13 Resource-backed loans, COVID-19 and the high risk of debt trap: A case study of Zimbabwe

Farai Mutondoro, Anna-Sophie Hobi, Mutuso Dhliwayo and Josephine Chiname

13.1 Introduction

Currently, the COVID-19 pandemic undoubtedly is the greatest threat to human well-being and the global economy. It has deep impacts not only on growth rates and commodity prices but also on countries' sovereign debt. While other indebted countries have received debt relief from the International Monetary Fund (IMF) and the Group of 20 leading economies (G20) resulting in them being able to access new loans to mitigate against the effect of the pandemic to their economies, Zimbabwe has not received much.

Zimbabwe, just as many other resource-rich countries in sub-Saharan Africa, is highly dependent on its mining industry and is in debt distress. The country's debt stock is believed to be around US $17 billion of which a significant portion is being attributed to interest and penalties from failing to pay back the external debt. For every dollar Zimbabwe earns, over 60 cents are from mining sector exports.

A leaked letter by the Minister of Finance to international financial institutions as reported by Africa Confidential reveals that as a result of the COVID-19 pandemic, Zimbabwe's economy could have contracted by between 15 and 20 per cent in 2020.[1] Already before the pandemic, Zimbabwe was struggling to attract foreign investments and loans due to the protracted economic crisis. Standing at the verge of financial collapse and instability, the COVID-19 pandemic is just the latest of Zimbabwe's woes. Chinese banks and international commodity traders are stepping in and filling the gap left by traditional creditors by providing quick and accessible loans using natural resources as collateral. The so-called resource-backed loans (RBLs) are offered to governments or state-owned enterprises and their repayments are either made directly through natural resources, such as minerals or oil (in-kind) or guaranteed by a resource-related income stream.

1 Magaisa (2020) Mthuli Plea, https://bigsr.africa/bsr-mthulis-letter-d1/ (accessed 30 October 2020).

RBLs come at a high price for borrowing countries, often with implications for human rights. The main risks with RBLs lie with the borrower as they become ever more dependent on their extractive sector, the volatile commodity market prices and the foreign lenders. RBLs can contribute to high debt distress which leads to economic crisis. The effects can be devastating. A government may struggle ever more to provide basic services such as health care and education. At the same time, the lenders may benefit from a steady supply of resources, high service fees and rents. Furthermore, RBLs are opaque and lack oversight.

Zimbabwe has been very active in resource mortgaging and six RBLs and resources-for-infrastructure deals estimated to a total amount of US $6,8 billion became known, mostly through the help of investigative journalists and researchers.[2] However, due to the lack of contract transparency in Zimbabwe and the opaque nature of some of these RBLs, the magnitude and extent of RBLs in Zimbabwe is difficult to ascertain. This is despite the fact that the Zimbabwean Constitution and laws demand transparency and accountability. In this chapter we analyse Zimbabwe's natural resource mortgaging through RBLs in the current situation of a global pandemic and a pan-African debt crisis. We include the legal background as well as the social implication of RBLs as Zimbabwe is increasingly using its natural resources as collateral and amending the laws in favour of them. Our main concerns are the negative impacts of RBLs both in terms of the debt burden, corruption risks and human rights. Through a review of secondary data and an interpretive approach, we analyse the RBLs and the human right scenario in Zimbabwe.

13.2 COVID-19, debt and the global economy

The COVID-19 pandemic represents a great shock to the global economy. The shock propagated through three key channels, namely, (i) a disruption of global value chains; (ii) restrictions on international mobility, which affected economies and activities differently, depending on their exposure and preparedness; and (iii) a reduction in cross-country remittances. According to the IMF's April 2020 World Economic Outlook, the global economy would experience its 'worst recession since the Great Depression, surpassing that seen during the global financial crisis a decade ago'. Prior to the outbreak, global growth was expected to rise marginally. COVID-19 reduced global economic growth to an annualised rate of -4,5 per cent to -6,0 per cent in 2020, with a partial recovery of 2,5 per cent to 5,2 per

2 http://zimcodd.org/wp-content/uploads/2021/02/The-Bane-of-Resource-Backed-Loans-Implications-for-Debt-Sustainability.pdf (accessed 30 October 2020).

cent projected for 2021.[3] More than 90 per cent of the global economy experienced a contraction in per capita gross domestic product (GDP), the highest share of countries simultaneously contracting since the Great Depression of 1930 to 1932.[4] Goods trade fell rapidly, adding to the economic decline in manufacturing countries.[5] Global trade is estimated to have fallen by 5,3 per cent in 2020.[6] Oil prices lost about 50 per cent of their value, dropping from US $67 below US $30 a barrel in 2020, and metals were projected to decline more than 13 per cent in 2020 while food prices were expected to be broadly stable through 2020.[7] The tumbling of the global economy arising from a plunge in commodity prices and slowdown in economic activity will severely affect the African economy.

In a podcast interview on the impacts of COVID-19 on African economies, Brahima Coulibaly,[8] the director of the African Growth Initiative at the Brookings Institution, stressed that as a result of COVID-19, Africa has a health and an economic crisis with the latter having actually preceded the health crisis because Africa began to feel the effects before it started to register a significant number of cases on the continent. The World Bank's Africa Pulse report of April 2020, entitled 'Assessing the Economic Impact of COVID-19 and Policy Responses in Sub-Saharan Africa' projected that economic growth in sub-Saharan Africa will decline from 2,4 per cent in 2019 to -2,1 to -5,1 per cent in 2020, the first recession in 25 years.[9] Sub-Saharan Africa could face a severe food security crisis, with agricultural production expected to contract between 2,6 and 7 per cent.[10] COVID-19 will further widen fiscal deficits, particularly in commodity-exporting countries and countries dependent on tourism revenues. It is anticipated that remittances that are sources of income for households in

3 Congressional Research Services 'Global Economic Effects of COVID-19' (2021), https://fas.org/sgp/crs/row/R46270.pdf (accessed 30 October 2020).

4 World Bank Global Outlook (2020).

5 The World Bank 'Global economic prospects' (January 2021) Subdued Global Economic Recovery, https://www.worldbank.org/en/publication/global-economic-prospects (accessed 30 October 2020).

6 As above.

7 https://www.cnbc.com/2020/03/08/oil-plummets-30percent-as-opec-deal-failure-sparks-price-war-fears.html (accessed 30 October 2020). Also see World Bank Reports 'Commodity markets outlook: Implications of COVID-19 for commodities' 1 (April 2020) https://openknowledge.worldbank.org/bitstream/handle/10986/33624/CMO-April-2020.pdf (accessed 30 October 2020).

8 Brookings Institute, https://www.brookings.edu/experts/brahima-coulibaly/ (accessed 30 October 2020).

9 AG Zeufack et al 'Africa's Pulse No 21' (April 2020), https://openknowledge.worldbank.org/bitstream/handle/10986/33541/9781464815683.pdf?sequence=18 (accessed 30 October 2020).

10 As above.

Africa and also a source of foreign financing will drop significantly. For Africa, therefore, the COVID-19 pandemic is a double-edged sword: On the one hand it impedes the ability of governments to mobilise revenue and, on the other, it pressurises governments to invest more in public health and welfare mechanisms.

The COVID-19 pandemic pushes governments across the globe into the depth of the debt conundrum, particularly in sub-Saharan Africa, depending on loans from abroad. In late 2020 the IMF writes that '[t]he COVID-19 pandemic has greatly lengthened the list of developing and emerging market economies in debt distress'.[11] While default rates are rising, debt relief and restructuring are urgently needed. According to the African Union (AU), there is a high probability that many countries could face a rise in the stock of external debt and servicing costs due to the increase in fiscal deficits as more emphasis will be placed on to fulfilling social needs, including healthcare systems, socio-economic stimulus to households, small and medium-sized enterprises (SMEs) and businesses.[12]

Already prior to the COVID-19 pandemic, debt in Africa has reached unsustainable levels. Mozambique, for example, had an external debt of US $14 billion. Among others, Mozambique received secret loans of more than US $2 billion for fishing boats using sovereign guarantees, whereby it bypassed Parliament.[13] As in the case of Mozambique, many resource-rich African states are at the brink of extreme debt crises.[14] For sub-Saharan Africa, government debt as a share of GDP has grown from 31,7 per cent between 2010 and 2015 to 50,4 per cent in 2020. Countries such as Cape Verde, Mozambique and Angola record debt levels as high as 118,9 per cent, 106,8 per cent and 90 per cent of their GDP respectively.[15] Since

11 J Bulow et al 'New steps are needed to improve sovereign debt workouts' IMF Fall Issue 2020, https://www.imf.org/external/pubs/ft/fandd/2020/09/debt-pandemic-reinhart-rogoff-bulow-trebesch.htm (accessed 30 October 2020).

12 'Impact of the corona virus on the African economy', https://www.tralac.org/documents/resources/covid-19/3218-impact-of-the-coronavirus-covid-19-on-the-african-economy-african-union-report-april-2020/file.html (accessed 30 October 2020).

13 M Sallen 'External debt complicates Africa's COVID-19 recovery, debt relief needed' (30 July 2020), https://www.un.org/africarenewal/magazine/july-2020/external-debt-complicates-africas-post-covid-19-recovery-mitigating-efforts (accessed 30 October 2020).

14 V Kgomoeswana 'The many resource-rich African countries on the brink of defaulting on their debts is worrisome' *Sunday Independent* (25 October 2020), https://www.iol.co.za/sundayindependent/dispatch/the-many-resource-rich-african-countries-on-the-brink-of-defaulting-on-their-debts-is-worrisome--b3488f7f-9d54-4a7e-9796-b58a12106b14 (accessed 30 October 2020).

15 C Onyekwena & M Amara Ekeruche 'The case for debt relief in Africa amid

2010 the average public debt in sub-Saharan Africa has risen faster than in any other developing region.[16] Sovereign debt and debt to GDP ratio is set to increase as countries invest more in mitigation measures and also seek to stimulate economic productivity. The issue of a COVID-19 debt relief became a topical issue with African thought leaders such as Brahima Coulibaly,[17] Ngozi Okonjo-Iweala,[18] Cristina Duarte,[19] Vera Songwe,[20] Strive Masiyiwa,[21] Donald Kaberuka[22] and Louise Mushikiwabo[23] coming up together in calling for a two-year standstill on all external debt repayments.[24] On 31 March 2020 African ministers of finance had a second online meeting and agreed that for Africa to effectively fight COVID-19, there is an urgent need for debt relief and fiscal stimulus. On 13 April 2020 the IMF suspended debt repayments due to it by the poorest developing economies for the next six months – the programme runs until the end of 2021[25] On 15 April 2020 leaders of the G20 announced the suspension of debt service payments for 73 of the poorest countries from May to the end of 2021.[26] Unfortunately, Zimbabwe was exempted from the list of countries that were offered debt relief. Moreover, debt repayment excludes loans from Chinese and private lenders. Copper-dependent Zambia was the first African country heading towards default on private creditors

COVID-19' (14 April 2020), https://www.africaportal.org/features/case-debt-relief-africa-amid-covid-19/ (accessed 30 October 2020).

16 'Africa's debt crisis hampers its fight against COVID-19' *Economist* (April 2020), https://www.economist.com/middle-east-and-africa/2020/04/11/africas-debt-crisis-hampers-its-fight-against-covid-19 (accessed 30 October 2020).

17 Brahima Coulibaly is the director of the African Growth Initiative at the Brookings Institution.

18 Ngozi Okonjo-Iweala is the former Nigerian Minister of Finance and former managing director with the World Bank.

19 Cristina Duarte is former Finance Minister of Cabo Verde.

20 Vera Songwe is executive secretary of the United Nations Economic Commission for Africa.

21 Strive Masiyiwa is a founder and group executive chairman, Econet Wireless Global.

22 Donald Kaberuka is a former Rwandese Minister of Finance and the 7th president of the African Development Bank Group.

23 Louise Mushikiwabo is secretary-general of the Organization Internationale de la Francophonie and former Minister for Foreign Affairs and Cooperation of Rwanda.

24 O-I Ngozi et al 'Africa needs debt relief to fight COVID-19' (9 April 2020), https://www.brookings.edu/opinions/africa-needs-debt-relief-to-fight-covid-19/ (accessed 30 October 2020).

25 IMF 'IMF executive board approves immediate debt relief for 25 countries' (13 April 2020), https://www.imf.org/en/News/Articles/2020/04/13/pr20151-imf-executive-board-approves-immediate-debt-relief-for-25-countries (accessed 30 October 2020).

26 France 24 'IMF chief asks for continued debt relief as pandemic aid winds down' https://www.france24.com/en/live-news/20211027-imf-chief-asks-for-continued-debt-relief-as-pandemic-aid-winds-down (accessed 16 November 2021). .

during the pandemic. In 2019 it accumulated a debt of US $11,9 billion. After the country sought to delay interest payments for foreign bonds, the private investors were hesitant to cooperate because they suspected the money would be channelled towards the repayment of Chinese loans – Zambia owes a third of its debt to China.[27]

Cash-poor and indebted countries have long struggled to attract foreign investment, to access international capital markets and to receive loans because of the higher financial risks these countries carry. The COVID-19 pandemic exaggerates the need for foreign loans. As one resort, resource-rich countries have in the past 15 to 20 years increasingly been borrowing with their wealth in natural resources serving as collateral – loans that in many oil, gas or mining-based economies have contributed to their current debt distress. Will such loans become more relevant due to COVID-19?

13.3 Resource-backed loans

Institutional donors and private companies are taking advantage of this need and 'help out' by granting resource-backed loans (RBLs) to states and state-owned companies. In return, they receive access to natural resources such as oil, gas and minerals or are repaid through revenues created in the sector. Such deals often come with a high risk and rarely on terms in favour of the borrower. On top of that, resource-backed loans tend to be highly opaque, hard to monitor and prone to corruption. For the often already-indebted and struggling young African nations, resource-backed loans contribute to financial dependencies and debt distress.

We speak of RBLs when referring to loans provided to a government or state-owned company leveraging their natural resource wealth as collateral. The repayment is made either in kind, such as in oil or minerals, from a resource-related revenue generated in the future, or as an asset serving as collateral.[28] RBL is used here as an umbrella term and includes different types of arrangements. Prepayments are generally short-term agreements in which the lender makes up-front payments for the future delivery of natural resources within a few years. These are particularly interesting to trading companies that rely on a consistent supply of commodities.

27 J Cotterill & T Stubbington 'Zambia headed for Africa's first COVID-related debt default' *Financial Times* (22 September 2020), https://www.ft.com/content/0b744d46-46b1-48c3-81cd-be0d78d99262 (accessed 30 October 2020); 'Cash-strapped Zambia takes on China as it seeks debt relief' *TRT World* (13 October 2020), https://www.trtworld.com/magazine/cash-strapped-zambia-takes-on-china-as-it-seeks-debt-relief-40544 (accessed 30 October 2020).

28 D Mihalyi et al 'Resource-backed loans: Pitfalls and potential' (2020) Natural Resource Governance Institute 3.

Other RBLs are long-term and may have a repayment schedule of several decades. If the repayment is done through the income gained from selling natural resources to a third party, terms such as 'pre-financing', 'loans in exchange for resource-receivable' or 'pre-export finance' are used. In these types of loans, the repayment speed is highly depending on commodity prices, especially when the loans are connected to a set quantity or volume of the resource.[29]

Furthermore, RBLs also include collateralised arrangement in which the borrower would use an underground asset such as a part of as mineral reserve or a yet to be developed mine as a collateral. In some cases, a government may grant extraction rights or mineral rights to a lending company, often in return for relevant infrastructure to be built by the company. Arrangements that include the provision of goods, services or infrastructure in exchange for natural resources, natural resource-related repayments or exploration and production concessions and mining rights are also known as '(infrastructure) barter agreements',[30] 'resource-for-infrastructure (R4I) swaps or deals'[31] or as 'resource financed infrastructure'.[32]

13.3.1 RBL borrowers and lenders

Researchers at the Natural Resource Governance Institute (NRGI) analysed 52 resource-backed loans in sub-Saharan Africa and Latin America made between 2004 and 2018.[33] Recipients of RBLs in most cases are state-owned enterprises and national oil companies.

Approximately 53 per cent of the loans to African countries came from Chinese state-owned policy banks such as the China Development Bank (CDB) and Export-Import Bank of China (China Eximbank). CDB granted three loans totalling US $18 billion and China Eximbank 14 loans totalling US $17 billion, among others to Zimbabwe. According to the NRGI, most countries that have borrowed from these two lenders also have Chinese companies active in the resource sector. Moreover, Chinese

29 As above.

30 EITI *Standard (2019)* 'Requirements 4', https://eiti.org/document/eiti-standard-2019#r4 (accessed 30 October 2020).

31 Columbia Centre on Sustainable Investment 'Resource for infrastructure deals', http://ccsi.columbia.edu/work/projects/resource-for-infrastructure-deals/ (accessed 30 October 2020); P Konijn 'Chinese Resources-for-Infrastructure (R4I) swaps: An escape from the resource curse' (2014).

32 H Halland et al 'Resource financed infrastructure. A discussion on a new form of infrastructure financing' (2014) *World Bank Studies* 3.

33 Mihalyi et al (n 28) 3.

loans often come in bundled deals involving infrastructure provisions.[34] Loans tied to infrastructure could be seen as positive exactly because they result in infrastructure being built. Nevertheless, resources-for-infrastructure deals come with high governance risks and can increase a country's sovereign debt.

The Sicomines project in the Democratic Republic of the Congo (DRC) probably is the best-known example of such a mineral barter deal. In 2007 DRC and China signed the Sicomines deal, at the time one of the most significant Chinese investments in Africa. While the DRC was eager to have a number of infrastructure projects financed, the Chinese counterpart gained access to key resources of copper and cobalt. Chinese companies received the mining rights to a mine owned by the Congolese state-owned Gécamines. For the deal, a joint venture named Sicomines was set up. Majority shareholding with 68 per cent was on the Chinese side.[35] In this deal, China Eximbank awarded Sicomines two credit lines, one of US $3 billion for infrastructure and the other of US $3,2 billion for the development of the mine itself. The US $3 billion loan is intended to be paid back through the mine's future profits.[36] Furthermore, the agreement included tax and custom duties exemptions to Sicomines until the US $3 billion infrastructure loan is fully repaid.[37] Over ten years later, researchers conclude that the agreement was less beneficial to the DRC than it was to China: Thanks to the DRC being part of the Extractive Industries Transparency Initiative (EITI), at least some information on the deal was disclosed. Nevertheless, researchers Maiza-Larrarte and Claudio-Quiroga state that the deal was highly opaque in the initial stage and hard to evaluate in financial terms. The DRC loses out on an opportunity because the infrastructure built was of too low-quality a standard, so the natural resources were traded for short-living infrastructure that will not increase economic or social development in the country.[38]

Peter Konijn, from the Erasmus University Rotterdam, suggests that resource-for-infrastructure (R4I) swaps were pioneered by the Chinese state and Chinese companies in their engagement with resource-rich

34 Mihalyi et al (n 28) 11, 15.

35 A Maiza-Larrarte & G Claudio-Quiroga 'The impact of Sicomines on development in the Democratic Republic of Congo' (2019) 95 *International Affairs* 427.

36 Mihalyi et al (n 28) 10.

37 Maiza-Larrarte & Claudio-Quiroga (n 35) 429.

38 S Marysse & S Geenen 'Triangular arm wrestling: Analysis and revision of the Sino-Congolese agreements' in A Ansoms & S Marysse *Natural resources and local livelihoods in the Great Lakes Region of Africa. A political economy perspective* (2011) 237; Maiza-Larrarte & Claudio-Quiroga (n 35) 445.

countries in Africa and they involve the exchange of natural resources for infrastructure.[39] The revenues from the export of natural resources such as oil or copper are used as collateral for a loan to finance infrastructure development. Konijn argues that the first complex R4I swap was initiated in Angola in 2004 when a $2 billion loan from China Eximbank was used to finance the reconstruction of infrastructure damaged during Angola's civil war. The export revenue from 10 000 barrels of oil per day over a period of 17 years would be used to repay the loan. In accordance with the loan agreement, 70 per cent of public tenders for the infrastructure projects related to the R4I swap deal was to be awarded to Chinese construction corporations. At the end of 2011, there were ten major R4I swaps, either concluded or in the process of implementation in eight African countries (Angola, Congo-Brazzaville, DRC, Ethiopia, Gabon, Ghana, Sudan and Zimbabwe) with a total value of approximately $22 billion. The Eximbank provided $38 billion in loans for over 1 000 infrastructure projects in Africa between 2003 and 2011.

Debts accumulated not only through loans from Chinese actors. The Jubilee Debt Campaign states in 2018 that 32 per cent of African government external debt is owed to private lenders.[40] Almost half of the RBLs in sub-Saharan Africa examined by the NRGI come from commodity trading companies such as Trafigura, Glencore and Vitol.[41] Trading companies coordinate the transport of commodities from the mines or oil production sites to the consumers. Trafigura, one of the largest trading companies in the world, describes commodity traders as 'essentially logistics company that use financial markets to fund their operations'.[42] At the interface between physical trade and the financial world, the traders also act as creditors by granting RBLs. In fact, their lending activities are on the rise: Trafigura, for instance, increased it from US $700 million in 2013 to more than US $5 billion in 2019.[43] White writes in the *Financial Times* that '[i]n other words, they engage in shadow banking (non-bank financial activity) – and their role here is growing'.[44]

39 Konijn (n 34 above)

40 Jubilee Debt Campaign 'Africa's growing debt crisis: Who is the debt owed to?' (2018) 1

41 https://www.resourcegovernance.org/sites/default/files/BigSpenders_20141014.pdf (accessed 30 October 2020).

42 Trafigura 'Commodities demystified' (2018) 30.

43 Trafigura 'Prepayments demystified' (2020) 2.

44 N White 'Regulators must now look at commodity trading' *Financial Times* (27 April 2020), https://www.ft.com/content/2f01cf55-d4b7-491e-bda8-5167731b5ce5 (accessed 30 October 2020).

Prominent borrowers of traders are Chad and Congo-Brazzaville. In 2014 Chad's state oil company agreed to supply crude cargos in return for a US $1,45 billion loan from Swiss commodity and mining giant Glencore. Two years later the Glencore debt alone accounted for 98 per cent of Chad's external debt. Most of the country's oil production went into the repayment leaving little left for other services and expenses. Oil is Chad's primary source of revenue and it struggled immensely to pay off the debt, despite it having been restructured.[45] With the oil price tumbling in early 2020 and the pandemic hitting already-indebted countries hard, Chad asked Glencore to suspend the payments which would be oil shipments of US $115 million for the year.[46]

The oil-producing Republic of the Congo (Congo-Brazzaville) finds itself in a similarly severe debt crisis. The country has both borrowed from China Eximbank as well as from commodity trading companies. The country received cash-for-oil loans from Switzerland-based traders Trafigura (US $1 billion); Glencore (US $850 million); and Gunvor (US $625 million).[47] The Congo is highly indebted – its external debt was peaking in 2017 at 117 per cent of the GDP. According to the IMF, Congo still owed US $966 million to Glencore and US $268 million to Trafigura in September 2019.[48] The government has taken these RBLs without public consultation and tenders and, therefore, was highly criticised by civil society. Moreover, an investigation by the Swiss non-governmental organisation (NGO) Public Eye revealed that Gunvor not only benefited from inflated lending rates and additional charges, but also obtained its contracts after its employees had offered secret payments to government officials.[49] A Swiss court held Gunvor criminally liable. One of its employees was sentenced to 18 months' imprisonment for bribery.[50] Generally, the size, terms and timeframe of an RBL can enormously affect countries such as the DRC, Chad and Congo-Brazzaville. Moreover,

45 N White 'Oil-hungry Western companies are contributing to huge debt problems in Africa – G20 leaders need to fix this' *The Independent* (30 November 2018), https://www.independent.co.uk/voices/africa-oil-companies-g20-summit-fix-glencore-debt-chad-a8660606.html (accessed 30 October 2020).

46 A Soto & K Hoje 'Chad asks to suspend payments on Glencore oil-backed loan' *Bloomberg* (20 September 2020), https://www.bloomberg.com/news/articles/2020-09-20/chad-asks-to-suspend-payments-on-glencore-oil-backed-loan (accessed 30 October 2020).

47 Mihalyi et al (n 28) 10.

48 IMF 'Republic of Congo. Staff Report for the 2019 Article IV Consultation. 34' (2020).

49 Public Eye 'Wie gemschmiert: Ölhändler Gunvor im Kongo', https://www.publiceye.ch/de/themen/rohstoffhandel/gunvor-kongo (accessed 30 October 2020).

50 D Sheppard & N Hume 'Gunvor faces scrutiny of historical dealings in West Africa' *Financial Times* (28 August 2018), https://www.ft.com/content/762b453e-aad7-11e8-94bd-cba20d67390c (accessed 30 October 2020).

when coupled with lacking public oversight, they create spaces for corrupt practices. In economically weak or indebted countries, RBLs contribute to high debt distress often leading to an economic crisis. Transparency and sustainability are the key challenges of resource-based borrowing.

13.3.2 Challenges with RBLs

The NRGI points out a number of advantages attached to RBLs: RBLs might be positive in the light of infrastructure development and may offer cheaper and faster loans to governments.[51] The African experiences, however, have shown the massive challenges and risks of RBLs. RBLs are hard to monitor, complex and often with several actors involved. They are, moreover, often off-budget and not subject to budgetary safeguards, parliamentary scrutiny, public tenders and government oversight because the borrower is seldom the government directly but a state-owned entity.[52]

Opacity

There is an increased governance risk attributed to state-owned companies with many not publishing financial reports. According to a report by the IMF, 62 per cent of national oil companies reviewed in the study were 'weak', 'poor' or 'failing' in regard to public transparency.[53] The terms and conditions of RBLs are rarely available in the public domain and obtaining reliable information is extremely difficult. This might not come as a surprise considering that the involved parties have little interest in transparency when trading off their national resources for fast money – often at the expense of the population and the generations to come. This lack of transparency resulted in an immense risk of corruption, as the Gunvor case in Congo-Brazzaville showed.

The EITI is pushing for the disclosure of RBLs and has included related requirement in their 2019 Standard. It requires implementing countries to disclose barter arrangements (for instance, resources-for-infrastructure deal) as well as any sales of the state's share of production or other revenues collected in kind.[54]

51 https://resourcegovernance.org/sites/default/files/documents/resource-backed-loans-pitfalls-and-potential.pdf (accessed 30 October 2020).

52 N White 'Commodity traders: Lenders of last resort for Africa's oil-producers' *Global Witness* (3 July 2019), https://www.globalwitness.org/en/blog/commodity-traders-lenders-of-last-resort/ (accessed 30 October 2020); Mihalyi et al (n 28) 8.

53 D Manley, D Mihalyi & PRP Heller 'Hidden giants. It's time for more transparency in the management and governance of national oil companies' IMF 57.

54 EITI *Standard (2019)* 'Requirements 4.2 and 4.3', https://eiti.org/document/eiti-standard-2019#r4-2 (accessed 30 October 2020).

Unsustainability and the debt problem

The fundamental problem with RBLs is that a high risk lies with the borrower: A country becomes ever more reliant on its extractive sector and may be stuck and forced into oil or mineral production for decades. Moreover, the borrower is exposed to the volatile market prices. If prices for the commodity fall or the agreed-upon volume cannot be produced within the often very short timeframe given, the borrower has to deal with the consequences. In the case of a country heading towards insolvency, the possibility of a rescheduling the repayment to achieve a sustainable debt situation is not necessarily available from lenders of RBLs.[55] This concerns both RBLs granted by commodity traders and Chinese policy banks. At the same time, the lenders may benefit from a steady supply of resources and revenue from the high service fees and rents. Due to the little public information available on RBLs, it is difficult to estimate the prices of especially long-term resources-for-infrastructure-deals and evaluate the overall fairness of it.[56] No doubt that fast-growing debt is a recipe for disaster; its effects can be devastating. A government may no longer be able to provide basic public services to the population such as education and health care. While the G-20 agreed to suspend debt repayment for the poorest countries due to the current pandemic, this does not automatically include private sector lenders. At the same time the growing instability exaggerated by the COVID-19 pandemic and the high demand in minerals make RBLs increasingly important, especially for mining-dominated nations such as Zimbabwe.

13.4 COVID-19 and the Zimbabwean economy

A report by Africa Confidential exposes a letter by the Zimbabwean Minister of Finance, Mthuli Ncube, to David Malpass, president of the World Bank, Kristalina Georgieva, managing director of the IMF, and Akinwumi Adesina, president of the African Development Bank, asking them for support with the rescheduling or cancellation of all Zimbabwe's foreign bilateral debt arrears and help in clearing all its multilateral arrears.[57] It is reported that the letter indicated that the Zimbabwean economy contracted sharply in 2019 and that the economy could further

55 N White 'Hey, big lenders' *Global Witness* (30 November 2018), https://www.globalwitness.org/en/blog/hey-big-lenders/ (accessed 30 October 2020); Mihalyi et al (n 28) 33.

56 Maiza-Larrarte & Claudio-Quiroga (n 35) 424.

57 Africa Confidential 'Zimbabwe government close to collapse as Ncube sends plea for cash' (30 April 2020), https://www.africa-confidential.com/article/id/12945/Zimbabwe_government_close_to_collapse_as_Ncube_sends_plea_for_cash (accessed 30 October 2020).

contract by 15 to 20 per cent due to the COVID-19 pandemic. Moreover, the Minister indicated that the government needs $200 million for unexpected spending to fight the pandemic and referred to World Bank estimates that the country's financing gap is nudging $1 billion for health, education, food security and social protection. As noted above, on 13 April 2020 the IMF cancelled debt repayments due to it by the poorest developing economies for the next six months.[58] Zimbabwe was exempted from the list of countries that were offered debt relief. Africa Confidential reports that 'senior finance officials in Washington say that grand corruption and state violence have to go before they resume economic cooperation with Harare'.[59] Thus, the Zimbabwean government is in a dire financial position and cannot unlock financial streams from traditional lending institutions. The key question is how Zimbabwe will finance its way out of the COVID-19 impact. Zimbabwe's economy is underpinned on mining and the huge reliance on mining explains why the Zimbabwean government of entreated the mining sector for relief on 19 April 2020 and allowed the mining sector to resume full operations.

A paper by the Zimbabwe Environmental Law Association (ZELA) and the Centre for Natural Resource Governance (CNRG) partly attributes the government's decision to fully re-open the mining sector on government's inability to access COVID-19 external financing.[60] The paper makes it clear that due to the centrality of mining to the economy, mining operations, in particular coal mining, continued even during the 21-day lockdown. Mining, therefore, underpins Zimbabwe's hope for economic recovery. Prior to the COVID-19 pandemic, the government of Zimbabwe had formulated an economic recovery plan that is hinged on mining. The government's vision to transform the country into an upper middle-income economy by 2030 is based on mining. Through this strategy, mining projects should unlock US $12 billion in revenues by 2023: Gold is expected to contribute US $4 billion, platinum US $3 billion, chrome, iron, steel, diamonds and coal will contribute US $1 billion, with lithium being expected to bring in US $500 million while other minerals will fetch US $1,5 billion. The huge reliance on mining is likely to push the Zimbabwean government further in using minerals resource and other natural resource as security to access foreign financing. Already prior to

58 IMF (n 25).

59 Africa Confidential (n 57).

60 Zimbabwe Environmentral Law Association 'COVID-19: Mining Sector and Communities Situational Report' (2020), http://www.zela.org/covid-19-mining-sector-and-communities-situational-report/ (accessed 30 October 2020).

the outbreak of COVID-19, Zimbabwe was mortgaging their resources to access foreign financing.[61]

13.5 Mining in the Zimbabwean economy

Zimbabwe's mining sector has grown in importance over the past few decades. The decreasing viability of the agricultural and industrial sectors, coupled with the vast mineral resource, has played a role in heightening the importance of the sector. Presently, there are more than 40 different minerals in Zimbabwe, including diamonds, platinum, gold, nickel, copper, iron ore, zinc, chromium ores, asbestos, vanadium, lithium, tin and coal.[62] In 2018, gold, platinum group minerals (PGM), diamonds, nickel, chrome and coal dominated the sector and accounted for 95 per cent of the value of minerals generated in Zimbabwe.[63]

By the year 2019 mining contributed about 16 per cent to the country's GDP, more than 60 per cent of exports and accounted for a significant share of foreign direct investment (FDI).[64] Due to its intense labour requirements, the sector has created formal employment for over 45 000 people.[65] Mining has also been a source of livelihood for millions across the country who engage in artisanal and small-scale (ASM) mining. It is estimated that ASM, especially of gold, directly provides a livelihood for more than one million people.[66] In 2018 ASM contributed 65,5 per cent of gold deliveries to Fidelity Printers and Refineries. Gold deliveries from

61 Global Witness 'A crude awakening: The role of the oil and banking industries in Angola's civil war and the plunder of state assets', https://cdn.globalwitness.org/archive/files/pdfs/a per cent20crude per cent20awakening.pdf (accessed 15 September 2020).

62 Mining Weekly 'Myriad of opportunities in Zim's mining sector' (8 September 2017), https://m.miningweekly.com/article/myriad-of-opportunities-in-zimbabwes-mining-sector-2017-09-08 (accessed 15 September 2020).

63 'State of the mining industry 2018 Report: Prospects for 2019' (November 2018), https://www.icaz.org.zw/imisDocs/State%20of%20the%20mining%20industry%20 2018%20report%20prospects%20for%202018.pdf (accessed 8 September 2020).

64 G Chigumira et al 'Enhancing natural resources management in Zimbabwe: Case studies of mineral exploitation, forestry management, wildlife management and solar exploitation' (2019), http://www.zeparu.co.zw/sites/default/files/2019-05/ENHANCING%20NATURAL%20RESOURCE%20MANAGEMENT%20IN%20 ZIMBABWE%20for%20web.pdf (accessed 30 July 2020).

65 Government of Zimbabwe (2016) P Jourdan et al 'Mining sector policy study' Zimbabwe Economic Policy Analysis and Research Unit (2012), http://www.zeparu.co.zw/sites/default/files/2018-03/Mining%20Sector%20Policy%20Study%20pdf.pdf (accessed 12 November 2020).

66 PACT 'A gold opportunity, scoping study of artisanal and small-scale gold mining in Zimbabwe' (2015), https://www.pactworld.org/a%20golden%20opportunity (accessed 25 August 2020).

small-scale producers increased from 13,2 tonnes in 2017 to 21,7 tonnes in 2018.[67]

13.6 Economic contraction and the RBL route for Zimbabwe

Despite these seemingly and expected positive attributes of the mining sector, mining in Zimbabwe has been associated with worrisome ills, such as corruption throughout the commodity value chain, illicit financial flows, revenue leakages, violence among artisanal miners and the signing of opaque mining agreements under the 'mega deals' policy narrative of the previous government and the 'open for business' mantra during the current government regime. The opacity associated in Zimbabwe's mineral sector is evident in the granting of licences, the negotiation of contracts, production data, the collection, allocation expenditure and accounting of mineral revenue,[68] also affecting agreements covering RBLs in Zimbabwe.

As shown by Table 1 below, RBLs have a long history in Zimbabwe dating back to 2004 when a case gained media attention in Zimbabwe which involved Chinese corporations, namely, China North Industries Corporation (NORINCO) and Anhui Foreign Economic Construction Company (AFECC). Since the 2000s Zimbabwe was alienated from the international community, and at the same time China was seeking direct access to natural resources.[69] One of the first RBLs to be reported in Zimbabwe was with NORINCO, active in both the defence industry and in providing engineering contracting. In 2006 NORINCO was said to have supplied mining equipment to Hwange Colliery Company (in which the government of Zimbabwe is the majority shareholder) worth US $6,2 million in exchange for coal and coke to NORINCO's smelters in the Democratic Republic of the Congo.[70] Additionally, NORINCO was reported to have supplied arms to the government of Zimbabwe in exchange for mining concessions and mineral exports to China.[71]

67 https://www.zimbabwesituation.com/news/artisanal-mining-can-boost-economy/

68 M Dhliwayo & M Sibanda 'From Zimbabwe mining revenue transparency initiative to the extractive industries transparency initiative' (2019) *Zimbabwe Environmental Law Association*, http://www.zela.org/from-zimbabwe-mining-revenue-transparency-initiative-to-the-extractive-industries-transparency-initiative/ (accessed 25 November 2020).

69 A Karkkainen 'Does China have a geo-economic strategy towards Zimbabwe? The case of the Zimbabwean natural resource sector' (2015) 14 *Asia Europe Journal* 185.

70 'Hwange in barter deal with Chinese Ndamu Sandu' *Zimbabwe Independent* (12 May 2006), https://www.theindependent.co.zw/2006/05/12/hwange-in-barter-deal-with-chinese/ (accessed 26 October 2020).

71 Karkkainen (n 69) 12.

AFECC, a large construction China state-owned enterprise, entered Zimbabwe's diamond mining sector in 2009 through a joint venture (Anjin Investments) with the Zimbabwe defence forces. According to Karkkainen, the mineral revenue from Anjin Investments was used to finance the National Defence College.[72] The RBL was structured in such a manner that China Eximbank advanced a loan of US $98 million to the government of Zimbabwe through the Ministry of Finance and this was to be repaid using the latter's share of profits from Anjin Investments.[73] Gross human rights violations have resulted in this engagement: In the diamond field of Marange, Anjin Investments has been accused of polluting the Save Odzi Rivers jeopardising the right to a healthy environment and water of Marange and surrounding communities. In a blatant disregard of the Zimbabwean environmental laws and policies, Anjin Investments, assisted by state security, detained environmental management agency officers for trying to carry out their mandate to inspect and monitor water pollution.[74] The environmental management agency officers were detained by mine management and the military for trying to inspect and monitor water pollution.[75] Further, the use of excessive force by the state security and private security at Anjin Investment mining claim as well as unfair labour practices have also raised concerns over the operations of the Chinese mining company.[76]

China is not the only country with which Zimbabwe has been associated with respect to RBLs in Zimbabwe. Reports connect Belarus, India and Russia with RBLs in Zimbabwe. For instance, in 2015 the Belarus Digest reported that Zimbabwe and Belarus had entered into an agreement which allowed Zimbabwe to access capital equipment and technical know-how regarding the mining of rivers.[77] This agreement was entered into despite the fact that Belarus had no proven record of

72 S Nyaira 'Diamond-financed Defence College deal exposes Zimbabwe's China ties' *VOA News* (2011), http://archive.kubatana.net/html/archive/econ/110616voa.asp?sector=ECON (accessed 21 October 2020).

73 Karkkainen (n 69).

74 S Mtisi 'Diamond mining and human rights in Marange: Examination of state and non-state actors' duties and liability for human rights violations' unpublished LLM dissertation, Midlands State University, 2015 60.

75 Informal discussions with Environmental Management Officers in Mutare (16 April 2016).

76 'Outrage over brutal Chinese labour practices'. https://www.theindependent.co.zw/2012/04/12/outrage-over-brutal-chinese-labour-practices/ (accessed 27 October 2020).

77 I Gubarevich 'Belarus Digest Belarus and Zimbabwe aim at 'mega deals' (8 December 2015), https://belarusdigest.com/story/belarus-and-zimbabwe-aim-at-mega-deals/ (accessed 26 October 2020).

expertise in river bed mining.[78] This may make one believe that these deals are entered into for political expedience and not necessarily for economic viability and without the interests of the ordinary Zimbabwean at heart. With regard to Russia, on 10 January 2020 the *Standard*, one of Zimbabwe's daily newspapers, reported that the government of Zimbabwe was contemplating an agreement with Russia involving the replacement of the former's military helicopters with payments based on the exchange of minerals. Further, it was reported that the government, faced with fuel shortages, was also negotiating a deal with Russia wherein it is provided with oil in exchange for diamonds.[79]

In 2019, Bloomberg writes that Zimbabwe secured a US $500 million loan from Afreximbank in order to stabilise its currency. In return, the government offered platinum production as collateral.[80] Shortly afterwards the newspaper writes that 'the main collateral for African Export-Import Bank's US $500 million loan to Zimbabwe is a mine that hasn't been dug yet'.[81] The loan should be paid back within four years through revenues of a mine. The mine is held by Great Dyke Investments, a venture between Russian investors and the Zimbabwean military's Zimbabwe Defence Industries Ltd. Yet, the mine is not developed and struggles to attract further investors. Platinum could come from other sources, including large-scale platinum mines in Zimbabwe. In autumn 2020 Bloomberg journalist Marawanyika revisited Grand Dyke Investments, which lies 65 kilometres outside of Harare, only to learn that significant amounts of funding still are needed to transform the exploration site into a platinum-producing mine.[82]

The common trend among the reported RBLs entered Zimbabwe is the involvement of the military and the opaqueness of the agreements. Information regarding the RBLs is mainly based on rumours in the media and media statements and reports. The governments of Zimbabwe, China, Belarus or Russia do not seem to want to be transparent on the terms of

78 O Manayiti 'Belarus gold mining deal questioned' (4 November 2018), https://www.thestandard.co.zw/2018/11/04/belarus-gold-mining-deal-questioned/ (accessed 21 October 2020).

79 https://allafrica.com/stories/202001310661.html

80 G Marawanyika (2019), https://www.bloomberg.com/news/articles/2019-05-20/zimbabwe-got-loan-from-afreximbank-using-platinum-as-collateral (accessed 21 October 2020).

81 R Ndlovu & L Prinsloo (2019), https://www.bloomberg.com/news/articles/2019-05-22/zimbabwe-secures-500-million-backed-by-an-unmined-metal-deposit (accessed 10 January 2021).

82 G Marawanyika (2020), https://www.bloombergquint.com/business/russian-plan-to-dig-biggest-zimbabwe-platinum-mine-clears-hurdle (accessed 10 January 2021).

the agreements, which in turn impedes citizen accountability and scrutiny. Mortgaging natural resources is a clear sign of a lack of creditworthiness and a struggle to attract banks as lenders. Minerals become Zimbabwe's last resort.

Given the increasing need to finance the economic recovery of a country negatively impacted by the COVID-19 pandemic and its limited access to finance, Zimbabwe still has to engage international commercial entities, RBLs may seem attractive to the government going forward. It is worth noting that other than mortgaging its resource for loans, Zimbabwe has also been swapping some of its resource rights in return for infrastructure development in what is known as resource-for-infrastructure (R4I) swaps (see Table 2). The NRGI data set shows that between 2004 and 2016 Zimbabwe contracted RBLs that constitute 2 per cent of the GDP.

Table 1: Data on some of the RBLs in Zimbabwe

Agreement years	Loan Value ($)	Borrower entity	Lending country	Lender entity	Associated Project
2004	110	ZESA- Rural Electrification Agency	China	CATIC	Purchase of rural electrification agency equipment
2006	200	Government	China	Eximbank	Purchase of agricultural equipment
2011	98	Government	China	Eximbank	Construction of the National Defence College

(Source: Data Extacted from the Resource Backed Loans : Pitfalls and Potential. A report by the NRGI)

Table 2: Data on R4I swaps in Zimbabwe

Year	Project Description	Loans	Terms			Conditions (resource used	Additional agreements to secure the loan
			Interest	Grace	Period in years, per cent in years		
2007	Construction of three thermal plants and chrome mine	$1.3 billion	A memorandum of understanding was signed to finance three power plants with chrome export revenues. Reports issued in 2010 indicate that the agreement had not materialised				
2009	Development of platinum mine	$ 5 billion	A memorandum of understanding was signed to 50 per cent equity in a $40 billion platinum concession for a $5 billion concession credit line. In 2011 a credit line limited to $3 billion was still under discussion				
2011	Construction of the National Defence College	$98 million	2 per cent	7	20	Diamonds from Marange	If there is any change of laws for government policies in Zimbabwe making it difficult for either party to perform its obligation, China could declare all the sum payable immediately

Source: (Konijn 2014, Chinese Resources- For Infrastructure (R41) Swaps: An Escape from the Resource Curse)

13.7 RBLs and Zimbabwean laws

Even though Zimbabwean laws do not specifically mention RBLs, some legal provisions regarding public finance management, especially on debt and borrowing, are worth noting. To begin with, the Constitution of Zimbabwe has a comprehensive chapter on public finance management (chapter 17) with section 298 clearly setting out the principles that should guide public finance management in Zimbabwe. In terms of section 298(1)(a) of the Constitution, one of the key aspects of public financial management is that there must be transparency and accountability in financial matters. Transparency is defined as 'increased flow of timely and reliable economic, social and political information, which is accessible to all relevant stakeholders'.[83] Accountability can be either vertical in that it is demanded from below by citizens, or horizontal in that institution of the state check abuses by other public agencies and branches of government and impose a requirement to report sideways.[84] With RBLs, the Zimbabwean government seems to be ignoring this critical provision. Information regarding the extent of the loan, repayment terms and period and the quantity and value of the minerals exchanged for the loans is hard to obtain. This makes it difficult for citizens to participate and hold the government to account where RBLs are concerned. Section 298(1)(f) goes even further to mention that public borrowing and all transactions involving the national debt must be carried out transparently and in the best interests of Zimbabwe. Considering the RBLs discussed earlier, one would wonder whether they are in the best interests of Zimbabwe or are only saddling present and future generations with debt and mortgaging the future of Zimbabwe. In a country where the public health system was failing and the education system deteriorating around the time when RBLs with AFECC were entered into, it cannot be said that these loans were contracted in the best interests of the country.

Closely related to transparency is the right of citizens to access information held by the government and public entities to enforce a right or for public interest and accountability. Without credible and timely information on RBLs, citizens and other government agencies cannot hold the responsible ministries to account as expected in terms of section 298(1) of the Constitution of Zimbabwe. In support of the correlation

83 T Vishwanath & D Kaufmann ' Towards transparency in finance and governance' (2003) *SSRN Electronic Journal* 10.2139/ssrn.258978 (accessed 26 October 2020).

84 A Schedler 'Conceptualizing Accountability' in L Diamond, MF Plattner & A Schedner (eds) *The self-restraining state: Power and accountability in new democracies* (1999).

between access to information and accountability, the High Court of Zimbabwe in *Hitschmann v City of Mutare* observed:

> There is no doubt access to information held by public institutions more so for purposes of ensuring that they complied with the law in carrying out their obligations ensures accountability by these public bodies. If the courts fail to give effect to these constitutional provisions that promotes transparency and accountability by public bodies, then the ability of citizens to hold public actors to account will be violated.

Dealing with similar provisions of access to information in the South African Constitution, the Constitutional Court in *Brűmmer v Minister for Social Development and Others* held:[85]

> The importance of this right … in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed, one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency 'must be fostered by providing the public with timely, accessible and accurate information.

The manner in which RBLs are contracted in Zimbabwe does not seem to respect the principles of public finance management set out in the Constitution. For instance, the RBL involving AFECC, China Eximbank, Anjin and the construction of the National Defence College was only made available to Parliament for approval within 24 hours before the date of debate, which many legislators viewed as not sufficient time to read and meaningfully debate the agreement.[86] While the debate in Parliament allowed for some of the terms of the agreement to become public, such as the 2 per cent per annum interest to the loan, seven-year grace period within which only interest will be paid, repayment in bi-annual instalments for 13 years and the preferential treatment of Chinese goods, technologies and services during the construction of the National Defence College, this disclosure does not meet the requirements of prompt and timely disclosure as the public was aware of the provisions only after the agreement had been signed by the executive and approved by Parliament.[87] While this RBL was contracted before the promulgation of the current Constitution, the government has not changed the manner in which it conducts itself

85 2009 (6) SA 323 (CC) para 62.

86 http://archive.kubatana.net/html/archive/legisl/110606veritas.asp?sector-legisl (accessed 26 October 2020); House of Assembly Hansard Zimbabwe (31 May 2011).

87 World Bank (n 5) 1.

with regard to RBLs, as the alleged agreements involving Belarus and Russia indicate.

In addition to citizens' accountability, Parliament also has a role to play in oversight where RBLs are concerned. The Constitution of Zimbabwe empowers Parliament to play a vital oversight role on loan agreements and public debt, and this includes RBLs. For instance, section 300 gives Parliament the power to enact a law that sets limits on the borrowing by the government, the public debt and debts whose repayments are guaranteed by the government of Zimbabwe. The section went on further to provide in terms of subsection (4)(b) that the minister has an obligation to report twice annually to Parliament on the performance of loans raised by the state, and loans guaranteed by the state. In keeping with section 300, the Public Debt Management Act (chapter 22:21) was promulgated into law in 2015.

While the Public Debt Management Act has provisions compelling the government of Zimbabwe to obtain parliamentary approval of borrowing in excess of limits set by law (70 per cent of the national GDP) which may apply to RBLs, the setup of the Parliament proves to be a limitation to the effectiveness of these provisions. The Zimbabwean Parliament tends to be dominated by one party which also constitutes the government and, given that the Parliament operates through a whipping system, the independence and watchdog role of Parliament is adversely impacted.[88] Another constitutional provision of importance in the RBL discourse is section 327 of the Constitution of Zimbabwe. Section 327(3) provides:

> An agreement which is not an international treaty but which (a) has been concluded or executed by the President or under the President's authority with one or more foreign organisations or entities, and (b) imposes fiscal obligations on Zimbabwe, does not bind Zimbabwe until it has been approved by Parliament.

This provision is encompassing and covers RBLs. In a functioning democracy, this provision provides an opportunity to ensure that RBLs or any other agreements entered into by the government are in the national and public interest. Parliamentary oversight is an important tool.[89] The

88 P Mushoriwa 'Improving the investment climate – Suggestions on legal aspects of public debt management', http://www.mushoriwapasi.co.zw/2020/04/13/improving-the-investment-climate-suggestions-on-legal-aspects-of-public-debt-management/ (accessed 21 October 2020).

89 S Mtisi & M Matsvaire 'Secretive constitutional amendment mischief: Implications of Constitutional Amendment Bill No 2 on Transparency and Accountability in Zimbabwe's Mining Sector', http://www.zela.org/secretive-constitutional-

import and nature of parliamentary oversight on RBLs and mining contracts in general in Zimbabwe is further at risk as the government is proposing an amendment to section 327 through clause 23 of the Constitutional Amendment Bill. The amendment seeks to remove the requirement of parliamentary approval on agreements signed between the government and international entities. The proposed amendment and the failure of the government to enact a law to provide for the negotiation and performance of mineral concessions and other rights is an indication of the unwillingness of the government of Zimbabwe to promote transparency and accountability in the mining sector.

13.8 Conclusion

This chapter has shown that as a result of economic contraction which started way back in 2000, Zimbabwe engaged in the process of mortgaging its resources in return for loans. The mortgaging of resources through RBLs is likely to continue in the future as the Zimbabwean economy has taken a hit from the COVID-19 pandemic. Comparing RBLs across the African continent, the Zimbabwean examples are in line with challenges these loans have caused. An assessment of the Zimbabwean RBLs that have been known to be signed so far reveals that RBLs have been opaque and involved little or no citizen participation, lack parliamentary oversight and some have resulted in gross human rights violations, such as the conduct of Anjin Investments in the diamond field of Marange. Governmental regulation regarding RBLs is increasing instead of restricting and reducing their risks. There is a need, therefore, for several policy responses to this challenge. In terms of Domestic Resource Mobilisation (DRM), Zimbabwe needs to consider financing its own development not through loans but through innovative ways that include improving the tax regime to allow more investors, curtailing corruption to avoid leakages in the mining sector as well as promoting value addition on raw materials. In the short run, there is a need for a policy and law to guide the contraction of loans through the mortgaging of resources, and Parliament needs to be involved in that process. That law and policy should spell out a threshold of what is permissible in terms of resource mortgaging. Parliament's involvement in this process is under threat from the proposed constitutional amendment 23 which seeks to remove Parliament from reviewing performance contracts in Zimbabwe. It becomes critical for civil society in Zimbabwe to lobby and advocate parliamentary oversight over all mining contracts. Parliament also needs capacitation so that they have an informed view

amendment-mischief-implications-of-constitutional-amendment-bill-no-2-on-transparency-and-accountability-in-zimbabwes-mining-sector/ (accessed 26 October 2020).

when they review contracts and licences. Transparency will be key in any RBL to come, both in the contraction of new loans and the monitoring and progress of debt servicing.

On the other hand, there is also a need for the international community to demand the same amount of transparency, room for rescheduling and restructuring, obligations for responsible resource-based lending and borrowing and financial oversight as there is for traditional loans. RBLs have so far received little attention. Responsibility lies not only nationally but also globally. The future generation's resources should not be sold out for today's short-lived greed.

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