



**Liberdade
Democracia &
Boa Governança**
Um olhar a partir de Cabo Verde

*Promoting Good Governance and Transparency in
Public Debt Management*

The Legal Foundations of Public Debt Transparency

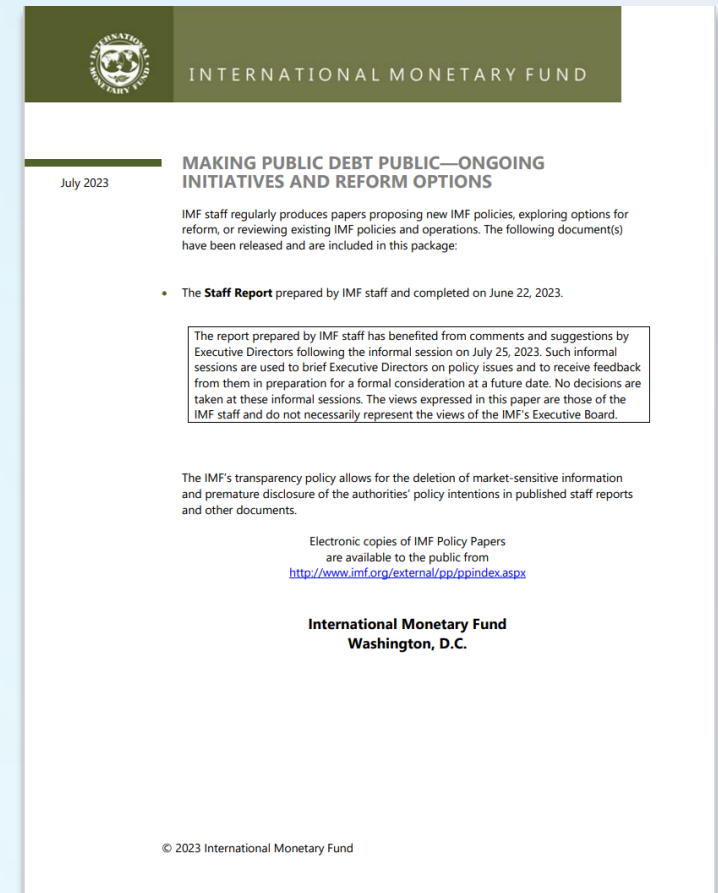
Calls for debt transparency have increased

Debt transparency has emerged as a prominent topic, due to a significant rise in public debt and increased use of complex forms of financing (collateralized borrowing, SOE and PPP debt, government guarantees, etc.)

Last July, the IMF published a Board Paper entitled ***Making Public Debt Public***.

Opaque debt is the consequence of inadequate institutions and capacity (“underlying drivers”) as well as “adverse incentives”...

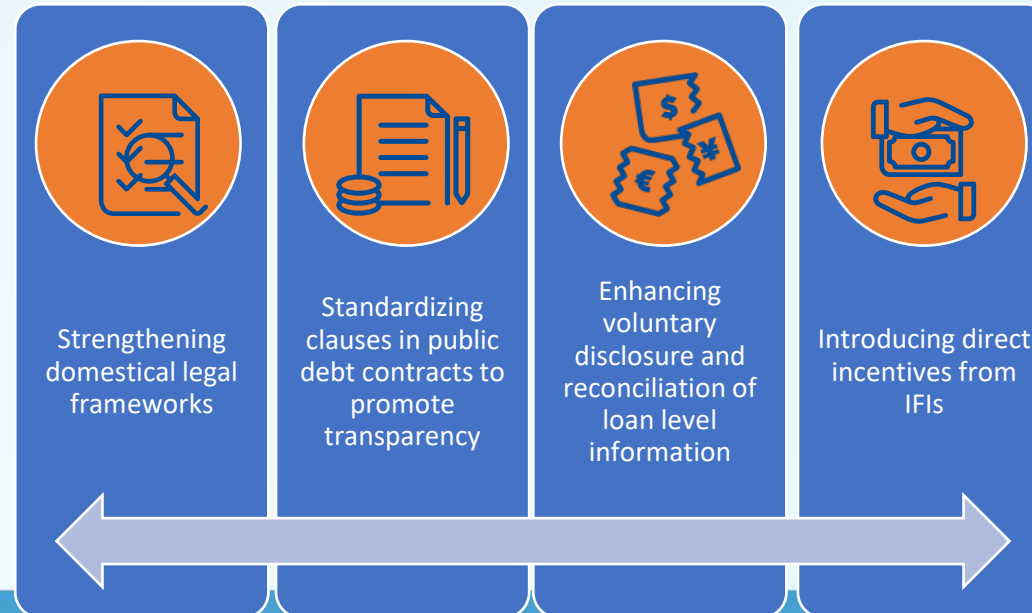
- Limited information and accountability, make it easier for the authorities to skirt fiscal rules or to divert public funds.
- Poor transparency may help creditors to achieve better contract terms than their competitors.



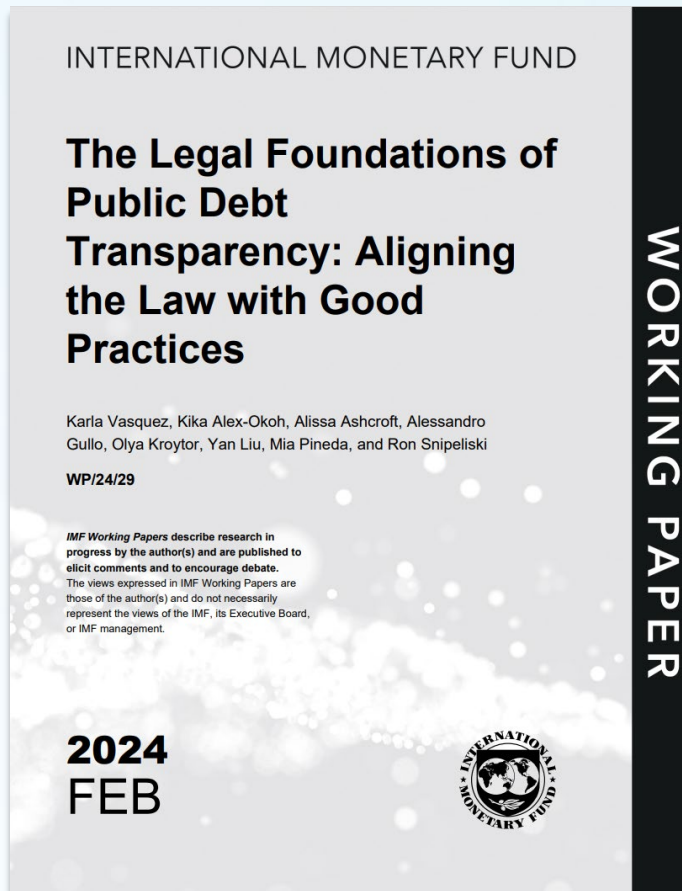
Transparency is integral to debt management

Debt transparency

- guides economic policy and promotes sustainable borrowing and lending practices,
- supports stable and adequate access to financing,
- contributes to macroeconomic stability and growth, and
- facilitates the assessment of debt performance and risks and debt restructuring processes.



Strengthening domestic legal frameworks – a key reform area



The [Working Paper](#) examined comprehensively the role of domestic law in promoting debt transparency

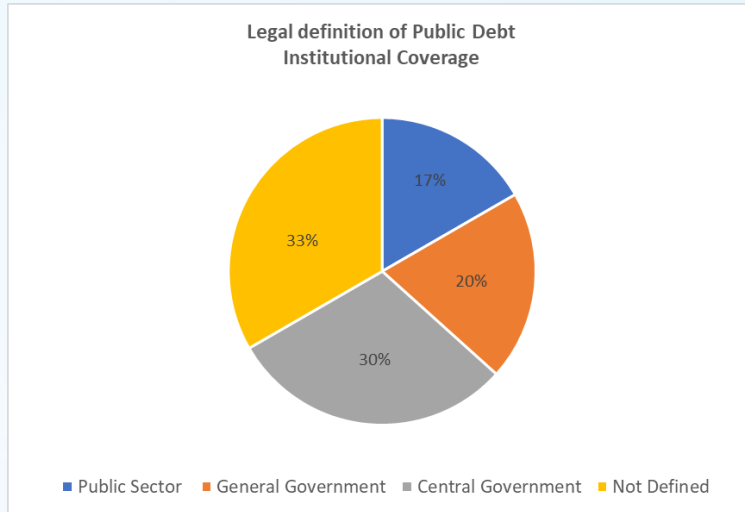
- **Law is important.** Strengthening the domestic laws of debtor countries help align practices with international standards by entrenching good borrowing practices, adequate institutional arrangements, and proper accountability.
- **Clear and unambiguous debt disclosure requirements** for the contracting of public debt create an incentive to disclose debt transactions and bind the discretion of policy makers and public debt managers on what, when and how to disclose debt data.
- Laws can also help **enhance the control on borrowing** by entities outside the central government, **strengthen institutional arrangements** for debt data collection and disclosure, and **support monitoring and oversight** of public debt.

Key findings and recommendations

1. Definition of public debt
2. Legal requirements for debt disclosure
3. Broader governance framework
 - Confidentiality clauses
4. Accountability mechanisms

Legal definition of public debt – critical gaps

Institutional Coverage – Domestic Laws in 60 countries



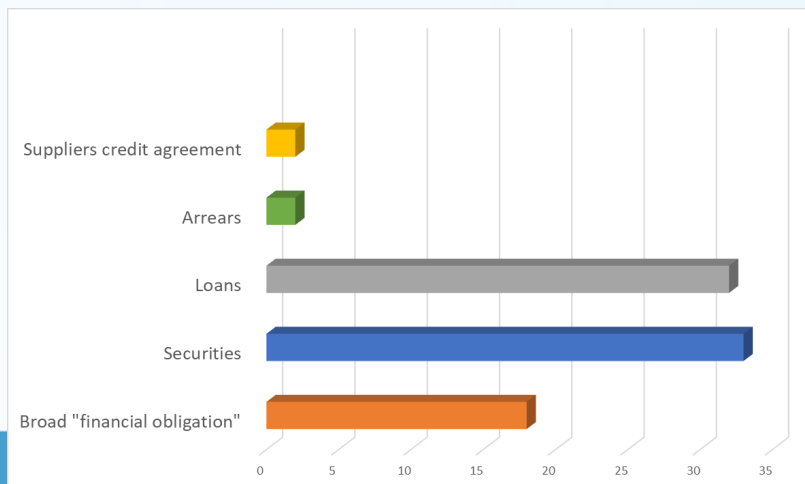
Whose Debt? Institutional coverage is narrow

- Centered in the **budgetary central government debt** and often **not aligned with international statistical standards**.

What is considered debt? Debt instrument coverage

- Narrow coverage of debt instruments, **restricted to loans and/or securities; inconsistent and ambiguous definitions** across legal instruments; and **complex and atypical instruments not legislated** and often left off-balance sheet.

Debt instrument Coverage – Domestic Laws in 60 countries



Recommendation:

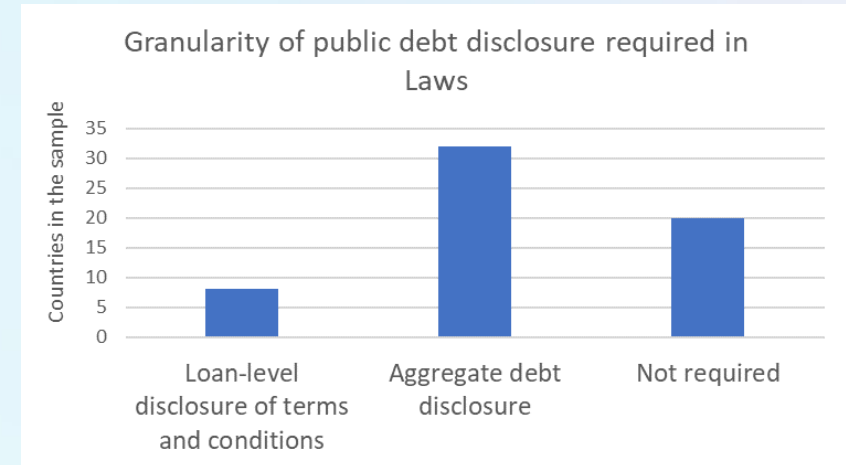
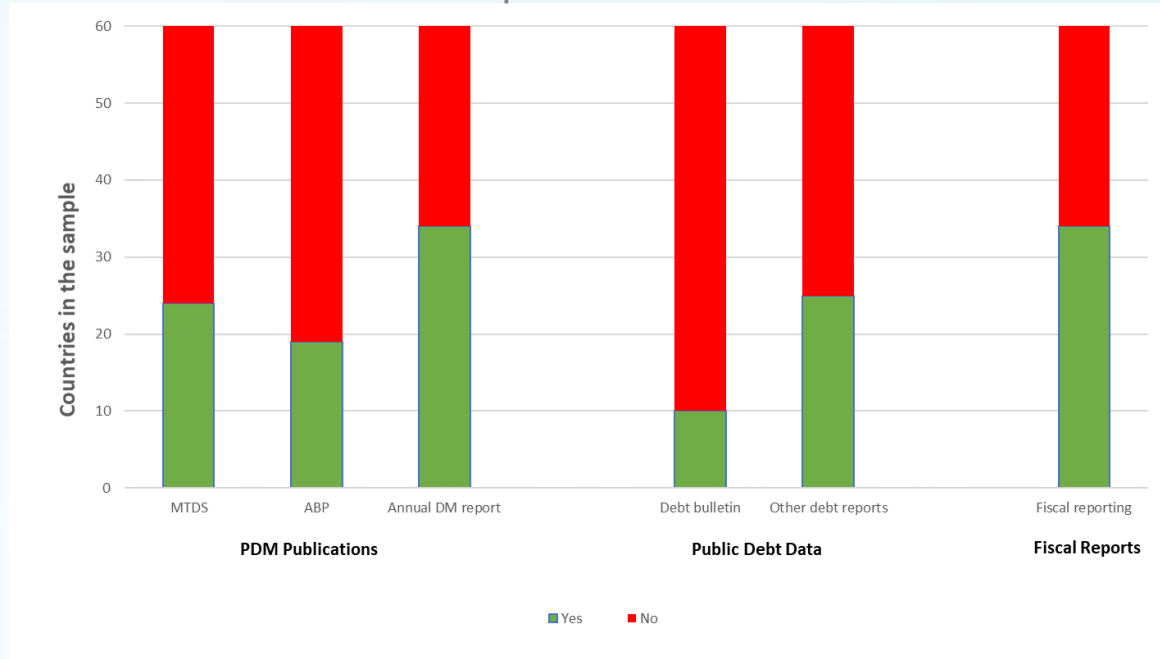
- Legal definition of public debt needs to be **comprehensive**, meaning it covers **various debt instruments** (recognizing the economic equivalent functions) and **all public sector entities** (aligning with the 2014's GFSM's sectorization).

Requirements for disclosure are insufficient

Less than 50% of countries surveyed require debt management and fiscal reports

Less than 25% of countries require disclosure of loan-level information

Public Debt disclosure requirements – Domestic Laws in 60 countries



Recommendation:

- Stronger legal basis is crucial to signal a commitment to report debt data in a manner that is both timely and relevant for policy analysis, and more broadly, for transparency and accountability.

Shortcomings in the governance framework

Borrowing authority, the law should contain

- clear allocation of roles and responsibilities among public authorities in the borrowing authorization process (e.g., Parliament/Cabinet/MoF/DMO);
- criteria and conditions, as well as restrictions for borrowing;
- authorization processes for critical complex debt instruments;
- a delegation framework that specifies the relevant entities, the powers being delegated; and
- A robust delegation framework for the authority to borrow.

Shortcomings in the governance framework

Hardly any PFM and PDM laws regulate confidentiality of public debt and international standards provide limited guidance.

The law should

- Tightly define exceptions to disclosure and scope of confidentiality agreements,
- Parliamentary oversight, and other safeguard mechanisms such as administrative or judicial remedies,
- Mandate governments to adopt confidentiality policies for debt contracting setting out what type of debt information could be subject to non-disclosure (confidential) and the management of confidential information.

There are problems in accountability mechanisms

Supreme Audit Institutions

- **Broad mandate to audit public debt**, which may derive from the powers to audit the government's financial statements.
- **Legal authority to audit the whole public sector as SOEs**, though broadening the authority of the SAI should be commensurate with its institutional capacity.
- **Sufficient powers to obtain information and report audit results.**

Oversight by the Legislature

- **Sound procedures, institutions, and staff** with technical capacity.
- Level of **transaction approval authority may be needed** for complex transactions.
- **Confidential debt information** should not be exempt from legislative oversight.

[Making Public Debt Public: Ongoing Initiatives and Reform Options](#)

[The Legal Foundations of Public Debt Transparency: Aligning the Law with Good Practices](#)