

# The Impact of Indebtedness on

## HUMAN RIGHTS IN ZIMBABWE



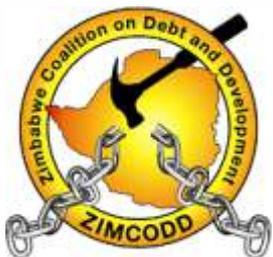
**IMPACTS  
OF SOVEREIGN  
DEBT ON POVERTY  
AND INEQUALITY  
IN ZIMBABWE**

**\$9.2BN**  
ESTIMATED  
DEBT JUNE  
2019



**45%**  
DOMESTIC DEBT  
REACHED 45% OF  
GDP IN 2019

**DEBT  
STRATEGIES  
AND POLICIES  
TO DEAL WITH  
DEBT ISSUES**



AFRICAN FORUM AND NETWORK  
ON DEBT AND DEVELOPMENT

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## Acronyms

ACHPR	African Charter on Human and Peoples Rights
AfDB	African Development Bank
AU	African Union
ESAP	Economic Structural Adjustment Programme
GDP	Gross domestic Product
GNU	Government of National Unity
HIPC	Highly Indebted Poor Countries
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFIs	International Financial Institutions
IMF	International Monetary Fund
RBZ	Reserve Bank of Zimbabwe
SADC	Southern African Development Community
SDR	Special Drawing Rights
SOEs	State Owned Enterprises
TBs	Treasury Bills
TSP	Transitional Stabilisation Programme
UN	United Nations
UNICEF	United Nations Children's Fund
ZAADS	Zimbabwe Accelerated Areas Clearance Debt and Development Strategy
ZAMCO	Zimbabwe Asset Management Corporation
ZANU PF	Zimbabwe African National Union Patriotic Front

## Executive Summary

...the research comes against a background of an economic crisis in Zimbabwe; reflected by a debt crisis, deepening poverty, unemployment, inequality, corruption, illicit financial flows and the general inability of government at all levels to provide services.....

This research, conducted in 2019, falls within the context of the 2013 Constitution, adopted during the tenure of the 2009-2013 Government of National Unity (GNU). The GNU was itself formed following intervention by the African Union (AU) and the Southern African Development Community (SADC) pursuant to a disputed poll in 2008. The elections were held under the 1980 independence Constitution, which had as of that year been amended a record nineteen times.

The 1980 independence Constitution contained a Bill of Rights that provided for civil and political rights, with no reference to other species of rights, such as economic, social and cultural rights. The 2013 Constitutional reforms, however, brought in a larger and expanded Bill of Rights, which contains both civil and political rights, as well as economic, social and cultural rights. In tandem with the principle of state responsibility, the government bears the primary responsibility to protect the rights of its citizens and those within its territory. The state must not only respect human rights, rather, it must also protect and work towards the fulfilment of these human rights and this entails a variety of actions by the state.<sup>1</sup>

On the other hand, the research comes against a background of an economic crisis in Zimbabwe; reflected by a debt crisis, deepening poverty, unemployment, inequality, corruption, illicit financial flows and the general inability of government at all levels to provide services and guarantee civil, political, economic, social and cultural rights for its people.

Historical debt from the colonial era weighed down sustainable development in most third world countries, raising the legitimacy of that debt.<sup>2</sup> However, to the extent that the legitimacy of the colonial era debt is in issue, so is some of the post-colonial debt accumulated by non-transparent processes by the leadership after independence. This paper will seek to raise the legitimacy of some of the debts contracted in the recent past, not only because they have added to the misery of the poor, but because of the manner in which they have been contracted. The net effect of all debts is to impact on the capacity of any state to discharge its human rights obligations. Debt is a serious burden on states' ability to develop, let alone meet the demands and expectations of their citizens. Burdened by debt, Zimbabwe is increasingly unable to guarantee the rights of its citizens, thereby proving the symbiotic relationship between debt and development, and between debt and human rights. This is particularly so as the country has had to adopt austerity measures with a view to restructuring its debt with the objective of enabling a developmental trajectory in the face of successive years of decline.<sup>3</sup>

This paper seeks to determine the extent to which sovereign debt is a burden that presents challenges to the Zimbabwean government with respect to the realisation and fulfilment of some of the human rights protected by the Constitution. This arising from the extent to which the debt burden influences the policies that the state then implements while attempting to steer the economy in the whirlwinds of debt management.

## SECTION ONE: INTRODUCTION AND CONTEXTUAL BACKGROUND

### 1.1 Introduction

For a very long time, the connection between sovereign debt and human rights has been academically underexplored. This has mainly been due to the fact that, at a first glance without deeper thoughts, foreign debt and human rights appear to belong to two separate and unrelated fields of study. More recently, however, due to the rising pressure for citizens to become active holders of fundamental rights instead of passive ones, several studies have begun to focus on this matter, analysing the debt phenomenon and how it affects human rights, mainly the economic, social and cultural rights.

The ability of State Parties to fulfil their international human rights obligations depends, to a large extent, on the availability and allocation of sufficient resources to essential investments in human, social and physical infrastructure that provide the foundation for sustainable and equitable development. Human rights do not exist in isolation.

In many cases, however, excessive sovereign debt burdens countries and the ensuing costs of servicing or repaying the debt often reduce the amount of resources available to governments for the realisation of human rights. Furthermore, the policy conditions that are typically linked to loans and debt relief provided by international financial institutions often limit investment and undermine the provision of accessible public services that seek to protect, promote and fulfil the rights of the people.

According to IMF reports, Zimbabwe has been classified as being in debt distress and over the last five years, government debt has risen substantially from just over 48 percent of GDP in 2013 to an estimated 82% in 2017 (IMF, 2017). Persistently large fiscal deficits have partly been the result of an

elevated public wage bill, which continue to absorb more than 80% of revenues in the country. Moreover, the deficits have also been financed through an overdraft facility at the Reserve Bank of Zimbabwe, bailouts of state-owned enterprises, and widespread mismanagement of public funds.

While it may be easy for one to simply examine the debt phenomenon from an entirely public finance and economic perspective, its implications on the economic, social and cultural rights of ordinary citizens should not be undermined. It is in this regard that this study seeks to establish the impact of indebtedness on human rights in Zimbabwe.

### 1.2 Contextual background

Zimbabwe has a robust constitutional framework that provides for both civil and political, as well as economic, social and cultural rights. The 2013 Constitution in particular made loud pronouncements on rights issues. While most of these rights are yet to be tested by way of litigation, it is clear that the Courts are alive to the State's obligations and responsibilities to protect, fulfil and ensure the realisation of the rights provided for in the founding document. This is notwithstanding the fact that some of these rights, particularly social and economic rights, are resource based rights, requiring the State to commit some resources towards their realisation. Zimbabwe inherited sovereign debt at independence. Over the years, it also accumulated its own debt, which has ballooned to levels that earn it a characterisation as a highly indebted country.<sup>5</sup> While the issue of the justification for the debt may be an issue for discussion on a different forum, the impact of such debt on the capacity of the State to discharge its responsibilities as a state is a big issue. The realisation of human rights, including social, economic and cultural rights, is one such

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responsibility. In consequence, it appears apparent that the debt situation Zimbabwe currently faces, and has faced in the past 20 or so years, is one of the most significant threats to the rights of her subjects.

The issue of control of the state's appetite for expenditure and borrowing needs not just political will, but a robust legal framework and an active and demanding citizenry. The paper outlines the legal framework for public borrowing. A return to constitutionalism and a little transparency around public debt will introduce justice into the whole question of public borrowing. Sovereign debt is an inter-generational phenomenon. It is not fair for current generations to subjugate the rights of future ones through public debt.

## 1.3 Objectives of the Study

The overall goal of this study is to examine the nexus between sovereign debt and human rights in Zimbabwe and establish how public debt actually affects the realisation of these rights.

As such, the specific objectives of the study are as follows:

To analyse the constitutional and institutional framework for human rights in Zimbabwe

To analyse the history of public debt in Zimbabwe in the context of the state's human rights obligations.

To outline the impact of sovereign debt on human rights

Assess the challenges for Zimbabwean policy makers generated by indebtedness and the possible solutions.

## 1.4 Research Methodology

This report is mainly premised on desk research and analysis of available documentary evidence on the subject. The main sources of information include relevant statutes and budgetary documents, as well as other publications relevant to the study.

## 1.5 Structure of the Paper

This paper is made up of five distinct sections. The

first section focuses on introducing the subject matter, giving a background to the study. A detailed outline of the Human Rights framework in Zimbabwe is given in section two, whilst section three focuses on the evolution of debt in the country taking a closer look at the trends and drivers of debt in the country. Section four goes on to answer the key question of this research that is, the impact of sovereign debt on human rights. The final section which is section five wraps up the study with policy recommendations.

“The issue of control of the state's appetite for expenditure and borrowing needs not just political will, but a robust legal framework and an active and demanding citizenry.”

## SECTION TWO THE HUMAN RIGHTS FRAMEWORK IN ZIMBABWE

What these characteristics of human rights reflect is the fact that they are a set of values that are intertwined and that an attack on one or other of those rights has a direct impact on the enjoyment of other rights.

### 2.1 The Constitution of Zimbabwe and the Bill of Rights

As indicated above,<sup>6</sup> the 2013 Constitution created an expanded Bill of Rights.<sup>7</sup> It protects the right to life; personal liberty; the rights of arrested and detained persons; human dignity; personal security, freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; freedom from forced or compulsory labour; equality and non-discrimination; the right to privacy; freedom of assembly and association; freedom to demonstrate and petition; freedom of conscience; freedom of expression and of the media; the right to access information; right to language and culture; freedom of profession, trade or occupation; labour rights; the right to administrative justice; the right to a fair hearing; the rights of accused persons; property rights; rights to agricultural land; environmental rights; freedom from arbitrary eviction; right to education; the right to health care; the right to food and water as well as marriage rights.<sup>8</sup> What is clear from this is a mixture of civil and political rights as well as economic, social and cultural rights.

The following principles underpin any human rights framework:

That they are universal, therefore apply regardless of geographical frontiers;<sup>9</sup> That they are indivisible, interdependent and interrelated; That they are inalienable; and That their enjoyment is premised on the non-discrimination principle.

What these characteristics of human rights reflect is the fact that they are a set of values that are intertwined and that an attack on one or other of those rights has a direct impact on the enjoyment of other rights. The right to life is for instance interrelated to the right to food, water and health, among others.

### 2.2 Social and Economic Rights Framework

The social and economic rights framework in Zimbabwe is underpinned by the constitutional framework as outlined above. This post 2013 Constitutional framework remains largely untested by the Constitutional Court and courts subordinate to it, to determine its resilience and extent. Indeed, its resilience in the legal context is important, but falls beyond the remit of this paper. What is critical is to evaluate the symbiotic relationship between the human rights framework and the economic situation being managed by the Zimbabwean state in general, and the sovereign debt that is supposed to provide for Zimbabwe's social and economic rights in particular.

The social and economic rights provided under the constitutional framework include the right to freedom from compulsory labour; freedom of profession, trade or occupation; labour rights; freedom of movement and of residence; property rights; rights to agricultural land; environmental rights; freedom from arbitrary eviction; right to education; right to health care; and the right to food and water.<sup>10</sup>

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These rights are recognised at the international level, with several instruments making provision for them. In particular, the following instruments are critical:

The International Covenant on Economic, Social and Cultural Rights, 1966

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, and

The African Charter on Human and Peoples Rights, 1981.

These instruments place a variety of obligations on state parties. Zimbabwe ratified the International Covenant on Economic, Social and Cultural Rights on 13 May 1991;<sup>11</sup> does not appear to be party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;<sup>12</sup> and is party to the African Charter on Human and Peoples Rights. The consequence is that it bears the responsibility of ensuring that the economic and social rights protected by the instruments to which it is party are not only protected but are also fulfilled and enjoyed.

### 2.3 Case Law

Cases decided upon by the courts are particularly instructive as they reflect upon the interpretation by the courts on the constitutional human rights framework in Zimbabwe, as well as the obligations created thereby vis-à-vis the State. While the 2013 Constitutional framework remains largely untested by the courts, those few decisions at hand are a source of useful jurisprudential guidelines for both the state and its stakeholders.

*Hopcik Investments v Minister of Environment Water and Climate and City of Harare*<sup>13</sup>

The applicant, a private company based in Ballantyne Park, Harare, sought to compel respondents to supply to its official premises a minimum 15 000 litres of clean and potable water weekly. There had been no water in the particular

area for at least three years. Other parts of the city of Harare were during this period receiving municipal water thereby reflecting a lack of equity in the distribution of available water resources. The applicant contended that the City of Harare bore an obligation to supply water which it had failed to discharge. Council argued that it was facing problems in supplying water, and was taking steps to do so, including debt contraction and the engagement of borehole drillers, among other steps. The City of Harare sought to also rely on a provision in section 183 (1) of the Urban Councils Act<sup>14</sup> which used the discretionary word *may* in respect of the role of Council in the provision of water.<sup>15</sup> The Court had to decide the case on the basis of the situation vis-à-vis the right to water in section 77 of the Constitution. The Court observed that the right to water was one of the most basic of rights, and that that right had received UN recognition through a General Assembly Resolution of July 2010.<sup>16</sup> This, the Court reasoned, placed an onus on state institutions to take measures to avail water to their subjects, as water was central to the enjoyment of other rights, for instance the right to life.

This case reflects the fact that Zimbabwean courts are inclined to enforce economic, social and cultural rights in the current Constitution.

“ While the 2013 Constitutional framework remains largely untested by the courts, those few decisions at hand are a source of useful jurisprudential guidelines for both the state and its stakeholders. ”

## SECTION THREE TRENDS AND DRIVERS OF DEBT

This chapter will focus on the trends and drivers of both foreign and domestic debt in Zimbabwe, taking a closer look at its evolution, composition as well as its relationship with other economic variables such as the Gross Domestic Product (GDP).

### 3.1 Introduction

The ability of States to fulfil the aforementioned international human rights obligations depends, to a large extent, on the availability and allocation of sufficient resources to essential investments in human, social and physical infrastructure that provide the foundation for sustainable and equitable development. In many cases, however, excessive sovereign debt burdens and the ensuing costs of servicing or repaying the debt reduce the amount of resources available to governments for the realisation of these human rights.

This chapter will focus on the trends and drivers of both foreign and domestic debt in Zimbabwe, taking a closer look at its evolution, composition as well as its relationship with other economic variables such as the Gross Domestic Product (GDP).

### 3.2 The Evolution of Sovereign Debt in the Zimbabwean Economy

The evolution of public debt stocks and public debt repayments in Zimbabwe dates back to the early 1980s when the country inherited US\$700 million of debt from the Rhodesian government. During this period, the country adopted a development strategy that relied heavily on foreign financing (Mupunga & Le Roux, 2014). Zimbabwe borrowed from foreign governments and international lenders such as the World Bank, supposedly to invest in productive activities including the development of the Hwange Thermal Power Station.

As a result of a drought that broke out in 1980 and the absence of significant grant aid to deal with the drought, the country relied on loans to import food. By the end of the decade debt repayments equalled 25% of national exports, as well as 25% of government revenue. This was not sustainable for a nation and the only way the country could survive was to receive new loans to pay old debts.

Moving on to the 1990s, Zimbabwe implemented an economic structural adjustment programme (ESAP), a programme which was meant to increase economic growth, improve the balance of payments and reduce unemployment. However, these efforts to accelerate growth through better fiscal management and market liberalization largely failed with a slow progress on social indicators, declining per capita incomes and a rise in poverty.

The country continued to receive new loans from international institutions, particularly the World Bank, African Development Bank and International Monetary Fund (IMF). These structural adjustment loans were not for investment in any particular project, but used to repay old debts. An estimate of US\$750 million of Zimbabwe's debt coming directly from structural adjustment loans by the World Bank, African Development Bank and IMF was recorded during this period.

In the face of increasing protest at the worsening situation in Zimbabwe, in the late 1990s, the ZANU-PF led government sought to maintain

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power through unbudgeted spending for war veterans, and joining the war in the Democratic Republic of Congo. In November 1997, the country devalued its currency and foreign speculative private money bolted the country. Spending on unbudgeted items and currency devaluation continued, resulting in a cycle of inflation and crisis. By the end of the 1990s, dissatisfied war veterans and poor rural households suffering from rising poverty and inequality began forcefully occupying white owned farms.

Whereas up to the period ending in 1999, it is apparent that public debt was largely state oriented, the post 2000 era reflects a mixture of policies, between both state-centric and individual focused public debt. This was aimed in part at ensuring the success of the land reform programme however whether the sovereign debt would in fact secure success of the land reform programme falls beyond the parameters of this paper.

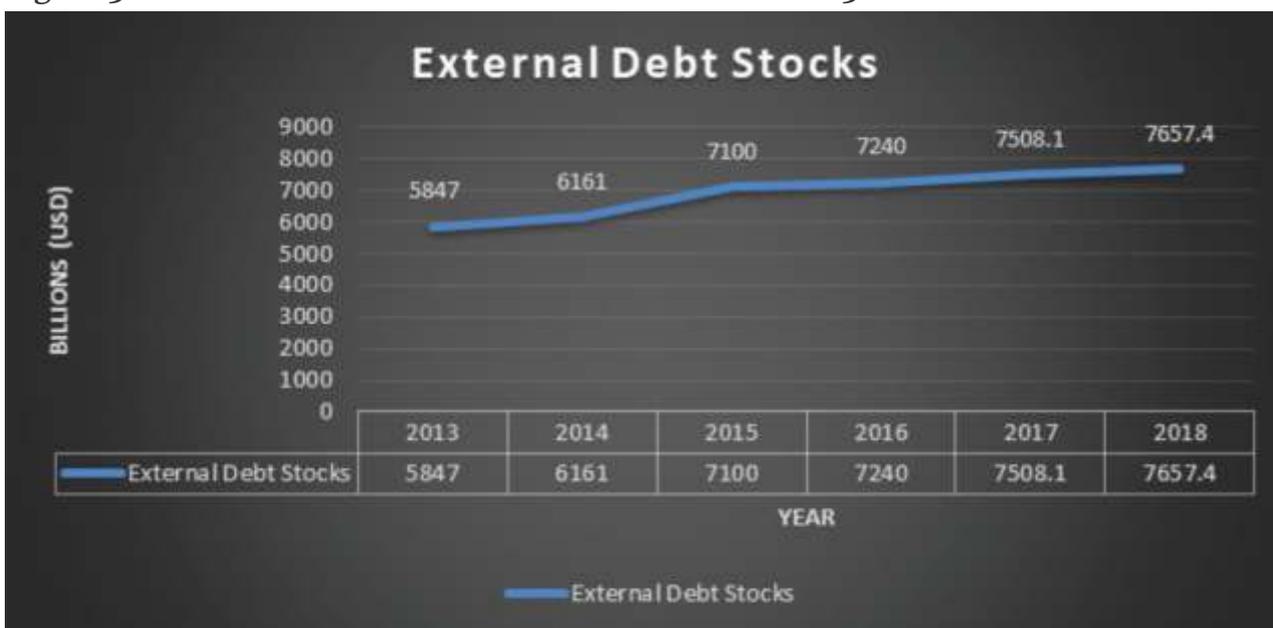
In the year 2000, the hyperinflation caused by continued unbudgeted spending and printing of money destabilised Zimbabwe's economy, which shrank through the decade. By July 2008 monthly

inflation had reached 231 million %. The country's economic crisis and the rapidly increasing size of national debt led the government to defaulting the repayment of loans, further worsening the burden.

Realizing that the former colonial powers and International Institutions were no longer keen to offer more loans to Zimbabwe, the country became one of the top beneficiaries of loans from China in order to sustain itself. China's lines of credit to the Zimbabwe have stretched considerably since 2000 and the funds are flowing fast, leaving the country in a tighter external debt trap.

It is only between the 2009 - 2012 period when the economy showed some improvement, particularly on inflation and economic growth as a result of the introduction of the multi- currency system. During this period, the government introduced a number of strategies to try and resolve the public debt burden, but due to structural challenges in the implementation process government's efforts were not sustainable. The graph below shows a trend of Zimbabwe external debt since the year 2013

**Figure 3.1: External Debt Stocks Trend for the Period 2013-2018**



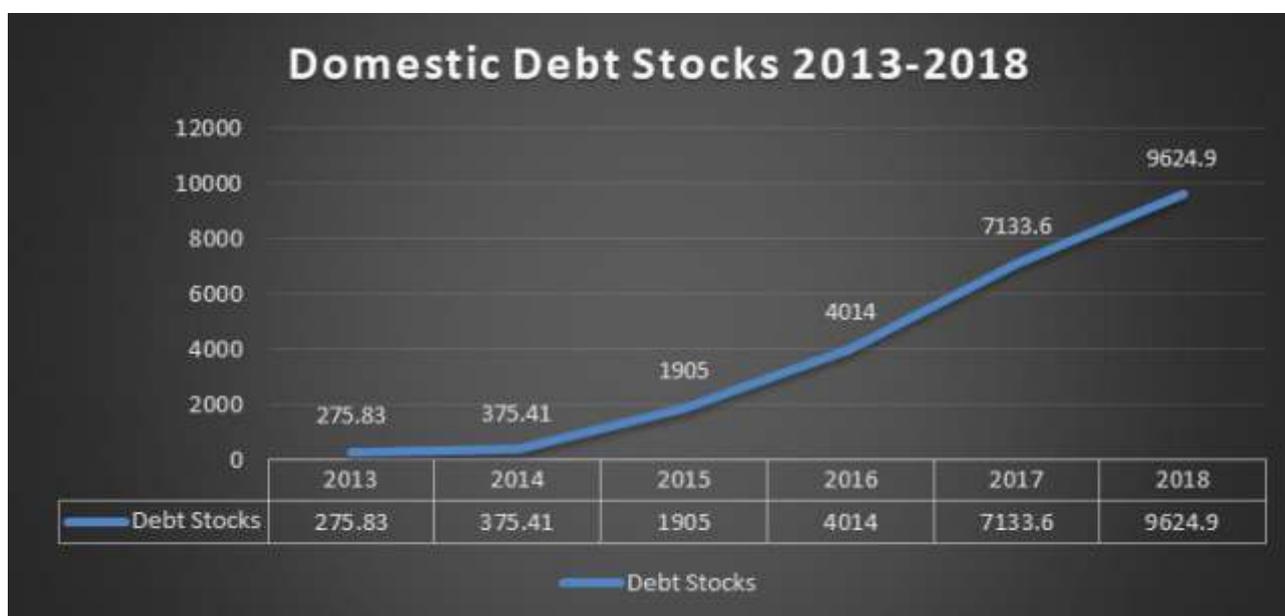
Source: Ministry of Finance<sup>17</sup> (2018)

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Despite all the strategies that the government has implemented (including the re-engagement efforts) to deal with the debt burden during the 2010-2018 period, external debt continued to grow. The graph above shows external debt levels that continued to rise after the year 2013 and these were mainly dominated by interest arrears, as well as penalties.

“ Despite all the strategies that the government has implemented (including the re-engagement efforts) to deal with the debt burden during the 2010-2018 period, external debt continued to grow. ”

Figure 3.2: Domestic Debts Stocks Trend for the Period 2013-2018



Source: Ministry of Finance<sup>18</sup>(2018)

As a result of limited access to external resources from multilateral institutions, the government of Zimbabwe resorted to financing large fiscal deficits domestically through central bank advances and Treasury Bill issuance. Domestic debt reached almost 45% of GDP in 2017, driven mainly by the issuance of treasury bills and the use of an overdraft facility from the Reserve Bank of Zimbabwe (RBZ). The recapitalization of the RBZ and other public enterprises has also led to an increase in domestic debt, as has the issuance of government paper to commercial banks through the Zimbabwe Asset Management Company (ZAMCO), in an effort to reduce the stock of non-performing loans held by the banking system.

“ Domestic debt reached almost 45% of GDP in 2017, driven mainly by the issuance of treasury bills and the use of an overdraft facility from the Reserve Bank of Zimbabwe (RBZ). ”

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Figure 3.3: Trend for both External and Domestic Debt in Zimbabwe

Table 2

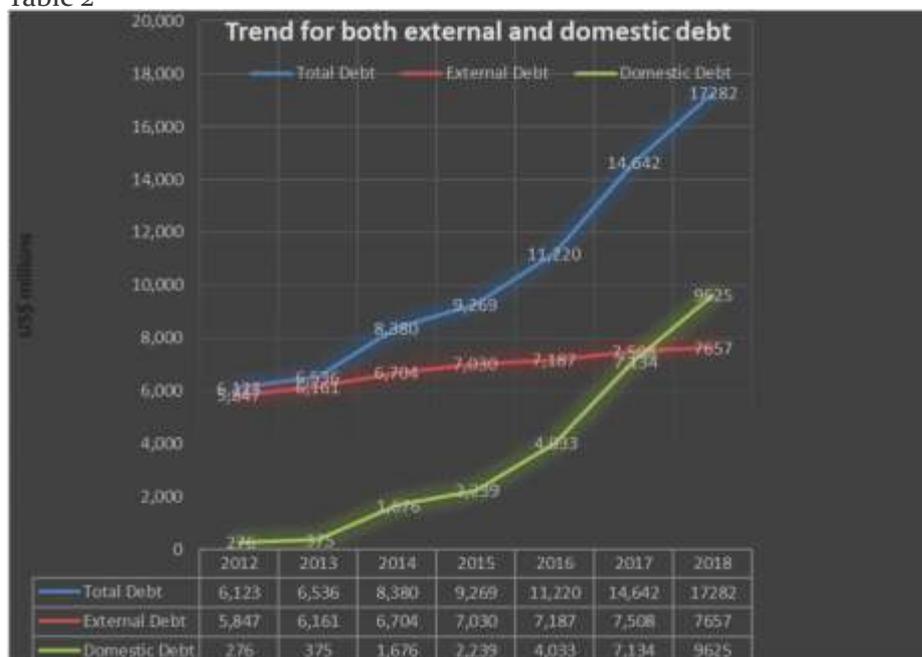


Figure 3.3 above clearly shows that the total debt stocks have been rising in Zimbabwe causing a serious development threat to a country that has been reeling in foreign currency challenges and a liquidity crunch.

Source: Ministry of Finance (2018)

### 3.3 Size, Nature and Composition of Sovereign Debt

As at June 2019 Zimbabwe's total debt stock is estimated at US\$9.2 billion of which external debt stands at 8 billion which constitutes 86.9% of the

total debt. The table below shows the size and composition of the debt as pronounced in the 2019 Mid Term Budget Review.

Table 1: Size of the Sovereign Debt as at June 2019

DEBT	AMOUNT	% of Total
<b>Total Debt</b>	<b>9.2 Billion</b>	<b>100%</b>
<b>External Debt</b>	<b>8 Billion</b>	<b>86.9 %</b>
Multilateral Debt	2.5 billion	59.3
Bilateral	5.5 billion	27.6
<b>Domestic Debt</b>	<b>1.2 billion</b>	<b>13.1%</b>

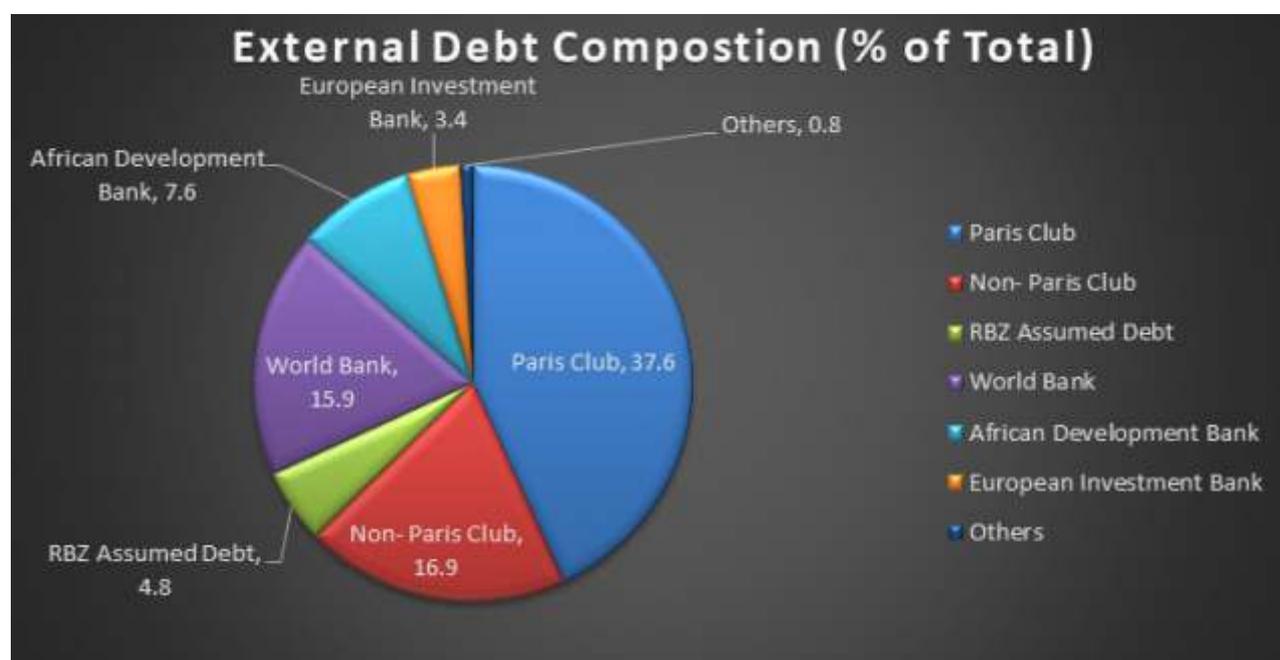
Source: Ministry of Finance (2019)

## The Impact of Indebtedness on Human Rights in Zimbabwe

The table above shows Zimbabwe's total debt stock which is estimated at \$ USD 9.2 billion as at end June 2019. External public and publicly guaranteed debt position is estimated at US\$8 billion of which almost US\$5.9 billion is accumulated arrears. On the other hand, domestic debt accounts for 13% of the total debt.

“The table above shows Zimbabwe's total debt stock which is estimated at \$ USD 9.2 billion as at end June 2019.”

Figure 3.4: Composition of External Debt as a Percentage of Total Debt



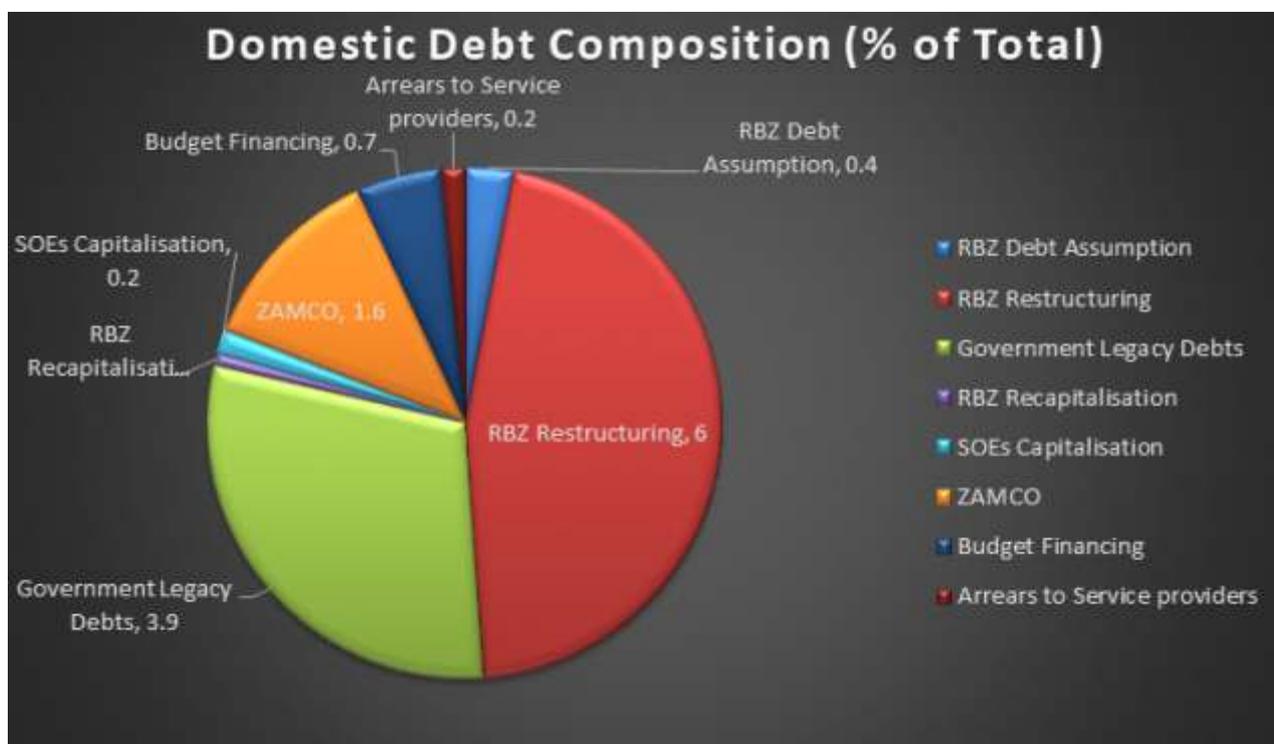
Source: Ministry of Finance (2019)

Figure 3.4 shows that external debt is largely dominated by bilateral debt with Paris Clubs constituting almost 38% of the total external debt whilst Non- Paris Clubs make up 17% of

the debt. Zimbabwe continues to owe Multilateral Institutions with the World Bank constituting 15.9% and the African Development Bank making 7.6% of the total external debt stocks.

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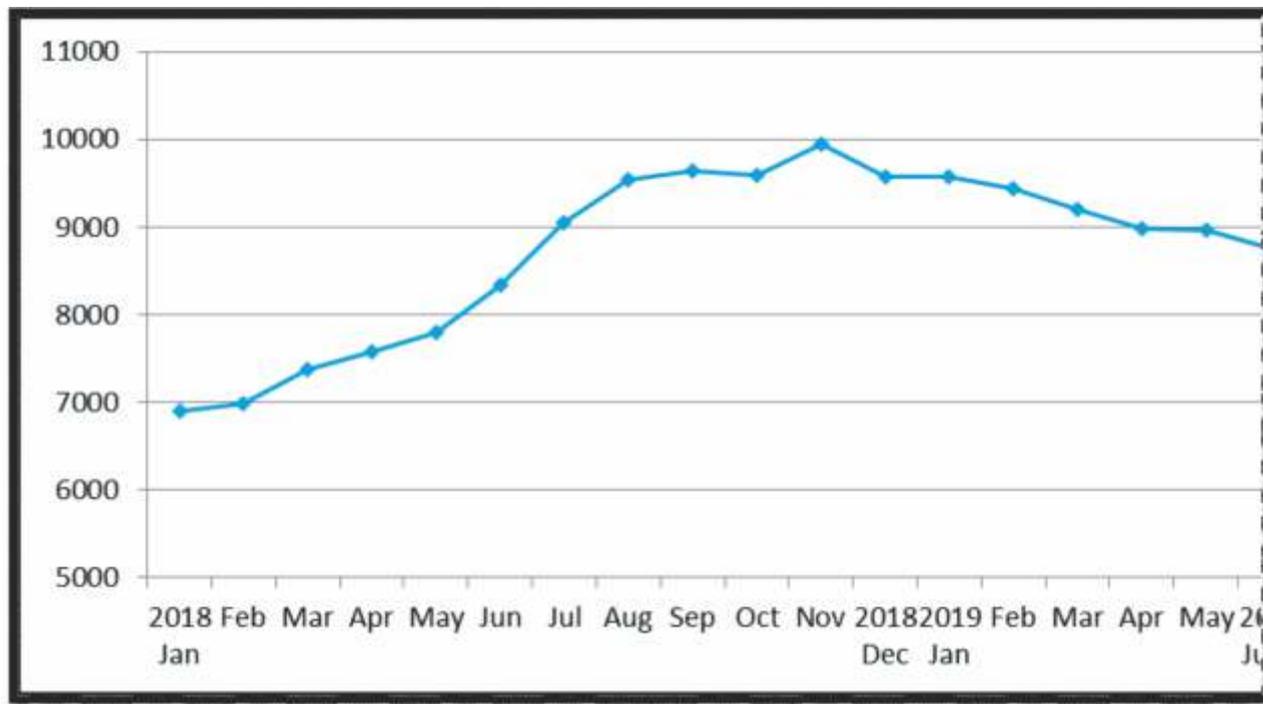
Figure 3.5: Composition of Domestic Debt as a Percentage of Total Debt



During the period prior 2019, there was a dramatic increase in domestic debt, mainly fed by fiscal deficits that were primarily financed by the issuance of Treasury Bills and Central Bank overdraft. However, according to the Minister of Finance Mid Term Budget Review of 2019, significant fiscal adjustments January - June 2019 culminated in domestic debt containment. These adjustment measures include zero recourse to Central Bank financing, including the overdraft; restructuring of overdraft facility, cash advances and Treasury Bills held by RBZ into long-term marketable instruments; a stop to any Treasury bills issuances for ZAMCO; issuance of treasury bills only for budgeted expenditures; and honouring of TBs maturities.

“ During the period prior 2019, there was a dramatic increase in domestic debt, mainly fed by fiscal deficits that were primarily financed by the issuance of Treasury Bills and Central Bank overdraft. ”

Figure 3.6: Domestic Debt Trend between the Periods January 2018- June 2019



Source: Ministry of Finance (2019)

In as much as the aforementioned measures have managed to contain part of the country's domestic debt as reported in the 2019 Mid Term Budget Review, RBZ restructuring, Legacy Debts and the TBs for ZAMCO continue to constitute most of the total domestic debt. Lately, legacy debts denominated in foreign currency is one component that has threatened the viability of companies in the country, following currency reforms by the Government in June 2019.

Through Statutory Instrument 142 of 2019, the Government of Zimbabwe outlawed the use of the multi-currency system and declared the Zimbabwe Dollar as the sole currency in the country. This has resulted in a situation where many companies are

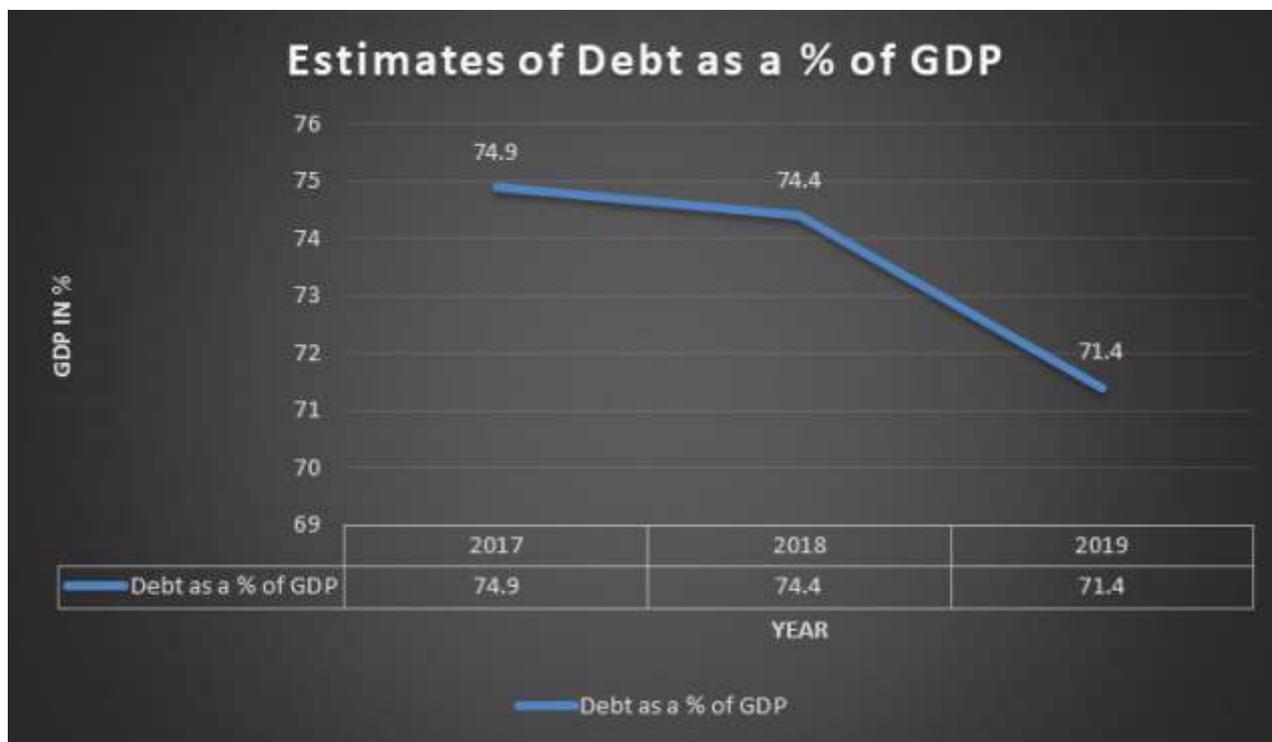
experiencing exchange losses arising from foreign obligation. The Reserve Bank of Zimbabwe has once again committed to assume these foreign legacy debts regardless of its experience with debt assumption and the fact that the country is already in a huge debt trap.

### 3.4 Trend of total Public Debt as Ratio of GDP

The government debt as a percentage of GDP is used by investors to measure a country's ability to make future payments on its debt, thus affecting the country borrowing costs and government bond yields.

legacy debts denominated in foreign currency is one component that has threatened the viability of companies in the country, following currency reforms by the Government in June 2019.

Figure 3.7: Showing the projections of Debt- GDP Ratio (2017-2019)



Source: Ministry of Finance (2018)<sup>19</sup>

Sustainable level of Public Debt to GDP, consistent with the Section 11(2) of the Public Debt Management Act [Chapter 22:21] requires that the total outstanding Public and Publicly Guaranteed Debt as a ratio of GDP should not exceed 70% at the end of any fiscal year. However, looking at the debt trends in Zimbabwe it can be seen that the country has been operating with unsustainable debt levels that are way above the stipulated margins. The implication of this is that allocations towards social protection sectors are short changed affecting service delivery and ultimately economic, social and cultural rights. The figure above gives estimates of debt to GDP ratio as at December 2018. As will appear below, a debt that the country owes always has human rights implications. It is a cost that the country will have to pay from whatever resources it manages to raise every financial year. This puts pressure on resources available for other expenses. In view of the pressure and power that creditors are able to pile and exert vis-à-vis local rights holders, the State may yield to the demands more to the

demands of creditors than the rights of citizens. It is in this regard that a debt burden must be viewed as always having a possibly negative implication on human rights.

### 3.5 Debt Service as a Proportion of Government Revenue

One useful tool to measure the Government's ability or affordability to pay back its debts is by calculating the debt service as a proportion of the government revenue. A country's finances are healthier when this ratio is low. However, in the case for Zimbabwe this ratio has for a long time been on the high side. This indicates that the country's revenue streams are not enough to adequately cover public debt and borrowing only leads to a debt trap that will affect economic activities for future generations. Using the given estimates for 2017 the debt service ratio is as follows:

$$14642 / 4338.5 = 3.374899158695402$$

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## 3.6 Debt Service in Comparison with expenditure on social sector

Year	Debt Service (US\$ million)	Expenditure on Health (US\$ million)
2018	1 771 001 602	454 014 000
2017	766 704 761	385 708 443

Source: Ministry of Finance (2017 and 2018)

Comparing the amount that is projected for debt servicing with the amount or proportion of the Government expenses that are directed towards service delivery and fulfilling the rights of the citizens, allows one to have a clear picture of how debt affects human rights. In this case, the table above gives a snapshot of the amount that is directed towards service delivery against the amount directed towards the Ministry of Health and Child Care. It is clear from the figures that a lot of money is going towards debt serving leaving lesser resources for fulfilling the right to health.

### 3.7 Understanding the Problem

Looking at the composition of debt in this country, it can be noted that the problem has a lot to do with violation of legal and constitutional provisions in respect of Public Finance Management and Reporting. The following are some of the key violations:

It has been noted that in many instances debt limits have been exceeded without the authority of Parliament which violets section 300 of the

Constitution of Zimbabwe. Parliament holds the power of the purse and therefore through its core functions it should first authorise state borrowings.

“ In this case, the table above gives a snapshot of the amount that is directed towards service delivery against the amount directed towards the Ministry of Health and Child Care. ”

## Section 300 of the Constitution of Zimbabwe

Limits of State borrowings, public debt and State guarantees

(1) An Act of Parliament must set limits on—

- (a) borrowings by the State;
  - (b) the public debt; and
  - (c) debts and obligations whose payment or repayment is guaranteed by the State; **and those limits must not be exceeded without the authority of the National Assembly.**
- (2) An Act of Parliament must prescribe terms and conditions under which the Government may guarantee loans.

(3) Within sixty days after the Government has concluded a loan agreement or guarantee, the Minister responsible for finance must cause its terms to be published in the Gazette.

(4) The Minister responsible for finance must—

- (a) at least twice a year, report to Parliament on the performance of— (i) loans raised by the State; and (ii) loans guaranteed by the State;
- (b) at the same time as the estimates of revenue and expenditure are laid before the National Assembly in terms of section 305, table in Parliament a comprehensive statement of the public debt of Zimbabwe.

*Source: The Constitution of Zimbabwe (2013)*

The Government has not been adhering to legal provision set out in the Public Debt Management Act [Chapter 22:21]. This section provides that Public Debt must not exceed the 70% debt to GDP ratio limit;

## Section 11 of the Public Debt Management Act

The aggregate of the amounts that may be borrowed in terms of subsection (1) in any financial year by way of loans shall not be exceed the limit fixed by National Assembly, which limit the Minister may propose to the National Assembly for approval by resolution or by means of a provision in the Finance Bill: Provided that the limit fixed in terms of this subsection and section 300 (1) of the Constitution **may not result in the total outstanding public and publicly guaranteed debt as a ratio of the gross domestic product at current market prices exceeding 70 per centum at the end of any fiscal year, unless the Minister obtains a resolution of the National assembly to do so...**

*Source: Public Debt Management Act (2015)*

Government of Zimbabwe overdraft at the RBZ far exceeds set limits in the RBZ Act (Chapter 22:15) of 2010

## Section 11 of the RBZ Act

Lending powers of Bank and loans to Bank employees

(1) The Bank shall not— (a) lend or advance moneys to, or directly buy, discount or re-discount bills, notes or other obligations from, the State or any fund established by the State so that the amount outstanding at any time exceeds the equivalent of **twenty per centum of the previous year's ordinary revenues of the State**; or

Public Finance Management (PFM) Act (Chapter 22:19) of 2009 Section 61 on 30% threshold for Government Debt and 40% for guarantees.

SADC Protocol on Finance and Investment benchmarks of 60%

### 3.8 Debt Strategies and Policies to deal with Debt Issues in Zimbabwe: Government Efforts since 2010

Realizing that the country was trapped by sovereign debt which continued to threaten national growth and development, the Government of Zimbabwe decided to come up with strategies that would lessen the debt burden. A number of strategies were employed since the year 2010, below is a summary of these.

#### 1. The Hybrid Model 2010

After 10 years of defaulting payments to the IFIs, external debt stood at US\$6.9 billion in 2010, of which 70% (US\$4.8 billion) was in arrears. The hybrid model was used and this involved use of a combination of traditional debt resolution initiatives and creative leveraging of the country's natural resources for economic development including mortgaging of mineral resources.

#### 2. Zimbabwe Accelerated Arrears Clearance Debt and Development Strategy (ZAADS), 2012

“The resolution of Zimbabwe's debt overhang is key to normalising our relations with the international financial institutions and bilateral creditors. It has become one of the serious impediments to the country's developmental agenda.

Mr Speaker Sir, the continued accumulation of external debt payment arrears is seriously undermining the country's creditworthiness, and severely compromising the country's ability to secure new financing from both bilateral and multilateral sources.

In this regard, Government in November 2010 approved the Zimbabwe Accelerated Arrears Clearance Debt and Development Strategy (ZAADDs), in order to pave the way for negotiating the clearance of arrears and debt relief for the country...”

Source: Ministry of Finance Budget Statement Extract (2012)

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This involved bridging Loans for Debt Repayment, to fully clear the arrears under IMF, World Bank and the AfDB. It also involved applying the Naples Terms (applies to HIPC) for settlement of the debt and arrears due to the Paris Club through rescheduling of payments by about 3 years, and a 67% reduction in repayment obligations and rescheduling of the balance over several years.

Paris Club currently insists that a country meets IMF conditions and the IMF must certify that the debt is not payable. Going through HIPC would require the same criterion, however it would lead to 90%-100% of the debt to the Paris Club being written-off in the end.

### 3. The LIMA Strategy 2015

LIMA strategy involved the following:

*Use of domestic Resources - already transferred part of its Special Drawing Rights (SDR) holdings kept by the IMF to clear the 107.9 million debt arrears*

*Use of a bridging loan- where African Export-Import Bank (Afrexim Bank) was to pay the AfDB loan*

*Use of Medium to Long Term Loan Facility*

The Lima strategy was, however not implemented effectively due to non-conclusive negotiations on settling outstanding arrears. The government vowed to pursue the Lima agreement which expired in November 2018 and it remains the effective strategy.

### 4. Austerity for Prosperity 2019

Zimbabwe launched its austerity measures under the Transitional Stabilisation Programme (TSP) in October 2018. The programme is running from October 2018 to December 2020. These measures are aimed at implementing cost-cutting measures to reduce the public sector wage bill, which consumed close to 90% of budget allocations between 2008 and 2018. Furthermore, austerity

reforms aim to increase tax revenues with the introduction of the 2% Intermediated Monetary Transfer (IMT) Tax, restructuring of the civil service and privatisation of state enterprises and parastatals (SEP). These initiatives are meant to bring about fiscal balances in the public sector. All this is in a bid to raise funds to repay some of the national debt.

The austerity programme adopted and being implemented by the Government of Zimbabwe bears resemblance to international finance institutions (IMFI) inspired reforms aimed at spending cuts whose conditionality in some areas has been associated with deepening poverty undermining human rights and other social safety nets.<sup>20</sup>

Austerity reforms can be controversial. Major criticisms against the IMF's austerity conditions include the economic decline realised after cuts in government expenditure. The measures have been deemed to be anti-developmental, self-defeating and tending to have an adverse effects society.

Further, the current macroeconomic policy introduced by government, dubbed *austerity for prosperity*, does not reflect any framework to the ordinary eye for the protection of the poorer and vulnerable segments of Zimbabwean society, whose numbers continue to escalate, against the impact of the policy. The provision of a few buses for urban and rural poor cannot surely be a panacea for the myriad of issues communities face. The consequence is a general rise in poverty with its negative ramifications on the rights of citizens. The evidence suggests a challenge to whatever social protection or safety nets for the poor and vulnerable as government strives to achieve an economic turnaround

## SECTION FOUR THE IMPACT

The impact of sovereign debt on human rights has been in relation to how the loans were contracted (that is, whether the conditions for loans take into consideration the human rights as prescribed by the laws of the land)

### 3.1 Introduction

This section is the core part of this paper as it seeks to answer the fundamental question of the study which is, the impact of sovereign debt on human rights. As it can be noted, the above sections have concentrated on giving a background to the issue of sovereign debt and human rights by giving the framework of human rights in Zimbabwe in section two as well as how debt has evolved in the country in section three. This section now focuses on bringing out how the debt evolution and trends explained in section three, affect the fundamental human rights given in section two.

The impact of sovereign debt on human rights has been in relation to how the loans were contracted (that is, whether the conditions for loans take into consideration the human rights as prescribed by the laws of the land); whether the loans were used, guided by the principles of national development for all, equity and equality; whether the debt management strategies are progressive, taking note of the needs of various vulnerable and marginalised groups such as women, children, people living with disabilities as well as the youth.

### 3.2 Sovereign debt burden and the public investment in social services sectors

Zimbabwe has experienced a deteriorating economic environment against the background of rising sovereign debt, suggesting a relationship

between debt and development. One of the defining features of this environment is the inability of government at both central and local level to provide access and protection of certain basic services including access to food, water, health services, employment, education, transport, energy, etc. in these circumstances, the submission is therefore inescapable that the sovereign debt weighs down the capacity of the state to guarantee its citizens certain rights protected by the Constitution.

The incapacity of the State to provide goods and services, it is contended, is in part due to the sovereign debt. This is because it has ballooned over the years, as we highlight below. To the extent that it has become a significant part on the national budget, it has tended to crowd out rights-based social costs that we highlight herein. To that extent, it is submitted that sovereign debt remains one of the factors negatively impacting on the rights of citizens. This submission is premised on the basis that the State bears primary responsibility to protect human rights and ensure their realisation.

### 3.3 Debt service and domestic resource mobilization

The cost of debt servicing is in most cases higher than expected, sometimes it is even close to the total debt itself. Budget allocations towards some key sectors such as health and education are reduced. The Government loses some of its

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revenue through such arrangements and an example is giving away some of its resource to meet the service conditions. As if this is not enough, the country becomes incapable of mobilizing its own domestic resources. If all resources that go towards debt servicing were to go towards social services, they would naturally enhance the realisation of rights enshrined in the Constitution of Zimbabwe. Funding constraints on the part of the State by their very nature have an impact on the State to discharge its many obligations. Human rights protection, realisation and fulfilment are but one of such obligations. Sovereign debts are a matter of contractual obligations, in respect of which creditor institutions and states have rights too. This explains why it is evident that the State has always sought to service its debt obligations. While it is acknowledged that Zimbabwe has at some point failed and/or ignored servicing its debt, this is more reflective of its incapacity to do so due to its myriad of problems. The fact that it still seeks more loans, reflects the impact of the debt trap.

### 3.4 The impact of Sovereign Debt on Poverty and Inequality in Zimbabwe

The Constitution proceeds on the basis of the assumption of the equality of all human beings and gender equality.<sup>21</sup> In a country whose social and economic policies have produced largely unequal development and therefore inequality, there exists the obvious possibility of differential impact of government policies on different social groupings. As highlighted above, the impact of the debt burden has been to reduce the capacity of the State to provide goods and services. This in turn has negatively impacted on such sectors as education and health. The impact has been harsher on the poor, who rely on public institutions, while the affluent are better able to respond, as private institutions at home and abroad have become alternative sources for goods and services.

It is submitted that sovereign debt impacts on different social groupings differently with those

living below the poverty datum line suffering more. In the current austerity environment, increasing tax is negatively affecting the poor more and women and children remain the most vulnerable groups.

### 3.5 The Social and Economic Human Rights Situation in Zimbabwe

As discussed above, Zimbabwe has in place a legal framework for the protection of social and economic rights. However, the fundamental question in this case is whether this legal framework is reflected by the extent to which people in Zimbabwe realise these rights. What is the evidence?

**Employment:** The employment levels have been falling over the years, resulting in a largely informal economy. The state cannot guarantee employment for the majority of its citizens, resulting in a flood of economic migrants from Zimbabwe into the region and beyond.

**Education:** Touted as one of the most vibrant educational systems on the African continent in the 1980s and 1990s, the post-2000 era has seen education largely privatised and based on means for its access. Tertiary education, which bloomed in the early post-independence era, saw resource allocation decline in tandem with a declining economy. This saw rankings of local tertiary institutions suffer to a point where they did not reflect the high literacy rate the country was touted for on the African continent.<sup>22</sup>

“ The state cannot guarantee employment for the majority of its citizens, resulting in a flood of economic migrants from Zimbabwe into the region and beyond. ”

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Indeed evidence by professionals has established all round declines in the education sector. Writing in the *International Journal of Asian Social Science*,<sup>23</sup> T. Mapolisa and T. Tshabalala contend that despite its attaining fundamental right status, education has been in falling at an alarming rate in Zimbabwe. They attribute this to the economic decline. It is submitted that to the extent that the debt burden weighs down on the capacity of the State to provide social services, it directly and indirectly contributes to the inability of the State to discharge its human rights obligations. The right to education is but one such obligation.

**Health:** Repeated epidemics of cholera and typhoid, in the context of an enduring HIV/Aids pandemic suggest a system under severe strain to a point where it cannot be claimed that the right to health is available for general enjoyment. Alois Mlambo<sup>24</sup> argues that Zimbabwe's economy, underpinned by agriculture, mining and manufacturing declined as a result of a combination of factors including government policy choices. The result was a decline in the entire economy. This in turn saw unemployment rise to above 90%.

The consequence was a massive decline in all other sectors including health and education. Public allocations have declined in real terms. This in part explains the tumult in the sector, which has been plagued by industrial unrest by public sector employees, amidst a general decline in the provision of resources. There is no denying the fact that Zimbabwe is deeply indebted, to a point where its debt burden is a factor weighing on its capacity to provide health services to its population. In the face of this decline, public health services have become a caricature of their former self. This has made health services generally inaccessible to the majority of the population in light of the high unemployment rate and the general economic misery. By definition, for them to make a difference, health services must be

accessible if they are to be realised as a right. That accessibility relates not only to geographical accessibility but also to cost.

**Social Welfare and Protection:** the economic meltdown of the period around 2008 saw the meltdown of savings and social protection schemes and insurance policies, opening pensioners to a life of misery. As indicated above, the economic decline increased unemployment and therefore household vulnerability.

**Children:** In the context of a society ravaged by the impact of the AIDS-HIV pandemic, the state's inability to respond to the needs of orphaned and vulnerable children has been a matter of public record. Even such social protection schemes as the Basic Education Assistance Module (BEAM),<sup>25</sup> a pro-poor assistance fund meant to cater for the school fees needs of children from poor families, has not been adequately provided for over the years. Indeed that the fund is now sustained through significant funding by donors reflects the State's inability to serve its social welfare obligations. The plight of the elderly, some of whose life savings melted with the economy around 2008, is a matter of public record, with the majority of them in dire circumstances.

**Women:** Austerity has had a telling impact on women in Zimbabwe. Their right to dignity has been impacted upon in more ways than one. Never in the history of the country has access to sanitary ware been as embarrassingly deficient as the post 2000s era, and markedly so since the onslaught of the slide in the economy from 2015. The increase in prostitution in both urban and rural settlements is self-evident. The monetized aspects of the economy have a tendency to ignore unpaid care work,<sup>26</sup> hence further thrusting women into poverty and failing to recognise their contribution to public health and wellbeing.

The monetized aspects of the economy have a tendency to ignore unpaid care work, hence further thrusting women into poverty and failing to recognise their contribution to public health and wellbeing.

## SECTION FIVE POLICY PROPOSALS

The impact of sovereign debt on human rights has been in relation to how the loans were contracted (that is, whether the conditions for loans take into consideration the human rights as prescribed by the laws of the land)

### 4.1 Possible Policy and Regulatory Measures on Debt Management in Zimbabwe

The principles of public finance management contained in the Constitution provide a basis upon which to provide effective mechanisms for the regulation of debt contraction and management for Zimbabwe. These principles however require political will and commitment. The principles are premised on the following:

- a) Transparency and accountability in financial matters.<sup>27</sup>
- b) The public finance system must be directed towards *national* development.<sup>28</sup> National policies that claim to be national and yet benefit a defined segment of the populace are unlikely to meet this criteria.
- c) The burdens and benefits of the use of resources must be shared equitably between present and future generations.<sup>29</sup> An obsession with debt contraction that tends to burden future generations cannot be justified.
- d) Public borrowing and the national debt must be carried out transparently and in the best interests of Zimbabwe.<sup>30</sup>

It is further submitted that, in order to ensure that the debt burden is contained, the limits thereon imposed under section 300 of the Constitution, which embraces statutory limitations on public borrowing, must be supported and enhanced. Such limitations are premised on transparency and accountability as outlined under section 300(3) of the Constitution.

The Public Finance Management Act must be understood in this context.

Debt contraction must be premised on the public interest. The post-2000 period has seen the routine abuse of the concept of the public interest. Loans advanced to individuals have during this period ended as public debts for discharge by the generality of the population. For instance, the Reserve Bank of Zimbabwe (Debt Assumption) Act<sup>31</sup> assumed debts contracted by known individuals and corporates during the Bank's controversial quasi-fiscal operations. The morality of this policy was never discussed, but reflects on the *bona fides* of policies on debt contraction.

Such policies as *Operation Maguta* and *Command Agriculture*, even with the most noble of intentions, tend to raise the red flag on public expenditure: What are the accountability mechanisms to ensure that public resources are used efficiently and effectively as required by the Constitution? What mechanisms are in place to ensure the repayment of such loans or advances? Is there no scope for the wholesale abuse of such resources? How are the beneficiaries chosen? The IMF<sup>32</sup> has characterised these initiatives as lacking in the targeting mechanisms for their beneficiaries, and suffer from a high loan default rate of above 35%, inefficiency, and rent-seeking. In light of the tendency for the State to eventually assume the debt for political reasons, as happened with respect to the loans acquired by the Reserve Bank in quasi-fiscal operations<sup>33</sup> it may be necessary to review these funding mechanisms as

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they contribute towards sovereign debt.

The Reserve Bank of Zimbabwe (Debt Assumption) Act, 2014, is evidence of how ordinary citizens can fall victim to opaque public expenditure processes. The Act authorised the assumption by the State of debts contracted by the central bank in the execution of quasi-fiscal operations. Private beneficiaries of some of these operations unjustly benefited from the debt assumption, while contributing to the tax burden of the populace, and therefore to its impoverishment. The proposition is that where such schemes are implemented, it is only fair that beneficiaries must discharge the debt themselves.

To share the responsibility to the general population, already burdened by a difficult economic situation is cruel and directly negatively impacts on the objectives set by the Constitution, as discussed.

There is a great need that Parliament, though its law making, representative and oversight functions, takes the centre stage in scrutinising loans and approving loans, assessing their implications on the fundamental rights of the people of Zimbabwe.

It is also important for financial institutions to make commitments in giving loan conditions that do not violate the human rights framework as provided for under the international instruments as well as national constitutions.

### 4.2 Does the Zimbabwean Debt Management Model Comply with Best Practice?

The United Nations Commission on Human Rights in 2004 tasked an expert to work on guidelines, which culminated in 2012 in *Guiding Principles on Foreign Debt and Human Rights*,<sup>35</sup> which were guidelines that it recommended states to follow. They were also recommended for private, public, national and international financial institutions in the management of sovereign debt, that is, in

“ It is also important for financial institutions to make commitments in giving loan conditions that do not violate the human rights framework as provided for under the international instruments as well as national constitutions. ”

decision making and the execution of debt discharge and structural restructuring programmes. These guidelines sought to strike a balance between debt repayments and the obligations of states to their citizens for instance. In other words, debt repayment or relief programmes need to accommodate human rights commitments of state parties. These principles include:

- a. Ensuring the primacy of human rights;
- b. Equality and non-discrimination;
- c. Progressive realisation of human rights;
- d. The state must ensure that minimum core human rights obligations are met despite its debt repayment obligations;
- e. The obligation to avoid retrogressive measures on human rights obligations arising from debt repayment obligations or commitments;
- f. Creditors and debtors share the responsibility of preventing and resolving unsustainable debt situations; and
- g. Transparency, participation and accountability in debt contraction and management by states.

It is proposed to determine, in the following section, to determine the extent to which Zimbabwean debt management complies with these guidelines, which even if not binding on member states of the UN, provide a framework for the just management of debt issues.

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## The Legal Framework for Debt Management in Zimbabwe:

In order to have a proper perspective on debt management in Zimbabwe, it is critical to highlight the framework in terms of which debt is supposed to be managed against a background of evidence that suggests that the runaway debt is a consequence of the trampling and trashing of that legal framework.

**The Constitution:** The relevant provisions were adverted to above. It provides a framework for a transparent debt contraction and discharge regime. If properly adhered to it avoids scenarios of the debt scandals that have rocked some countries.

**Public Finance Management Act:** the debt management principles in the Act, which have been codified by the Constitution, are critical for the transparent management of public debt. Reference thereto was made in earlier parts of this report.

**International Bank Loans Assumption Act (Chapter 22:08):** This 1963 Act empowered the post-Federation Government, at the end of the Federation of Rhodesia and Nyasaland, to assume certain debts that had been taken during the Federal era.

**Former Administration (Liabilities) Act (Chapter 22:06):** The Act, which came into force on 18 April 1980, viz. on Independence Day, was part of the 1979 Lancaster House Agreements. It obliged the new government to assume debts contracted by previous governments.

**Public Debt Management Act (Chapter 22:21)** of 2015 established an infrastructure for the management of public debt. The objectives of the Act are stated as follows:

*The objectives of public debt management are to ensure that Government's financing needs and its payment obligations are met at the lowest possible*

*cost over the medium to long term, with a prudent level of risk, and to promote development of the domestic debt market*

The Act needs to embrace public participation and input into debt contraction, in keeping with constitutional principles discussed herein, and international best practice.

## The Right to Development:

The Constitution of Zimbabwe enjoins the State and all its institutions to facilitate rapid and equitable development. It however demands that measures so adopted in furtherance of such development *must involve the people in the formulation and implementation of development plans and programmes that affect them*.<sup>36</sup> It is in this context that such programmes as *Operation Maguta*<sup>37</sup> and *Command Agriculture*<sup>38</sup> must be interrogated. They involve huge amounts of public resources, underpinned ostensibly by the public interest, and add to the sovereign debt, yet raise questions on the involvement of ordinary citizens, transparency and accountability for public resource utilisation. Indeed they become issues the net impact of which may be to contribute to the erosion of the rights of citizens that the government is sworn to uphold.

The United Nations in 1986 adopted a Declaration on the Right to Development. It states:

*'The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.'*

In the context of economic crises, the issue is as to the extent to which societies are able to embrace that right in the face of sovereign severe debt obligations

## The Impact of Indebtedness on Human Rights in Zimbabwe

Zimbabwe suffers from a serious sovereign debt burden. That it has had difficulties in servicing the debt is proof to the economic challenges the country has been going through.

### CONCLUSION

The Constitution of Zimbabwe is underpinned on the objective that seeks the *promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives*.<sup>39</sup> The country is however, in the throes of a severe sovereign debt crisis arising from years of fiscal indiscipline, among other reasons. It is in this context that an examination of the human rights framework in general, and the economic and social rights framework in particular was conducted. In the face of austerity measures adopted in 2018, it is apparent that the bulk of Zimbabweans are experiencing anything but *happy fulfilling lives*. The situation appears difficult for the majority that live under the poverty datum line.

Zimbabwe suffers from a serious sovereign debt burden. That it has had difficulties in servicing the debt is proof to the economic challenges the country has been going through. The country appears in a debt trap, where it must borrow more in order to deal with its impoverished status. At the same time, its debts create legally actionable obligations on the State. The consequence is a state in which sovereign debt competes with the provision of goods and services compete for fiscal space. The evidence with respect to the Zimbabwean context reflects a general decline in the capacity of the State to respond and discharge its constitutional obligations with respect to economic and social rights that have a financial bearing.

This is in part due to the impact of the debt burden, which not only increases the expenditure of the State in terms of payments towards the principal debt and its accrued interest, but also affects the capacity of the state to create conditions conducive for improved investor destination status. While

Zimbabwe may have an educated population, the debt burden that impacts on the realisation of the rights of citizens also impact on the conditions that make it an attractive investment target for capital.

The following recommendations, in addition to those made above are therefore made:

- a. Ensuring debt transparency, to ensure that debt contraction is not the preserve of a few yet debt payment becomes everyone's obligation; and
- b. To ensure that in the crafting of the national budget annually, the debt service rates are agreed to after an evaluation of their possible impact on the rights of citizens.
- c. Borrowing is a last resort, when it happens it should be stop gap measure and not perpetual practice. Sustainable domestic resource mobilisation is therefore recommended as substitute for borrowing as a lasting solution to debt burden.

“The evidence with respect to the Zimbabwean context reflects a general decline in the capacity of the State to respond and discharge its constitutional obligations with respect to economic and social rights that have a financial bearing.”

## END NOTES

- <sup>1</sup> See for instance Article 25 of the African Charter on Human and Peoples Rights (ACHPR)
- <sup>2</sup> El Hadji Guissé Economic, Social and Cultural Rights: Effect of Debt on Human Rights, Working Paper prepared for the COMMISSION ON HUMAN RIGHTS Sub-Commission on the Promotion and Protection of Human Rights Fifty-sixth session Item 4 of the provisional agenda, E/CN.4/Sub.2/2004/27 1 July 2004
- <sup>3</sup> See the discussion on debt and human rights with respect to Argentina and Cuba at a side event of the 28<sup>th</sup> Session of the Human Rights Council, Geneva, 4 March 2015, *Foreign Debt and Human Rights*, Kinda Mahomediah, at <https://www.southcentre.int/question/foreign-debt-and-human-rights/> (Accessed 16 August 2019)
- <sup>4</sup> The book *Sovereign Debt and Human Rights* Edited by Ilias Bantekas and Cephas Lumina, published on the 22 November 2018 is the first book to link sovereign debt with human rights, drawing together contributions from global experts with academic and practical experience, including current and former UN independent experts. On the 16<sup>th</sup> of July 2019, the UN Secretary General also presented to the General Assembly the report of an Independent Consultant on The effects of foreign debt and other related international financial obligations of States on the Full Enjoyment of all Human Rights, particularly economic, social and cultural rights.
- <sup>5</sup> Section three of this paper will give a detailed report on these debt levels as well as how the debt has evolved.
- <sup>6</sup> In the *Introduction and Contextual Background* section
- <sup>7</sup> See Chapter 4 of the Constitution of Zimbabwe, Act 20 of 2013
- <sup>8</sup> Sections 48-78 of the 2013 Constitution
- <sup>9</sup> See United Nations General Resolution 217 (III) of 10 December 1948
- <sup>10</sup> See sections 55, 64, 65, 66, 71, 72, 73, 74, 75-76 and 77 of the 2013 Constitution
- <sup>11</sup> See [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en) (Accessed 30 August 2019)
- <sup>12</sup> See [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en) (Accessed 30 August 2019)

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<sup>13</sup> HH 137-16 & HC 1796/14

<sup>14</sup> (Chapter 29:15)

<sup>15</sup> The provision states: *...council may provide and maintain a supply of water within or outside the council area and for that purpose the council...*

<sup>16</sup> UN Resolution 64/292

<sup>17</sup> Zimbabwe 2019 National Budget Statement

<sup>18</sup> Zimbabwe 2019 National Budget Statement

<sup>19</sup> Annexure 5 Zimbabwe 2018 National Budget Statement

<sup>20</sup> Conditionality and Sovereign Debt An Overview of Human Rights Implications, T. Stubbs and A. Kentikelenis, in Sovereign Debt and Human Rights, by I. Bantekas and C. Lumina, eds. Oxford University Press, 2018, at p360

<sup>21</sup> See the founding values and principles at section 3(f) and (g) of the 2013 Constitution

<sup>22</sup> Kudzai Mashining, writing at <https://www.universityworldnews.com/post.php?story=20180703064950190> (Accessed 12 October, 2019) writes that as of 2018, the University of Zimbabwe was the most highly rated local university, but was ranked at 59 out of 200 African Universities in Africa. This was attributed to the general economic decline of the country, which saw the decline in funding of the sector. This had also seen the migration of skilled staff in the education sector into the Diaspora

<sup>23</sup> 2013 Volume 3(11), 2226-2266

<sup>24</sup> *From an Industrial Powerhouse to a Nation of Vendors: Over Two Decades of Economic Decline and Deindustrialisation in Zimbabwe 1990-2015*, in *Journal of Developing Societies*, at <https://doi.org/10.1177/0169796X17694518> (Accessed 12 October 2019)

<sup>25</sup> The scheme was introduced in 2001, and by 2008 was unable to sustain intended beneficiaries, see www. UNICEF. [https://www.unicef.org/evaldatabase/index\\_69966.html](https://www.unicef.org/evaldatabase/index_69966.html) (Accessed 12 October 2019)

<sup>26</sup> See Statement by J. P. Bohoslavsky, Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, 73rd session of the UN General Assembly, Item 74 (a-d), New York, 22 October 2018

<sup>27</sup> Section 298(1)(a) of the Constitution

<sup>28</sup> Section 298(b) of the Constitution

<sup>29</sup> Section 298(c) of the Constitution

<sup>30</sup> Section 298(1)(f) of the Constitution

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<sup>31</sup> Among beneficiaries were the political elite that benefited from inputs under schemes run by the Bank for beneficiaries of the Land Reform Programme

<sup>32</sup> See IMF Country Report Number 19/144

<sup>33</sup> See Reserve Bank of Zimbabwe (Debt Assumption) Act 2014

<sup>34</sup> This is the predecessor of the Human Rights Council

<sup>35</sup> See the Guidelines, referenced A/HRC/20/23, Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/128/80/PDF/G1212880.pdf?OpenElement> (Accessed 5 September 2019)

<sup>36</sup> Section 13(1) to (3) of the Constitution

<sup>37</sup> Under this programme, government around 2005-2006 funded a programme that involved sections of the military using public funds for agricultural production as a way of addressing the food deficit that became chronic consequent to the chaotic land reform programme adopted in 2000

<sup>38</sup> This programme adopted in 2016 sought to avail resources to farmers for agricultural production, and reportedly saw an increase in maize production during the 2016-2017 agricultural season

<sup>39</sup> Section 8(1) of the Constitution

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