14 Towards utilisation of domestic resources in settling Zimbabwe's sovereign debt

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14.1 Introduction

Currently, there are discussions involving Zimbabwe and international financial institutions and countries to which it owes money. The profile of these creditors include the World Bank, the African Development Bank (AfDB), Paris Club creditors and other creditors. These ongoing discussions are part of efforts to have the over US $8 billion external debt restructured.[1] Zimbabwe has submitted several proposals for a debt-restructuring process to those institutions and countries to which it owes money. Zimbabwe's external debt stand at around US $8,2 billion, of which US $6,34 billion is accumulated arrears. Multilateral institutions are owed US $2,65 billion, of which 90 per cent are arrears. To the World Bank Group, the arrears are US$1.33 billion, for African Development Bank US$689 million while arrears to the European Investment Bank are US$ 329 million and US$ 28 million are for other multilateral creditors. Bilateral external debt is estimated to be US$5.56 billion, of which arrears constitute 71 per cent of the bilateral debt. Of this amount, US $3,63 billion is for Paris Club creditors while the remaining US $1,63 billion is for non-Paris Club creditors.[2] These external arrears prevent the country from accessing fresh financing from global financial institutions and traditional bilateral and commercial creditors. Zimbabwe is one of the highly-indebted countries in the world but was not considered in the Highly Indebted Poor Countries (HIPC) Initiative and the Multilateral Debt Relief Initiative (MDRI) as it did not meet the criteria.[3] The situation is exacerbated by the COVID-19 pandemic and its economic impacts, which needs urgent attention in terms of preventative measures as well as for the vaccination programme.

1 Zimbabwe, The National Budget Statement, presented to the Parliament of Zimbabwe on 26 November 2020, by Prof Mthuli Ncube, Minister of Finance and Economic Development, Harare.

2 As above. See also https://www.afdb.org/en/countries/southern-africa/zimbabwe/zimbabwe-economic-outlook (accessed 1 January 2021).

3 See International Monetary Fund Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) Statistical Update, December 2014 7.

The concept of sovereign debt management and restructuring is broad.[4] In the case of Zimbabwe, it encompasses the repayment of the principal amount and interest thereon, and also

> negotiations and application of new loan agreements with private banks and international financial institutions (IFIs); establishment of a new structured framework for re-engaging with the international community – so as to normalise relations and seek removal of economic and political sanctions; utilisation of donor grants, special drawing rights (SDRs) and new loans; introduction of new debt instruments; and debt restructuring.[5]

This chapter focuses on public external debt. This refers to loans and borrowings that are made by creditors located outside the country's borders in foreign currency with a view to supplementing domestic financial resources.[6] It also includes government guaranteed loans that are taken by parastatals, private entities such as banks or even individuals. Thus, public and publicly-guaranteed external debt (PPGED) refers to both debts to foreign creditors taken by the government itself and those the government has guaranteed.

This chapter, therefore, seeks to evaluate the Zimbabwean strategies with which Zimbabwe has come up in its sovereign debt restructuring. It will start by giving a brief background on how Zimbabwe has managed its sovereign debt. This is followed by a discussion on sovereign debt management strategy and plans that were implemented in Zimbabwe between 2010 and 2020 and an examination of the current challenges. It will analyse a set of proposals that have been suggested to date and test their suitability as responses to the current debt crises in the light of the challenges posed by the COVID-19 pandemic.

14.2 Background to and context of the Zimbabwe's public debt

Sovereign debt has a long history in Zimbabwe.[7] The debt history of Zimbabwe cannot be fully appreciated outside the political context. For

4 US Das, MG Papaioannou & C Trebesch 'Sovereign debt restructurings 1950-2010: Literature survey, Data, Stylised Facts, IMF Working Paper 2012 7.

5 T Saungweme & NM Odhiambo 'A critical review of the dynamics of government debt servicing in Zimbabwe' (2018) Studia Universitatis 'Vasile Goldis' Arad Economics Series Vol 28 Issue 3/2018 ISSN: 1584-2339; (online) ISSN: 2285-3065.

6 C Mbawu & P Nkala 'A critical review of the implementation challenges of the Zimbabwe Accelerated Arrears Clearance Debt and Development Strategy (ZAADDS)' (2018) 9 *Journal of Economics and Sustainable Development* 13.

7 N Mupunga & P le Roux 'Analysing the theoretical and empirical foundations of

this reason, the history has been divided into four phases, which will be discussed in detail in the following paragraphs.

The first phase was from independence to 2008, where there was accumulation of debts and a reluctance to repay under the ZANU PF government. At independence in 1980 Zimbabwe inherited US $700 million from the Rhodesian government of Ian Smith.[8] The Rhodesian government was using the money to buy weapons in the 1970s to use in the war against the people of Zimbabwe who wanted independence. Such purchase of arms by the Rhodesian government was against United Nations (UN) sanctions. The Zimbabwean government was under international pressure to take on the debt, which pressure was accompanied by promises of donor funding for reconstruction and development by Western countries that promised over US $2 billion for this purpose.

It may be argued that the debt inherited by Zimbabwe from the Rhodesian government was an odious debt.[9] The concept of odious debts usually is invoked where there is a change in political regime. The new regime would seek to avoid, in whole or in part, some debts that were incurred by its predecessor, on the grounds that they were used in a way that was harmful and not beneficial to the interests of the people of the country. Thus, this becomes both a moral and legal justification for not honouring the debt. The concept has been raised in the concept of state succession where the original debtor has ceased to exist. Arguably, it can apply even where there is a change of government.

However, the doctrine is difficult to successfully argue in practice. One of the challenges is that the creditor should have knowledge of the odiousness of the debt. It is difficult to prove the subjective knowledge of the creditor. Furthermore, a country would not wish to raise the doctrine of odious debts as it may affect the creditworthiness of the regime. Creditors may be hesitant to lend to the regime in the future.[10]

public debt dynamics in Zimbabwe' (2014) *Economic Research Southern Africa* (ERSA) 1; MA Matandare & J Titi J 'Public debt and economic growth nexus in Zimbabwe' (2018) 9 *Journal of Economics and Sustainable Development* 84; Saungweme & Odhiambo (n 5) 20.

8 African Forum and Network on Debt and Development (AFRODAD) 'The impact of indebtedness on human rights in Zimbabwe' (2019) *Africa Portal* 11.

9 KS Openshaw & CR Terry 'Zimbabwe's odious inheritance: Debt and unequal land distribution' (2014) *JSDLP-RDPDD* 42.

10 R Howse 'The concept of odious debt in public international law' Discussion Paper 185, July 2007, UNCTAD, United Nations, UNCTAD/OSG/DP/2007/4.

The 1980s were characterised by borrowing by the Zimbabwean government. Although Zimbabwe was promised developmental aid by Western countries, such aid did not materialise. Instead, Zimbabwe had to borrow to pay the Rhodesian loan as well as for the reconstruction after the destruction by the war. Furthermore, Zimbabwe also borrowed funds for drought relief. Some bilateral loans were tied to purchasing goods from the lending countries. For instance, the United Kingdom (UK) was tied to buying products from British companies such as General Electric. In addition, there were UK-backed loans that were given to Zimbabwe for the purchase of British-made Hawk aircraft. By the end of the 1980s Zimbabwe was spending a quarter of government revenue on debt repayment.

By 1990 Zimbabwe had to take financing loans from the International Monetary Fund (IMF) and the World Bank, in order to keep repaying the debt.[11] However, the IMF and World Bank pressured the government to liberalise its economy and to cut down on public spending. As a result, the 1990s were characterised by cutting down on public expenditure, trade liberalisation, deregulation of financial markets and prices and the relaxation of labour laws. These suggested economic policy reforms were expected to yield higher economic growth, bigger trade surpluses and increase the employment rate in the country. However, in practice the opposite results were achieved. Between 1990 and 1997 the economic growth retarded. Furthermore, the rate of unemployment almost doubled and there was a huge trade deficit. As a result, Zimbabwe started to default on its debt in 2000.[12]

Between 2000 and 2010 Zimbabwe was in default and did not even bother to make any payment plans. Prior to 2010 there was no comprehensive debt resolution strategy. As a result, arrears on external debt payments continued to accumulate. This has affected Zimbabwe's creditworthiness, especially with respect to multilateral financial institutions such as the IMF and the World Bank. These debts and arrears are blocking further access to multilateral financial institutions and are hampering the attraction of foreign direct investment. This in turn makes it difficult to revive and resuscitate the economy.

Thus, the first phase was characterised by the taking of new loans to repay other loans. It seems as if that was the debt strategy that backfired as the government started to default on the payment of the debts and accumulated many arrears and was left with a debt overhang. This

11 Mbawu & Nkala (n 6) 10.

12 Mupunga & Le Roux (n 7) 1; Mbawu & Nkala (n 6) 10.

development is consistent with the debt overhang theory, which states that where a government has defaulted and has a large debt obligation, it has no incentive to repay, especially when it has been in power for a long time.[13]

The second phase is from 2008 to 2013. The year 2008 witnessed a Global Political Agreement which saw the formation of the Government of National Unity (GNU) which was made by the then three main political parties, namely, the Zimbabwe African National Union Patriotic Front (ZANU PF); the Movement for Democratic Change (MDC); and the Movement for Democratic Change N (MDC-N). Mr Tendai Biti was appointed Minister of Finance and Economic Development and he spearheaded efforts to re-engage the creditors and discuss strategies for arrears and debt clearance. In terms of strategies and plans, the Zimbabwean cabinet approved the Zimbabwe Accelerated Arrears, Debt and Development Strategy (ZAADDS) in 2010.[14] This was the road map for the clearance of arrears and payment of debt. It was under the ZAADDS where a Debt Arrears Clearance Committee was formed, and in 2015 the Committee came up with the payment plan that was known as the Lima Plan, 2015-2018. The ZAADDS and subsequent plans are discussed in detail later in this chapter.

During the GNU, there was a new Constitution that also dealt with issues of public debt management. In 2010 the government established the Debt Management Office as a department in the Ministry of Finance. In 2015 this office was established on a statutory basis in terms of the Public Debt Management Act.

Overall, the second phase during the GNU was characterised by a drive to repay the external debts as evidence by several reforms that were made, including the debt strategies, the debt office as well as constitutional reforms concerning sovereign debts. This can be explained in light of the debt overhang theory, which states that where there is a change in government, the new government would want to clear the old debts, since it needs new financing and has little incentive to postpone payments on the old debt.

The third phase started at the end of the GNU. The tenure of the GNU ended in 2013 and the ZANU PF government was back in power. The momentum in coming up with strategies for debt repayment continued

13 K Keboyashi 'A theory of public debt overhang' (2013), https://ideas.repec.org/p/hit/cisdps/589.html (accessed 15 January 2021).

14 www.zeparu.co.zw

as witnessed by the passing of the Public Debt Management Act in 2015. Furthermore, the Debt Arrears Clearance Committee, which was formed in 2015, came up with the payment plan which was known as the Lima Plan, 2015-2018.[15] However, there was no proper implementation of the plan, as will be discussed later in this paper. As a result, the Lima Plan was not successful.

The final phase started in November 2017 and continues to the present. November 2017 witnessed the removal from power of Zimbabwe's President Robert Mugabe who had been in power for 37 years. He resigned amid protests by the people and a pending impeachment effort in Parliament. His resignation divided opinion as some were of the view that it constituted a *coup d'état*. However, that discussion is beyond the scope of this chapter. What is worth noting is that the post-Mugabe period, which saw the appointment of a new President, Emmerson Dambudzo Mnangagwa, is known as the Second Republic. As the new government, it is making concerted efforts to re-engage with the international community and implement the repayment plan.

However, the Second Republic has not had a smooth ride due to the outbreak of natural disasters and the COVID-19 pandemic. In 2019 and 2020 the Zimbabwean economy sustained a recession wherein it was estimated that that the gross domestic product (GDP) contracted by -6 per cent and -4.1 per cent respectively.[16] This is mainly due to the contraction in many sectors of the economy, including agriculture, mining, manufacturing, tourism and electricity generation.

14.3 Importance of sovereign debt management in Zimbabwe

Literature suggests that there is a relationship between government debt servicing and economic growth.[17] High debt-servicing costs create economic and financial uncertainties and discourage foreign investment.[18]

15 www.rbz.co.bw

16 Republic of Zimbabwe, National Development Strategy 1, January 2021 to December 2025, 16 November 2020, Harare, 5.

17 J Roos *Why not default? The political economy of sovereign debt* (2019); Saungweme & Odhiambo (n 5); A Carlos, P Braga & GA Vincelette *Sovereign debt and the financial crisis: Will this time be different?* (2011); L Rieffel *Restructuring sovereign debt: The case for ad hoc machinery* (2003); M Megliani *Sovereign debt: Genesis-restructuring-litigation* (2015); Das et al (n 4); DS Kamlani 'The four faces of power in sovereign debt restructuring: Explaining bargaining outcomes between debtor states and private creditors since 1870' PhD thesis, London School of Economics and Political Science, 2008.

18 B Clements, R Bhattacharya & T Nguyen 'Can debt relief boost growth in poor

Currently, Zimbabwe is in debt arrears. The Zimbabwean debt status has been dubbed as a development issue without the 'resolution [of which] there shall be no access to development resources from the international financial institutions'.[19] The arrears status with multilateral creditors has rendered the country ineligible to access funding from these institutions, as well as most other sources of finance. Clearing the external debt would unlock fresh capital injections 'which would accelerate inclusive and sustained economic growth and poverty reduction[20] and would normalise relations with creditors'. Therefore, the need to clear arrears is critical.

Zimbabwe's debt burden has affected the country's credit rating. Zimbabwe has lost out on several funding opportunities from international creditors. This has led to the suspension and or cancellation of a number of projects.[21] The projects that stalled include the US $400 million package from China for the expansion of the Kariba South power station;[22] the US $15 billion per year World Bank's Infrastructure Recovery Asset Platform; the US $ 500 million Rapid Social Response Programme; and the US $10 billion Infrastructure Crisis Facility.[23] Thus, the resolution to the burden 'will unlock fresh financing for critical infrastructure reconstruction projects and economic recovery programme that will significantly improve the quality of life of the ordinary Zimbabwean'.[24]

countries?' (2005) International Monetary Fund Economic Issues 34; J Baneth 'Some determinants of debt service sustainability in low-income aid dependent countries' (2003) 1; P Krugman 'Financing vs forgiving a debt overhang' (1988) 29 *Journal of Development Economics* 407; TJ Moss & HS Chiang 'The other costs of high debt in poor countries: Growth, policy dynamics, and institutions' Issue paper on debt sustainability 3, Centre for Global Development (2003) 1.

19 A Bvumbe cited 'On addressing Zimbabwe's huge debt burden', Brown Bag Dialogue Series, UNDP.

20 Zimbabwe Strategies for Clearing External Debt Arrears and the Supportive Economic Reform Agenda (2015) 2.

21 United Nations Development Programme 'Why a debt overhang is not good for the economy' Brown Bag Dialogue Issues 3.

22 As above.

23 As above..

24 Tendai Biti (former Minister of Finance) Foreword to the Zimbabwe's Accelerated Arrears, Debt and Development Strategy (ZAADDS).

14.4 A decade of debt management in Zimbabwe: An assessment of Zimbabwe's sStrategy 2010-2020

14.4.1 The Zimbabwe Accelerated Arrears, Debt and Development Strategy, 2010

This is the debt resolution strategy that was initiated in 2010 during the inclusive government. It was aimed at resolving Zimbabwe's debt problem. This strategy was motivated by the need to deal with Zimbabwe's unsustainable debt overhang and the country's lack of capacity to address the debt burden and attract new financing. This was during the GNU when there were serious attempts at dealing with the country's debt crisis. During this period there were several debt serving challenges that were faced by Zimbabwe.[25] These included 'liquidity constraints due to poor economic performance; lack of proper public sector financial management principles; improper composition and structure of the public debt; low investor confidence; low industrial and export competitiveness; and poor economic relations with the international donor community'.[26] The main features of the strategy were the following:

- the establishment and operationalisation of the Debt Management Office;
- reconciliation and validation of external debt;
- negotiating with creditors for arrears clearance, debt relief and new financing;
- re-engagement with international community on the removal of sanctions; and
- leveraging resources for debt clearance.

There are legal instruments that work hand in glove to operationalise this strategy.[27] The main instrument is the Public Debt Management Act 4 of 2015, which provides for the management of public debt in Zimbabwe; the establishment of the Public Debt Management Office on a statutory basis and provision for its functions and administration; provisions for the raising, administration and repayment of loans by the state and for the giving of guarantees in respect of certain loans; among other things. Other legislation includes the Constitution of Zimbabwe, the

25 D Danha et al 'Zimbabwe Equity Strategy 2015: At cross roads' (2015) Harare: IH Securities; International Monetary Fund (2016b); Zimbabwe 2016 Article IV Consultation: Staff Report; Press Release; and Statement by the Executive Director for Zimbabwe. Washington DC: International Monetary Fund.

26 Saungweme & Odhiambo (n 5).

27 As above.

Reserve Bank of Zimbabwe Act (chapter 22:15), the International Bank Loans Assumptions Act (chapter 22:08) and the Former Administration (Liabilities) Act (chapter 22:06). The main features of the ZAADDS are discussed below.

The establishment and operationalisation of the Debt Management Office

This office was established and became operational in 2010. In 2010 it was established merely as a department in the Ministry of Finance and Economic Development. In 2015 the Public Debt Management Act was passed which provided a statutory basis for the Debt Management Office. This Act also stipulates the functions and administration of the Debt Management Office. It also provides for the raising, administration and repayment of loans by the state and for giving guarantees in respect of certain loans. The functions of the Debt Management Office are provided for in section 5 of the Act. The Public Debt Management Office advises the Minister of Finance and Economic Development with respect to borrowings, negotiates with creditors on government borrowing and guaranteed loans, prepares and publishes annual borrowing plans as well as a medium-term debt management strategy. It also compiles and reports on all public debt arrears.

The ZAADDS encountered several implementation challenges and was subjected to much criticism. The Debt Management Office has been accused of lacking autonomy, resources as well as capacity.[28] Negotiations with creditors for arrears clearance, debt relief and new financing have not been successful. Zimbabwe is in a weak position in these negotiations and there is a lack of trust and confidence by creditors.[29] In addition, creditors have been accused of double standards when dealing with Zimbabwe. Furthermore, the operation of the principle of comparable treatment of creditors affects efforts at creditor negotiating. The attempt to leverage resources for debt clearance has been unsuccessful due to the fragile economic situation, disagreements on the valuations of resources as well as government's inconsistencies on natural resources policies.[30]

Reconciliation and validation of the external debt

The exercise to verify the actual amounts the government owes began in 2011. This audit is also a way of mitigating against fiscal indiscipline. The

28 Mbawu & Nkala (n 6) 20.

29 Mbawu & Nkala (n 6) 22.

30 C Mbaiwa Zimbabwe Coalition on Debt and Development, Sustainable and Inclusive management Framework for Zimbabwe (SIDMaF) (2019) 23, ZIMCODD: Harare.

main criticism of this exercise is that it lacks transparency. The information on reconciled and validated debt statistics is not publicly availed and even when done, it would be late.

Negotiation with creditors

In terms of the ZAADDS, the government would negotiate with creditors for arrears clearance, debt relief and new financing. In pursuit of this strategy, the government successfully engaged with the IMF to undertake a staff-monitored programme, which was successfully completed in 2015. The programme focused on key reforms showing that the country has the capacity to undertake the reforms required for funds-supported programmes. This was a pre-condition for negotiating arrears clearance and debt relief. Furthermore, in 2015 the government constituted a Debt Arrears Clearance Committee (DACC). The mandate of this Committee was to develop strategies to resolve the country's debt burden mainly with respect to international financial institutions. The Committee came up with the Lima Plan which was presented at the sidelines of the IMF/ World Bank annual meeting in Peru that was held from 8 to 12 October 2015. The plan was accepted by the creditors, namely, the African Development Bank, the Work Bank and the IMF. The details of the Lima Plan are discussed in the following part.

14.4.2 The Lima Plan, 2015

The Lima Plan (2015-2018) was the debt and arrears clearance plan that Zimbabwe negotiated with its international creditors. It involved the following:

- the use of domestic resources; it already transferred part of its special drawing rights (SDR) holdings kept by the IMF to clear the US $107,9 million debt in arrears;
- the use of a bridging loan, where African Export-Import Bank (Afrexim Bank) was to pay the AfDB loan; and
- the use of medium to long-term loan facility to pay other creditors, including the World Bank.

In accordance with the above plan, Zimbabwe managed to clear its US $107,9 million arrears with IMF in 2016. However, it is still in the process of settling a debt of about US $2,2 billion to other international financial institutions, including the World Bank and the AfDB.[31] The

31 M Mutize 'Zimbabwe wants to raise money through a sovereign bond: Why is this ill-advised' *The Conversation* (5 August 2020).

Lima Agreement expired in November 2018.[32] The Lima Plan was not implemented effectively due to non-conclusive negotiations on settling outstanding arrears. The international creditors wanted the implementation of some economic reforms that include enhancing investor confidence, the transformation of state-owned enterprises, the ease of doing business and fiscal consolidation. Zimbabwe did not undertake these reforms to the satisfaction of the international creditors, so the anticipated financial support did not materialise.[33]

14.4.3 The Transitional Stabilisation Programme 2018 to 2020

The Transitional Stabilisation Programme (TSP) is one of the main economic plans laid down in Zimbabwe's Second Republic in order to resuscitate the economy. It was spearheaded under the new Finance Minister, Professor Mthuli Ncube. Among other things, the TSP sought to integrate Zimbabwe into global financial markets.[34] This includes re-engaging cooperating partners over resolving Zimbabwe's external payment arrears. It also involves putting in place a comprehensive and coherent macro-economic policy framework, underpinned by a strong programme of fiscal adjustment and structural reforms.

At the time when the TSP was formulated, Zimbabwe's foreign debt amounted to about US $5,6 billion which consisted of the following:

- multilateral creditors, US $2,2 billion;
- the Paris Club, an informal group of creditor nations, US $2,7 billion;
- non-Paris Club creditors, US $700 million.

The TSP emphasised that in terms of sequencing, Zimbabwe needs to first and simultaneously clear its arrears to the AfDB, the World Bank and the European Investment Bank. This would be done as part of efforts to unlock external new financing required by the productive sectors.

32 B Mpofu 'Why Lima plan stalled' *The Independent* (15 September 2017).

33 Zimbabwe Coalition on Debt and Development, Statement on Arrears Clearance Strategy, 2015; T Biti 'Putting lipstick on a crocodile: Zimbabwe's sinister reengagement agenda' (16 April 2016), www.facebook.com (accessed 10 November 2020); PA Chinamasa *Zimbabwe: Strategies for clearing external debt arrears and the supportive economic reform agenda* (September 2015).

34 Zimbabwe 'Transitional Stabilisation Programme Reforms Agenda October 2018-December 2020: Towards a prosperous and empowered upper middle-income society by 2030' (5 October 2018); Harare; Labour and Economic Development Research Institute (Zimbabwe), Review of the Transitional Stabilisation Programme (TSP) (August 2020); L Chitongo, P Chikunya & T Marango 'Do economic blueprints work? Evaluating the prospects and challenges of Zimbabwe's transitional stabilisation programme' (2020) 9 *African Journal of Governance and Development*7.

14.5 Zimbabwe sovereign debt and COVID-19

The ZAADDS and the subsequent strategy were created without taking into account the COVID-19 pandemic, as by then it was not foreseeable. By early 2020, when the COVID-19 pandemic started to hit Zimbabwe, the country was already under a huge a heavy debt burden, and liable to pay debt arrears. The economy already was not performing well and the health delivery system was near collapse, punctuated by health personnel, including doctors and nurses, that were striking.

Faced with this challenge, the Zimbabwean government attempted to open negotiations and seek negotiations with its international creditors. On 2 April 2020 the Minister of Finance and Economic Development, Professor Mthuli Ncube, wrote a letter addressed to the heads of the IMF, the World Bank, the European Investment Bank, the AfDB and the Paris Club of Creditors.[35] The essence of the letter was to reschedule the payment of arrears and to allow Zimbabwe to access fresh finance in order to mitigate the effects of COVID-19.

The letter did not receive a favourable response. The Paris Club responded to this letter of assistance in the negative.[36] It gave the conditions that must first be met for Zimbabwe to normalise its relations with the international community. First, Zimbabwe had to implement substantive and sustainable political and economic reforms, in particular regarding respect for human rights, especially freedom of assembly and expression. Second, Zimbabwe should implement a staff-monitored programme by the IMF as an important first step of engagement. Third, Zimbabwe should clear World Bank and AfDB debt of over US $2 million.

This brings into question the relationship between sovereign debt and human rights. In 2012 the United Nations Commission on Human Rights came up with Guiding Principles on Foreign Debt and Human Rights.[37] These guidelines are meant to be followed by states and private, public, national and international financial institutions in the management of sovereign debt. These principles include the following:

- ensuring the primacy of human rights;
- equality and non-discrimination;

35 Reuters Staff 'Implement substantive reforms, Paris Club creditors tell Zimbabwe' *Reuters* (8 July 2020).

36 As above.

37 https://www.undocs.org/A/HRC/20/23 (accessed 20 January 2021).

- the progressive realisation of human rights;
- the state must ensure that the minimum core human rights obligations arising from debt repayment obligations are met;
- the obligation to avoid retrogressive measures on human rights obligations arising from debt repayment obligations or commitments;
- creditors and debtors share the responsibility of preventing and resolving unsustainable debt situations; and
- transparency, participation and accountability in debt contraction and management by the states.

Although these are only guidelines, they make a strong case for human rights considerations, which are very relevant in this time of COVID-19. Although these are not binding on the parties, it would have been better if the international creditors and Zimbabwe had attempted to find a common ground for renegotiation and relief for Zimbabwe during the COVID-19 pandemic. This would be in line with the UN Guiding Principles on Foreign Debt and Human Rights summarised above.

14.6 Options for Zimbabwe's sovereign debt restructuring

Zimbabwe is a complex issue. The debt burden is unbearable, given that 90 per cent of the total debt is made up of arrears and penalties continue to accrue unabated. The economy is at its worst and this is exacerbated by the COVID-19 pandemic and natural disasters such as floods and droughts. On a positive note, the government of the Second Republic is determined to re-engage with the international community as well as external creditors. Thus, this presents an opportunity for the country to be re-integrated into the international economy. However, there are complications that need to be overcome if Zimbabwe is to get out of this maze. This calls for the cooperation of both Zimbabwe and its various creditors.

It is undeniable that the first step that needs to be undertaken by Zimbabwe is to re-engage with creditors. Zimbabwe should develop its plans to be used as the basis for renegotiation with its creditors. Due to the divergence of creditors, there may not be a one-size-fits-all plan, hence the need for specific plans depending on the type of creditor and the governing legal framework. For instance, one plan can address international financial institutions, the other one for Paris Club creditors and another for non-Paris Club creditors. The issue of re-engagement is supported by the IMF in its Zimbabwe Debt Sustainability Analysis, where it recommended that Zimbabwe needs to reach 'an agreement with creditors on a comprehensive treatment of Zimbabwe's external debt and arrears'.[38] In the view of the IMF, the re-engagement with the international community would also help to restore debt sustainability.

There are options available to Zimbabwe to secure debt relief and restructuring. Professor Mthuli Ncube, who currently is Zimbabwe's Minister of Finance and Economic Development, has discussed some of the available options.[39] First, Zimbabwe can request to be considered for the HIPC Initiative.[40] However, this is not an easy option as the IMF and World Bank would need to re-open the HIPC eligibility requirements and determine whether Zimbabwe meets the criteria. One of the requirements is that Zimbabwe needs to demonstrate that it has performed well under the economic adjustment programmes of the World Bank and the IMF. Currently, Zimbabwe is on an IMF staff-monitored programme.

The second option presented by Professor Ncube is that the international community can create a *sui generis* debt relief approach for Zimbabwe.[41] The third is an *ad hoc* debt restructuring under the auspices of the Paris Club.[42] Given the complexities of Zimbabwe's crisis, it is suggested that a *sui generis* approach would be the most suitable as it takes into account Zimbabwe's peculiar situation. For example, Zimbabwe is not part of the Debt Service Suspension Initiative (DSSI) as it is in arrears to the International Development Association (IDA), causing it to be ineligible.[43] Since Zimbabwe is not part of the DSSI, it has to plead its case individually with the creditors for debt relief.

The question then would be, what should be the *sui generis* approach that should be followed by Zimbabwe?

First, Zimbabwe needs to clear its debts to the international financial institutions such as the World Bank and the AfDB, who are all preferred creditors.[44] It is only then that it can seek debt treatment by the Paris Club.

38 IMF Zimbawe Staff Report for the Article IV Consultations-Debt Sustainability Analysis (12 February 2020) 1.

39 M Ncube 'Zimbabwe's options for sovereign debt relief' *Daily Maverick* (3 September 2018).

40 As above.

41 As above.

42 As above.

43 See C Humphrey & S Mustapha 'Lend or suspend? Maximising the impact of multilateral bank financing in the COVID-19 crisis' Working paper 585 (July 2020), www.odi.org (accessed 13 January 2021).

44 G Chigumira, N Mupunga & E Chipumho 'An assessment of arrears clearance and sustainable debt options for Zimbabwe' Zimbabwe Economic Policy Analysis and Research Unit (ZEPARU) (November 2018).

Paris Club creditors 'provides debt treatments to debt countries in the form of rescheduling, which is debt relief by postponement or, in the case of concessional rescheduling, reduction in debt service obligations during a defined period or as of set date'. In the case of Zimbabwe, it will need to negotiate for a suspension of payment and a moratorium on interests for at least two years so that Zimbabwe has the space to deal with the challenges posed by the COVID-19 pandemic.

With respect to the payment plan to the international financial institutions, it is suggested that the Zimbabwe plan should have the following key elements in mind:

- the suspension of payment obligation for at least two years (as discussed above);
- the use of a bridging loan, from African Export-Import Bank (Afrexim Bank) and/or other source;
- the issuance of a long-term sovereign bond;
- the use of domestic resources to repay the bridging loan and other debts.

These elements, besides the payment suspension, are assessed in the following paragraphs.

14.6.1 Use of a bridging loan

A bridging loan is crucial for the success of the plan. A bridge loan is an interim financing facility for a government, business or individual that helps it until the next stage of financing is reached.[45] It generally is used to pay back an existing loan, as well as other capitalisation needs. Due to a lack of goodwill, it is very difficult for Zimbabwe to obtain a bridging loan or grants. The major criticism is that this borrowing to repay strategy results in the perpetuation of indebtedness.[46] During the Lima Plan in 2015 Zimbabwe sought to get a bridging loan from the Afrexim Bank and the negotiations were unsuccessful. However, there now is a change in the political leadership and the new leadership is keen to engage with creditors. Thus, the government can re-engage the Afrexim Bank. In October 2020 it was reported that Zimbabwe intends to borrow US $1,9 billion from G7 countries in order to repay its debts.[47] Thus, Zimbabwe can approach multiple sources for a bridging loan. However, once the bridging loan has been secured, there remains a need to re-pay that loan and other creditors.

45 Mbawu & Nkala (n 6) 10.

46 Carlos et al (n 17); Megliani (n 17); Das et al (n 4).

47 'Zimbabwe to borrow 1,9 billion USD from G7 countries to repay its debt' (15 October 2020), www.news.cn (accessed 3 February 2021).

It is recommended that such payments should be done using long-term sovereign bonds and domestic resources if Zimbabwe is to escape a debt trap. The main issue is to avoid taking other loans to pay the loan again.

14.6.2 Long-term sovereign bond

A long-term sovereign bond may be defined as 'a process where the government sells bonds to investors on either domestic or international financial markets to raise funds'.[48] It has been argued that a long-term sovereign bond is not the correct way to go in Zimbabwe at the moment.[49] This is because the economic and political conditions in Zimbabwe would make the pursuit of this a futile exercise because the poor performance of the economy.[50] Mutize highlighted the fact that these fundamentals relate to internal political and economic fundamentals. He highlighted some factors that are worthy of consideration.[51] First, Zimbabwe does not have a sovereign credit rating from international credit rating agencies. The rating plays an important part as a key input in determining yield and coupon payment on a bond. Although countries without sovereign credit ratings have sold bonds, this has been done at high rates. Second, there is currency instability caused by the introduction of a currency and subsequent loss of value. Third, the weak currency taints the attractiveness of the bond that is issued since it increases the risk of default and debt sustainability, particularly if repayments are to be made in hard currency. Fourth, the goodwill of the government has been eroded due to the economic crisis in the country coupled by a bad reputation on defaulting payments to international financial institutions. Fifth, the government has been hostile to the private sector. For instance, on 29 June 2020 the government ordered the closure of the stock exchange, accusing it of fuelling currency devaluation. The stock exchange was later re-opened. Thus, Zimbabwe should first demonstrate a political will to restore business confidence if it is to successfully issue a long-term sovereign bond.

14.6.3 Use of domestic resources

Mineral resources

One of the suggestions that have been touted is mortgaging revenues from mineral resources, which entails linking revenues from minerals to future

48 Mutize (n 31).

49 As above.

50 As above.

51 As above.

debt service payment.[52] Zimbabwe has a vast store of mineral resources which, if properly managed, can be used to repay the country's debts. At one point, the then President of Zimbabwe, Robert Mugabe, mentioned that Zimbabwe has lost around US $15 billion due to mismanagement.[53] At the moment, royalties from the proceeds of mineral resources to the government are not significant. A full discussion on this aspect has a whole chapter dedicated to it in the book.

Sale of municipal land around the biggest cities and sale of agricultural farms across the country

It has been mooted that Zimbabwe can sell municipal land around its cities in order to raise money for servicing the debts. While there is a demand for land in big cities, the cost of servicing the land may be high to the extent that there may be a small margin between the cost of servicing the land and the selling price. Furthermore, due to the bad performance of the economy, the buying power of most people has been eroded, with the result that there will be a low demand for such land sales. In addition, mortgage loans are not viable in the current economic situation of high inflation.

Alternatively, Zimbabwe can sell commercial farms for agricultural purposes. At its independence, Zimbabwe was known as the bread basket of Africa.[54] This was mainly because of viable land titling, especially freehold, which was for all commercial farms. Because the commercial farms were freehold land, they could be used as commercial security against loans that were meant for agricultural activities. This was one of the factors that supported productivity in the commercial farms. All this changed with the advent of the land reform programme from the late 1990s which saw most of the commercial farms being nationalised by the government.[55] One of the consequences of this nationalisation is a lack of productivity on the farms.[56] The land reform programme was

52 S Nkhata 'Leveraging on debt sustainability for sustainable development' Brown Bag UNDP.

53 See Staff Reporter 'Mugabe's missing $15 billion saga intensifies' (7 December 2017), https://www.iol.co.za/business-report/mugabes-missing-15-billion-saga-intensifies-12283828 (accessed 10 January 2021).

54 See http://www.fao.org/3/i6022e/i6022e.pdf (accessed 10 January 2021).

55 RG Muchetu 'Agricultural land-delivery systems in Zimbabwe: A review of four decades of Sam Moyo's work on agricultural land markets and their constraints' (2018) 57 *African Study Monographs.*

56 M Mutema 'Land rights and their impacts on agricultural efficiency, investments and land markets in Zimbabwe' (2003) *International Food and Agribusiness Management Review* 50.

characterised by chaos and farm invasion to the extent that the court ruled that there was no 'programme' at all.[57] The invaders had no title to the land and also did not have sufficient resources to continue with productivity. The government allocated some of the nationalised land to 'new farmers' who also had no title to the land except offer letters. As a result, the land could not be used as collateral in accessing loans from the banks. With these farmers having no resources, and unable to borrow, there is less productivity on the farms, which contributed to bad economic performances. Zimbabwe is now importing grains and meat.

To solve the issue of chaotic land reform, Zimbabwe has come up with a Land Commission that is tasked with the administration of agricultural land,[58] including the development of 99-year lease agreements with respect to agricultural land. For it to be effective, such a lease agreement should be bankable so that it can act as collateral. So far such a bankable instrument has not been developed and there are ongoing consultations with stakeholders. This can possibly be a viable option if such sale or lease is accompanied by a secure land tenure system. If properly administered, a substantial amount may be raised using this method. In addition, this will also promote agricultural production which can stimulate economic growth,[59] more than the sale of residential land.

14.7 Conclusion and recommendations

Zimbabwe is in debt crisis. Zimbabwe still faces the following major economic challenges: high government debt; low industrial and export competitiveness; a narrow revenue base; and subdued investor confidence. Zimbabwe has engaged in numerous debt-servicing reforms and policies, which included the re-engagement process with the creditor community, new public debt-servicing methods, such as the usage of special drawing rights in the payment of the IMF loan in 2016, and the contraction of new loans to pay off debt arrears, the use of domestic resources and efforts to campaign for the removal of sanctions.

In the context of the COVID-19 pandemic and human rights, it is recommended that international creditors should reconsider their stance and attempt to find a common ground for renegotiation and relief for Zimbabwe in this time of the COVID-19 pandemic. This would assist

57 *Commercial Farmers Union v Minister of Lands & Others* 2000 ZLR 469 (S).

58 Land Commission Act (ch 20:29).

59 S Moyo & W Chambati *Land and agrarian reform in Zimbabwe: Beyond white-settler capitalism* (2013).

Zimbabwe to have more resources towards the management, control and mitigation of the effects of the pandemic. This would be in line with the UN Guiding Principles on Foreign Debt and Human Rights. Zimbabwe needs the renegotiation of the payment plan and to commit to that payment plan. The government should implement the economic reforms previously agreed with multilateral lenders. These include the reduction of the government's double-digit fiscal deficit and adopting reforms to allow market forces to drive the functioning of foreign exchange and other financial markets. There is a need for a credible reform programme to stabilise and strengthen the economy.

Undoubtedly, there is a need for a bridging loan or facility to clear all the arrears. The downside of this method has been noted, but it is a necessary step in resolving the Zimbabwean debt conundrum. However, the clearance of such loan should be by the use of domestic resources. The most preferred way is through the sale of agricultural commercial farms, which have a ripple effect of stimulating economic recovery and growth.

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