessity go beyond the negotiation of new contracts but also extend to already



contracted debts because the servicing of accumulated international debt is a continuous exercise and also because debt negotiation and management are two sides of the same coin.

I am happy that the Nigerian Institute of Advanced Legal Studies being the premier legal research institution in Africa, South of the Sahara set the initiative to convene a forum to address the issues from a legal standpoint. My Ministry the Federal Ministry of Justice will support every effort directed at developing novel principles of law in support of developing countries. For too long, we have accepted standard form agreements from lenders with little or no input from us. Such agreements were brazenly lopsided in favor of the lenders. They also did not promote our long term development objectives. It is now clear that to realise our aspirations we must seize the initiative by working out pragmatic symbiotic solutions which promote our development objectives while also appreciative of the profit motive of the lenders.

The multi disciplinary focus and approach of this book is commendable. The world is moving away from stereotyped and monolithic approach to issues. It is therefore necessary for lawyers to appreciate economic and fiscal issues relating to debt while economists and accountants learn the legal aspects. My ministry will therefore encourage its lawyers to be exposed to the salient features of debt and financial management. I especially recommend the practical legal solutions to the debt as proffered in this book.

## Preface

Governments and businesses often raise loans to augment their income in order to execute their important development objectives. Such loans are always subject to conditions of repayment quite often on laid down schedules. This phenomenon has far-reaching effects on the operations of government and the activities of business because debts must be repaid.

In many third world countries, debts were mostly incurred on the assumption that rates of interest would remain low, that terms of trade would not deteriorate and that recipient governments would use the money to create productive capacity which would enable them to eventually repay the loans. These assumptions have proved to be false as the question of better terms and conditions of trade as well as the repayment of debt was not properly handled. Many recipient governments did not use loans wisely and honestly to execute socio-economic programmes. Indeed, there was hardly any loan discipline, arising mostly from lack of expertise in negotiation, financial planning and effective management. The inevitable consequence has been the debt crisis that has befallen third world countries.

The severe debt crisis that exists and persists in many developing countries calls for a more comprehensive approach to debt and financial management. In Nigeria, the old approach was that the debt problem was purely an economic and fiscal issue requiring only technical experts in finance and

economics on an ad hoc basis to deal with it. Today, the Nigerian debt problem can only be resolved by sustained economic growth and effective debt management involving experts cutting across many disciplines. We know now, for instance, that legal documentation and principles of law ranging from law of contract, administrative law, budgetary law, constitutional law, etc. encompass the process of public borrowing, expenditures, revenue and repayment.

Debt management is a multifaceted activity involving economists, financial analysts, policy planners, accountants and lawyers. To be effective, debt management must combine all aspects regarding legal aspects of budget execution and control, risks in lending and borrowing, and the economic, and fiscal issues generally.

One of the contributory factors to the debt crisis in third world countries was the failure to lay down proper legal, administrative and technical procedures and parameters for obtaining foreign loans and the lack of well trained professionals in this area. In recognition of this fact, some international bodies reacted by providing assistance through training and reformative programmes. Eminent among such bodies is the United Nations Institute for Training and Research (UNITAR) which embarked on a wide range of training programmes on legal aspects of debt and financial management for Sub-Sahara African countries.

In 1990, UNITAR introduced a series of training programmes for lawyers and other professionals in Sub-Saharan Anglo-Phone countries including Nigeria. These seminars which were held on a regional and national basis focussed on improving the areas of negotiating, monitoring and managing external debt. Some Nigerians have benefitted from these projects including some staff of the Nigerian Institute of Advanced Legal Studies.

The Nigerian Institute of Advanced Legal Studies has since continued to develop a formidable pool of in-house experts in the various facets of debt and

financial management regime. The need to develop resource material, establish a permanent national network of trainers and establish local training programmes informed the mounting of national workshops with broad curriculum. The proceedings of the Second National Workshop forms the content of this book.

Hitherto, information on external debt and financial management is sourced from abroad. Such material hardly ever focus on local concerns and peculiarities. This book is published to provide the much needed legal and technical information on aspects of planning, negotiating, procuring, monitoring and managing international loan obligations especially from the perspective of local practitioners. It also focusses on the role and procedures of international organizations such as the International Monetary Fund (IMF), World Bank, the London and Paris Clubs etc. It becomes the main source material on the subject matter post-structural adjustment.

Professor I.A. Ayua,

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Special thanks to the Honorable Minister of Finance Chief Anthony Ani (MON), for taking time out of very busy national schedules to contribute a chapter to this book. We are also grateful to the corp of dedicated professional from the Federal Ministry of Finance, Central Bank of Nigeria, the Academia and the Private Sector who have found time to contribute to the development of the law from the Nigerian perspective.

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### List of Abbreviations

ACG	Arun Concerned Group
ADB	African Development Bank
ADF	African Development Fund
AFEM	Autonomous Foreign Exchange Market
BIS	Bank for International Settlements
CBN	Central Bank of Nigeria
DCP	Debt Conversion Programme
DMA	Debt Management Agency
ECA	Export Credit Agency
EIB	European Investment Bank
ESAF	Enhanced Structural Adjustment Facility
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IBRD	International Bank for Reconstruction and Development
ICB	International Competitive Bidding
ICSID	International Centre for the Settlement of Investment Disputes
IDA	International Development Agency
IFAD	International Fund for Agricultural Development
ILA	International Loan Agreements
IMF	International Monetary Fund
ITO	International Trade Organisation
LCB	Local Competitive Bidding
LCIA	London Chamber of International Arbitration
LCICM	London Court of International Conciliation and Mediation
LDCs	Less Developed Countries
LIBOR	London International Bank Offered Rate
MTEP	Medium Term Economic (Adjustment) Programme
MIGA	Multilateral Investment Guarantee Agency

NECON	National Electoral Commission of Nigeria
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
SAP	Structural Adjustment Programme
SDR	Special Drawing Rights
SPA	Special Programme of Assistance
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNITAR	United Nations Institute for Training and Research
USAID	United States Agency for International Developments
WTO	World Trade Organisation

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# 1 NIGERIAN DEBT PROFILE

by

Chief Anthony Ani (MON)

## Introduction

Nigeria's internal and external debts have assumed such an immense dimension that no meaningful economic programme can be successfully implemented without taking adequate cognisance of the debt problem. But I wish to quickly observe that I do not believe that all the answers to our debt problem are warehoused only in the Federal Ministry of Finance and the Central Bank. I believe that intellectuals within and outside the universities, professionals in various walks of life, especially in the financial sector and of course, the business community, all have a role to play, both in the generation of ideas and in the implementation of any action plan towards the resolution of the problem. This is why information on the subject is very important for providing part of the intellectual guidelines for tackling the problem. Information affords professionals drawn from all works of life at Federal and State levels and the private sector the opportunity of appreciating the magnitude of our debt problem and therefore the need to be mindful of it both in our individual and collective demands, as well as in our contribution to the formulation and implementation of public and corporate policies.

In the 1996 Budget Speech, I discussed in some detail the structure of Nigeria's debt. Since I made that speech only a short while before this