



The Challenge of Rapid Development Amidst International Debt in Sub-Saharan Africa: Nigeria's Legal Framework and Pathways to Sustainable Debt Management

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Abstract. Africa is no longer the frontier for new expansion like before the colonial era when Developed nations carved the African continent like a nice piece of chocolate cake. Anyone who still thinks this way does not fully grasp the implications of debt dealing and the mouse trap of international borrowing and underdevelopment. Africa is still the major frontier for European and oriental expansion but this time rather than sending troops on the ground the battle is economic. The struggle is also philanthropically disguised in initiatives by international financial and non-financial organizations that are loyal to the developed nations. This work is not a debate as to the veracity of the claims made here rather this work is squarely focused on the challenge of Nigerian external debt in recent times. The voyage is designed to examine the legal framework over external debt management in Nigeria while seeking adaptable solutions that would end the culture of international borrowing and make sure there are real economic gains made viz a viz the culture of running abroad for loans for capital projects. Borrowing for Nigeria predated the existence of the Nigerian democracy because at the time when the earliest international loans were taken, the Brits were still in control around 1958, and the sum of Twenty-Eight Million (\$28 Million) was obtained to ensure the construction of the Nigerian railway system. The research shows that indeed there are a handful of legislations within the country that regulate and marshal out both the powers and parameters of securing and servicing external debt, however, there is a disconnect somewhere that leads to many hindrances on the growth of the nation's GDP. It is the objective here to through the examination of

existing laws discover the missing link and make recommendations for better arrangements. Invariably there will be lessons from looking at the legal framework vis-a-vis the sub-Saharan African layout. Indeed developing economies must now focus within and desire more alternatives for raising capital than simply relying on foreign debt or international debt or external debt to raise capital for infrastructural projects within the nation or for even running the government.

Keywords: International debt, Debt servicing, Financing, Debt Refinancing, Nigerian, World Bank,

1. Introduction

A debt profile is the outline or description of the total debt owed by individuals, companies, or the government (Abdulmumini, Ewugi, & Gomina, 2022). In this particular instance, we are dealing with the debt profile of whole nations specifically the debt profile of the Nigerian government. The most reliable source for information at the national level may easily be the Nigerian Bureau of Statistics (NBS) though one cannot without a shadow of a doubt vouch for the absolute credibility of the records from NBS, the attempt at capturing national figures is commendable (Antai et al., 2024; Aidonojie et al., 2021; Aidonojie et al., 2020). Accordingly, stats from the Bureau regarding States and Federal Debt showed using Stock data as of 30th September 2020 that the Country's total public debt portfolio stood at ₦32.22 trillion naira currently (National Bureau of Statistics, 2020). This is now four years ago and there have been more foreign debts incurred by the President Muhammadu Buhari-

led government and the most recent loan from the World Bank from the President Asiwaju Bola Ahmed Tinubu Government (Aina, 2024). A cursory look at about twenty years ago stat shows that in the year 2004 Nigeria's external debt stood at \$35.94 billion United States dollars, having shut up astronomically from US\$18.9 billion United States dollars recorded in 1985 (Omotosho, Bawa & Doguwa, 2016). Presently the nations' calculated public debt showed that ₦12.19 trillion naira or 37.82% of the debt was purely externally obtained by the Nigerian Government with ₦20.04 trillion naira or 62.18% (Omotosho, Bawa & Doguwa, 2016) of the debt being sourced from homegrown sources or being domestic loans. These numbers have since doubled. A further look and disaggregation of Nigeria's foreign debt showed that \$16.74 billion of the debt was multilateral (consisting of international creditors such as major international financiers like the World Bank and IMF etc.) while about 502.38 million dollars was bilateral (as between Nigeria and another sovereign nation) and another \$3.26 billion bilateral from China's Export and Import Bank, India, and Germany while 11.17 billion dollar was commercially represented in the form of Eurobonds and other kinds of Bonds (Omotosho et al., 2016; Masajuwa & Aidonojie, 2020) and incorporeal asset (Paul & et al, 2024). While the statistics reveal the status quo and problem it is important to zero in on the laws that regulate external debt and create the necessary powers and pathways for approval (Antai, 2024; Imoisi et al., 2023; Oaihimore & Aidonojie, 2023).

That Nigeria occupies a very important position economically in the African Continent (Antai, 2024) is not in dispute, it is often viewed as being the most populous African nation but despite her capacity and might she remain underdeveloped and classed as a developing economy denied many privileges as a result; despite the wealth of the nation (Ekpenisi, & et al., 2024). It is difficult to really trace the exact foreign loan that would be described as Nigeria's first international loan prior to the period of colonialism. However, one of Nigeria's earliest external debt or loan was obtained from the Italian Government as far back as 1964 (Akanbi, Uwaleye, Ibrahim, 2002). The sum is reported to have been about thirteen Million and One Hundred Thousand Dollars (\$13.1 Million) to build the Niger Dam to facilitate immigration and drainage in the Northern region of the country (Akanbi, Uwaleye, Ibrahim, 2002). Since that time the habit has been formed and it is now almost certain that every government lives on borrowed money to survive, money specifically taken from foreign residents or institutions. As recently as days ago the World Bank approved the sum of 2.25 billion dollars

to be advanced to Nigeria with 1.5 billion dollars out of this largesse meant for reforms for economic stabilization to enable transformation development policy financing program while 750 million dollars set aside for accelerating resource mobilization reforms program (Omotosho, Bawa & Doguwa, 2016). The loan is committed with so much optimism as intended to enhance non-oil revenue and promote fiscal sustainability among other things but how disciplined can the Nigerian government be to ensure it is not just another round of loans that would be wasted or siphoned elsewhere (Majekodunmi et al., 2024)? Can the existing laws made by the National Assembly on debt management help in avoiding this particular sum being wasted? That forms the purport of this inquiry (Aidonojie et al., 2024; Budiyanto et al., 2024). The research is stratified into sections with the very first part dealing with the debt debacle of African Nations in the 21st Century; the second part considers Nigerian legislation over external debt management beginning with the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Aidonojie, 2023; Aidonojie et al., 2022); then the final part deals with implications and possible lessons for Nigeria and other African nations.

2. The Debt Debacle and Sub-Saharan African Nations in the 21st Century

From basic economic enlightenment, it is assumed that debt is a burden and should be avoided at all cost, but national governments seem not to get the memo. Perhaps it is a necessary evil that is needed for much greater good later on. Who knows? The sustainable development and economic prosperity of beloved black Africa is important and should be at the zenith of any conversation. The term sub-Saharan Africa is often used to describe some parts of Africa and not all of Africa, the concern of this inquiry is specifically around the fringes of this area so described with an even more precise look at Nigeria (Aidonojie et al., 2022; Aidonojie & Francis, 2022). The New World Encyclopedia (2024) which provides many definitions and explanations on key subjects, define the term 'sub-Saharan Africa' to mean that specified region or area of the African continent geographically situated south side of the famous Sahara Desert. For even more precision it is recorded that the demarcation line which divides the sub-Saharan part of Africa from North Africa is the Southern edge line of the Sahara Desert (New World Encyclopedia, 2024). The word 'sub' taken in another breadth means below' this by implication sub-Saharan African Countries are countries below the Southern edge line of the Sahara Desert. Precisely, countries in West Africa, and although traveling farther other parts such as Central

Africa, East Africa, and Southern Africa, including unsurprisingly the horn of Africa are all part of the larger description of sub-Saharan Africa. These countries are all undeveloped or developing as the case may be.

The Sub-Saharan African nations are all one way or the other debt merchants for one reason or the other. Who is their highest creditor? Although there are rumours it is China, verifiable data shows that the United Kingdom ranks as one of the highest creditors to Sub-Saharan African nations (Akpanke, et al., 2022) and this is not very surprising considering the historical affiliations with the sub-continent. As of 31 August 2022, developing countries in Africa reportedly owed a total of £2,758, 000.00 million (Two Million Seven Hundred and Fifty-Eight Thousand Pounds) to the UK Government (World Bank, 2023). This figure quantitatively accounts for about 56% of all debt owed to the UK Government by foreign countries (Brooke-Holland & et al, 2023). This challenge could be described as debt distress which we choose to call the debt debacle. The nine (9) countries in debt distress or debt debacle currently are the Republic of Congo, Ghana, Malawi, Mozambique, Sao Tome and Principe, Somalia, Sudan, Zambia and Zimbabwe.

The debt debacle is the continuous cycle of debt dealing and borrowing that does not seem to translate to much feasible national growth (Haruna, Aidonjje, & Beida, 2024). The cycle never ends and the sub-Saharan African nations continue to shrivel down the barrel of economic advancement rather than upwards. The capital question then is how can this cycle be broken? I'm facing the issues this paper has been subdivided into four parts outside the introduction and conclusion with the last part addressing lessons for Nigeria and sub-Saharan African nations largely classed as developing nations (Aidonjje et al., 2023; Aidonjje et al., 2023). The second part focuses on the effect of external debt in terms of the burden it places on economic growth; the third part covers international arrangements to ease the burden while the fourth part deals with lessons for Nigeria as mentioned above being the concluding part of the research. The modus operandi adopted here is to deal with issues head-on rather than regurgitate what is already well-known in the area of international debt servicing. Senadza et al. (2017) assert that considering the immense gap and needs in Sub-Saharan African nations, there will continue to be an over-reliance on foreign financing and loans (Senadza, Korsi & Quartey, 2017). Here is the problem for sub-Saharan African nations and developing nations; continuous external loans mean growing debt to Gross Domestic

Product (GDP) ratio which would in turn erode any fading investors' confidence in the economy. Immediately foreign investors perceive the unsustainability of the accumulation of debt by the government the chances of more Foreign Direct Investment (FDI) are reduced drastically (Kose, Ohansorge & Sugawara, 2020). While sub-Saharan African nations seem to be trapped in an unending cycle of debt burden and negative economic and fiscal growth, the Latin American Nations have also had their fair share of trouble being developing nations (Shadlen, 2007).

3. The National Legal Framework over External Debt Management in Nigeria

We have reviewed the statistics from the Nigerian Bureau of Statistics (NBS) above but underlying all the statistics and occurrences at the heart of the matter are the laws and policies driving this culture of borrowing from external sources (Muwaffiq et al., 2024; Ekpenisi et al., 2024). At this point, it may be impossible to stop the trend but caution can be taken if the existing laws are obeyed and practised sincerely. In no particular order, we shall review the most relevant laws in Nigeria that make up the legal framework for authorizing external debt and managing the same (Edet, Antai & Itafu, 2022). In the same vein, it is important to consider the Constitution of Nigeria and see if there's an authoritative provision on the issue at hand. The authority document is the constitution which allows laws to be made both by the Federal legislature known as the National Assembly and by the States through the States' Houses of Assembly. In this part, it is considered better to examine the federal laws on debt management since any state laws would be too limiting governing only those states and their inhabitants (Mutawalli et al., 2024; Imoisi & Aidonjje, 2023). It will however be important to first consider the Constitution of the Federal Republic of Nigeria to see the permissibility of external borrowing or powers allotted for that.

4. The Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

The most potent provision to look to is section 81 (1) of the Constitution (hereinafter CFRN) which provides inter alia that whoever the President is or Commander in chief of the nation's economy, that President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year. This is the appropriate stage to inform the legislature of any intentions to apply for loans and

provide adequate information for them to form an informed opinion. Interestingly, section 81 subsection (2) instructs that the heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by this Constitution) shall be included in a bill, to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein (Safi' et al., 2024). At the point of appropriation is the most ideal time to make the application for approval of a loan but this does not rule out the fact that there may be contingencies and unforeseen events also.

The Constitution is the collective will of the people, but the Nigerian Constitution 1999 (as amended) makes no explicit provision about external debt but it creates the powers to do so by implication (Mukhlis et al., 2024). The constitution of the Federal Republic of Nigeria 1999 (as amended) has seen all borrowing of money within or outside Nigeria for the Federation or of any State put within the exclusive legislative list in the second schedule to the Constitution. The implication therefore is that it is only the National Legislature that can approve any external loans for the government (Edetalehn & Aidonojie, 2023). As for state governments that take loans outside the shores of the state, the state Assembly must approve the same. The CFRN therefore allows and envisages borrowing externally. As if this is not enough confirmation item 50 of the Exclusive legislative list in the second schedule specifically lists the public debt of the federation as being within the exclusive preserve of the Federal Legislature to legislate on (Gunawan et al., 2023; Aidonojie et al., 2023). In recent times there has hardly been any opposition to foreign loans by the national assembly for a host of reasons. Perhaps the legislators feel like no need to oppose what seems to be good for the economy. The CFRN only provides the authority regarding approval while the following laws to be reviewed go a notch further.

The Loans Act (1960)

The preamble reveals the purpose of the Act as authorising the raising of loans outside Nigeria. The Act which by now has been taken over by events had pegged the external loan limits to not exceeding N80, 000, 000.00 (eighty million naira) for specific purposes in connection with the economic programmes and development programmes of the government of the Federation and of other governments in Nigeria and with certain statutory corporations. Although this legislation came in the year of Nigeria's Independence, repealing an older

Loans Act of 1954 was probably its greatest accomplishments. The external borrowing threshold under this legislation is eighty million naira however as expected with the inflation rates this amount has risen. The authority to raise loan is provided for specifically in section 31, it is the finance minister that is saddled with this responsibility. This Act also is one that has been revised repeatedly and is now out of circulation having been replaced by more recent legislations.

5. The Fiscal Responsibility Act (2007)

With the clear roles which define government structure and economy, the Fiscal Responsibility Act (FRA) was promulgated with the specific goal of promoting prudent management of the nation's resources. The FRA aims to limit waste and ensure long-term macroeconomic stability, fostering a culture of accountability within the national economy. The Act also sets out to secure greater accountability and transparency in fiscal operations framework. The Act is to be enforced by an agency known as the Fiscal Responsibility Commission within the primary duty of ensuring the advancement and implementation (Antai, 2024) of Nigeria's economic objectives and related matters, whether direct or indirect. The commission itself subject to sections 2 and section 3 has the function of monitoring the implementation of the Act (sec 3 (1) (c), conduct fiscal and financial analyses, as well as analyse and diagnose while disseminating the result or outcome to the general public (sec 3 (1) (c). The commission is also empowered to compel any government institution or person to disclose information relating to public revenue and expenditure and to cause an investigation into possible violations of the Act (sec 2 (1) (a) and (b).

The provisions of the FRA are so important because of the contents of part IX which makes provisions on Debt and Indebtedness specifically directing for the building of a debt management framework on certain rules. The Rules are in section 41 (1) (a) and (b) and are so important or fundamental. The first basic rule in section 41(1) (a) stipulates that the national government at all times shall only borrow for capital expenditure and human development (Antai & et al., 2024) provided that such borrowing shall be on concessional terms with low interest rate and with a reasonably long amortization period subject to the approval of the appropriate legislative body where necessary. While in section 41(1) b) Government shall ensure that the ratio of public debt to national income is kept at a sustainable level, as set from time to time by the National Assembly based on the Minister's advice. We see a huge challenge in defining what will

be considered a "sustainable level" because if we go by current cycle of external borrowing, I doubt it if any sane person would call what we have borrowed sustainable. The FRA largely aims at creating a culture of accountability by government at all levels and by financial institutions also.

By section 42 (3) the Fiscal Responsibility Commission is to ensure compliance with the threshold set by the law and this is to be done by verifying compliance. Apart from verifying compliance the Commission may also publish erring states that have surpassed the thresholds of consolidated debt. The provision that catches the reader's attention is section 42(5) which directs that at the end of any quarter, the consolidated debt of all the three tiers of government, should not exceed the respective limit. If that limit is exceeded then the tier of government Involved must by all means endeavor to scale back to the limit. As expected, any State that exceeds her borrowing limit is a violator and in violation. There are penalties for violation in section 42(6) of the FRA Act which must apply religiously. The implication is simply that a state or local government in violation of the threshold will not be allowed to go on borrowing. This is to ensure some form of sanity for the good of the entire federation.

Also, pursuant to section 43 (1) the servicing of external debts in Nigeria is the prerogative of the government that took on the debt, so if it is Local government for example or a State government, they will bear that responsibility (Kisubi, & et al., 2024) not the federal government. This is fair enough since State and Local government are free to also take loans to manage their states. Another important provision is the provision that allows for fiscal transparency (Anifowose, & et al., 2024) by all tiers of government and all institutions pursuant to section 48 of the Act. Section 49 mandates the government to publish audited accounts while section 47(1) allows the Minister of Finance can provide assurances on behalf of any government of the federation subject to federal executive council approval. The most accountable provision would probably be section 51 which allows even regular citizens to bring an action to ensure enforceability of the legislation. Consequently, a person shall have the *locus standi* to enforce the provisions of the Fiscal Responsibility Act and this can be done by obtaining prerogative orders or other remedies at the Federal High Court of Nigeria, without having to show any special or particular interest.

6. The Debt Management Office (Establishment, etc.) Act 2003

This legislation is an Act of the Nigerian National Assembly enacted as No. 18 of 2003 just after President Olusegun Obasanjo second tenure commenced. The legislation has the objective of establishing the Debt Management Office (DMO) and other incidental matters connected to the functions and duties of the DMO. The Act is not as elaborate as expected considering the subject of debt and its importance to the nation's growth. The interpretation Section is section 3 and Section 3 of the Act defines debt to include both domestic and external debts which is not a surprise. The Debt Management Office is created precisely under section 1 of the Act with the role or duty of advising the Nigerian Government on the financing gap for the succeeding financial year and the amount it is to borrow for bridging the gap both internally and externally. Since the DMO plays an advisory role also two things are expected from the hallowed office. First, the officials at the DMO must be highly qualified in every respect because their advice could very well make or mar the nation's future. Section 19 stands out emphatically and is worth mentioning here. That particular section 19 (2) of the Debt Management Act specifically states that the advice of the office to the government shall also serve as the basis of the national borrowing plan for the next financial year, pending approval by the National Assembly. Look how crucial a role they play.

The implication is straightforward, every loan for the government is negotiated and acquired with the full participation of the Debt Management Office, this is their very prerogative and the reason for their existence pursuant to section 19 (3). A combined reading of section 19 to section 21 shows that the Minister of Finance plays a very crucial role beyond just standing behind the scenes. In other words where any undertaking needs to be done or where any guarantee is to be made the Minister is responsible for doing that acting as the authorized agent of the president. He can also sign the necessary bonds or documents needed to be signed on behalf of the Federal Republic of Nigeria. So for example when Section 22 (1) of the DMO Act 2003 also says that the Federal Government is to guarantee external loans by section 22 (3), it is the Minister of Finance that has this duty, and where the law says that the government shall not guarantee an external loan unless the conditions of the loan shall have been laid before the National Assembly sanctioned by Resolution then it is the Minister that shall do this or through his disclosed representative. Apart from the Fiscal Responsibility Act which is unique and very important the DMO Act is probably one of those ranking legislations in this area. Just to reiterate some key points; it is the Minister of Finance that guarantees the loans on behalf of the

government but when it's due for repayment all such loans shall be considered a charge on the Consolidated Revenue Fund of the Federation or the Consolidated Revenue Fund of the State, as the case may be. Second point to be reiterated is the fact that regardless of the powers and functions of both the Debt Management Office (DMO) and Minister, it is the National Assembly that have approval power and sanctioning of external loans and issuance of guarantees.

7. The External Loans (Rehabilitation, Reconstruction and Development) (1970)

This legislation is one they call old but gold, it is a legislation that may have outlived its usefulness because it was enacted immediately after the three-year Nigerian civil war. The legislation has only two simple sections. This is a very short legislation with only two sections but it is worth mentioning because its role in the debt management space. The preamble to the legislation declares that the Act is intended to authorize the raising of loans abroad for the rehabilitation project. The first Section, Section 1 (1) (a) is important because the total external loans that could be raised at the time were not to exceed five billion naira which is five billion naira as of 1970. This Act is simplified making it very specific that the loans shall be for Rehabilitation and development programmes only and for no other. Unfortunately, this legislation has become moribund. Since an in-depth look of the most relevant law has been made it is now important to also consider what lie in the future for Nigeria. What lies in wait? Also looking at the debt debacle as a continent what can be learned to improve the status quo?

8. The Implications and Possible Lessons for Nigeria and other African Nations.

Public debt globally in 2022 stood at a little over \$92 trillion dollars with nations in the developing category owing slightly over 30% (United Nations, 2023). The implication then is that the debt crisis is not necessarily an African thing or only a Sub-Saharan African challenge or only a Nigerian challenge. Even developed nations struggle in this area having time after time austerity measures or debt restructuring to accommodate debt servicing and economic growth side by side. Since it is a global issue how can developing nations be shielded from the cycle? The first lesson would be for Sub Saharan African nations to band together economically and ease off movement and goods to ensure seamless productive transaction that would benefit the entire continent. Secondly, every developing nation must not shy away from any opportunity to have their debt written off by a creditor

or have their debt forgiven in totality. From time to time this happens especially in times of huge global crisis. This is why even chaos can be a ladder to climb up higher in the world. Following from the foregoing, Nigeria's debt relief from the Paris Club in 2005, leading to the cancellation of about 60% percent of the US\$30.85 billion owed by Nigeria at the time (Omotosho, Bawa & Doguwa, 2016). Debt forgiveness as rare as it is must always be maximized as it helps free up the economy for more foreign direct investment because it boosts investor's confidence and creates room for wide economic growth (Omotosho, Bawa & Doguwa, 2016).

The next lesson is in the medium of payment issue or the currency of payment issue. Put simply, the currency disparity is putting African nations at a great disadvantage. External debt payments may need to be made in a currency other than the unit of account used for reporting in the debt service payment schedule. So the lesson for Nigeria and other African nations is for such projected external debt payments and actual payments should be converted to the unit of account using the market exchange rate (International Monetary Fund, 2014). Or in the alternative, these nations should insist on dealing in their national currencies rather than the United States dollar or the euro. Because of the current system in the International Monetary Fund (IMF) in advising Compilers have advised that for borrowing in multicurrency's, payments should be estimated with consideration of the component currencies of the borrowing and the prevailing market exchange rates (International Monetary Fund, 2014). We still insist on the African nations insisting on their currency or perhaps pending when the proposed Eco (single currency for West Africa) comes into existence the situation may remain the same (Antai, 2024). Finally, the resource curse on the continent still rings true because if the continued poor maximization either due to corrupting potentialities or ignorance. It is not strange to say that economic development in developing countries can only be improved by closing the domestic resources gap. How can this be done without the neocolonial entities having their hands in our affairs? One way to overcome this is to emphasize more domestic industry than dealing outside the confines of their territory. It is therefore crucial for the Federal government to turn to domestic borrowing, ensuring that the funds are invested in productive channels that facilitate their eventual repayment and liquidation. If not for the aura of corruption that makes wealthy institution and individual hide their affluence that can help the government, we would not be running a road always to borrow.

9. Conclusion

Debt ordinarily should be avoided but in the lingua of nations and national growth in this context, debt acts as an injection into the economy and is highly encouraged. However, it is evident that excessive government borrowing can displace investment, leading to a significant reduction in output and consequently wages, which could leave citizens more vulnerable (Fayose, 2018). We would simply advice for a very strategic payment schedule to be drawn up for every external debt deal (Antai, 2024). A payment schedule offers a credible estimate of future payments as of a specified date, relying on a certain set of assumptions that are expected to evolve over time. However, a good schedule plan of payment should foresee likely changes whether on a national level or global level and design the plan accordingly. A debt service payment schedule projects payments based on the current gross external debt position as of the reference date. It aids in assessing liquidity risk by enabling both the data user and debtor to monitor whether there is a clustering of payments developing, irrespective of the initial maturity of the debt instrument (International Monetary Fund, 2014). The final proposition them is for more internal resources control a total divorce of all foreign interests so we can control the level of derivable income that can be generated. This may be the most difficult option yet because of alleged international syndicates allegedly in place to undermine the growth of Sub-Saharan African nations. It still remains a mystery why Nigeria cannot have a viable refinery; it is a mystery that seem to puzzle the mind but there's always more than meets the eye. In order not to sound like a conspiracy theorist we will end by suggesting a review of all external debt documents by a robust legal team of vibrant lawyers. All other African nations should do the same and the hands of the neocolonial entities should be forced out to allow more autonomy and clarity. If debt especially international threat is a trap, then we have to be smarter to see the trap ahead and dodge it collectively.

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