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Research Paper

Legal Framework for the Management of External Public Debt in Zimbabwe

Victor Mapuvire[1], Davidzo Hope Mapuvire[2]

[1] *University of Johannesburg. PO Box 524 Auckland Park, Johannesburg. South Africa.*
[2] *Midlands State University, Zimbabwe. PO Box 9055 Gweru, Zimbabwe.*

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***Corresponding Author:**
Davidzo Hope Mapuvire
Email:
davidzomufema@gmail.com

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Abstract: The establishment of an effective governance structure consisting of a sound institution and legislative framework is one of the fundamental requirements for having a prudent and effective debt management system capable of ensuring debt sustainability in place. There are numerous legal arrangements that have been established by the GoZ for the management of the country's external public debt. This paper therefore examines the legal arrangements put in place for the management of external public debt in Zimbabwe. Methodologically, the paper was based on a qualitative approach and relied on secondary data obtained from original or primary sources. Findings from the paper reveal that, the legal framework for debt management in Zimbabwe comprises of; the Constitution of Zimbabwe Amendment (No. 20) Act 2013, the Public Finance Management Act [Chapter 22:19] of 2009, the Public Debt Management Act [Chapter 22:21] of 2015 as well as the Reserve Bank of Zimbabwe Act [Chapter 22:15] of 2010. However, even though such a legal framework somewhat meets the minimum acceptable standards for the management of external public debt, it can be noted that there have some areas of concern with the current legislation framework that required attention. Such a scenario therefore undermines the effective management of the country's external public debt. This paper thus recommends that there is need to reform the legal framework for the management of external public debt in Zimbabwe.

Keywords: Debt Management, External Public Debt, Legal Framework.

1. Introduction

The legal framework for det management is one of the crucial elements in the management of public debt as it provides clarity on the authority to borrow, issuing of new debt, invest, and conduct transactions on government's behalf [1]. The legislation put in place for managing debt plays the role of clearly defining the authority to borrow. Having an appropriate legal framework for debt management is thus part of sound governance practices are therefore a fundamental element of sovereign debt management, especially considering the size of government debt portfolios [2]. The legal arrangements ought to be supported by the delegation of appropriate authority to debt managers and experience suggests that there is an array of institutional choices for locating the sovereign debt management tasks across one or more agencies, including in the central bank, autonomous debt management agency and ministry of finance [3]. Regardless of which approach is chosen, the key requirement is to ensure that the organisational framework surrounding debt management is clearly specified, and that there is coordination plus sharing of information, and clarity of the mandates of the respective players [4]. This paper therefore examines the legislative arrangements put in place for the management of external public debt in Zimbabwe. The establishment of a sound institution and legislative framework is one of the fundamental requirements for having a prudent and effective debt management system capable of ensuring debt sustainability in place. To improve the debt management function, there are numerous legal arrangements that have been established by the GoZ for the management of the country's external public debt. The legislative frameworks that are examined are the Constitution of Zimbabwe Amendment (No. 20) Act 2013, the Public Finance Management Act [Chapter 22:19] of 2009, the Public Debt Management Act [Chapter 22:21] of 2015 as well as the Reserve Bank of Zimbabwe Act [Chapter 22:15] of 2010. It must be highlighted that the institutional and legislative framework informing external public debt management in Zimbabwe are similar to the framework which governs all public debt.

2. Literature Review

A sound legal framework is one of the key requirements for effective debt management. International best practices require governments to have in place a comprehensive legal framework which clearly defines procedures, responsibilities and accountabilities [5]. Debt management should be guided by "*a legal framework which clearly outlines the authority to borrow and to issue new debt, to hold assets for cash management purposes, and, where applicable, to carry out other transactions on the government's behalf*" [6]. Therefore, the legal framework must ideally be able to give support to the development of a debt management strategy. To ensure effective debt management, debt managers must ensure that they obtain the requisite legal advice and also ensure that any transactions carried out incorporate sound legal features and such transactions are backed by sound legal documentation [7]. Such an exercise allows debt managers to assist governments in discerning their rights and obligations within the relevant debt management functions. The minimum requirements for an effective legal framework thus encompass a clear mandate to borrow or undertake debt-related transactions, as well as specifying the purposes under which debt can be issued [8]. Under an ideal scenario, the primary legislation must also include the requirement for developing a debt management strategy [9]. The authority to issue new debt, often highlighted in the form of either borrowing authority legislation with a present limit or a debt ceiling is one of the key elements of the debt management legal framework [10]. This authority to borrow must be well-defined in legislation. A well-defined legislation plays a number of critical roles which include:

(a) Ensuring that there are sound governance practices in place which act as an important component of public debt management, due to the size of public debt portfolios.
(b) Acting as an assurance that the public debt portfolio is being managed in an efficient and prudent manner ensure that the financial system is both sound and credible, and
(c) Providing assurances to counterparties that the debt managers possess the legal authority to represent the government, and that the government supports any transactions that its public debt managers enter.
(d) Strengthening accountability and transparency through specifying the actual purposes government is allowed to borrow [11].

It is important to highlight that the debt management law is one of the key elements in strong governance arrangements [12]. The debt management law must therefore clearly spell out the objectives of debt management, the purposes for borrowing, and the need to come up with a regularly

updated medium term debt management strategy [13]. It has been noted that this is in fact a minimum requirement of debt management legislation and is intended to "*safeguard against borrowing for speculative investments or to finance expenditures that have neither been included in the annual budget nor approved by the parliament…in some other fashion*" [14]. There should thus be clear primary and secondary legislation which guides debt management. Therefore,

> "The primary legislation, which is the debt management law (or a public financial management act in cases where there is no specific debt management law in place), must clearly highlight parliament's authorisation to the government's executive (which could be either the cabinet or the Minister of Finance) to approve borrowings on central government's behalf" [15].

This primary legislation includes the laws enacted with approval of the parliament and secondary legislation comprises of the laws determined by the executive arm of the government and may include executive orders, decrees and ordinances [16]. Additionally, the primary legislation must make it a requirement to report to parliament and such reporting must be in the form of an annual report containing a detailed evaluation of the implementation of the strategy and the outcomes against the set objectives [17]. It should thus be noted that strong governance can only be attained when there are specific directions on the roles played by entities responsible for debt management and specific delegation powers included in the laws.

In attempts to govern and control their level of borrowing, some countries tend to set a fiscal rule which prevents them from exceeding a certain debt-to-GDP ratio [18]. Fiscal rules can be defined as "*parameters set by the government to limit its own tax and spend excesses*" [19]. On top of debt rules, there are three other kinds of fiscal rules (budget balance rules, expenditure rules and revenue rules). For instance, Indonesia's debt rule set out in the State Finance Law, states that total central and local debt should not exceed 60% of GDP, Georgia's debt rule dictates that the ratio of State Debt to GDP will not exceed 60% and Botswana has a debt limit cap of both total domestic and foreign debt at 20% of GDP each [20]. This is of the utmost importance to parliamentarians since fiscal rules tend to be enshrined in the Constitution or in primary or secondary legislation to ensure that governments do not wantonly alter limits on spending levels or tax revenues. In most cases, the limit for fiscal rules is usually placed on the recommended 'prudential limit', which normally is 60% of GDP in advanced economies and 40% of GDP in emerging economies [21]. However, even though these percentages act as a "useful benchmark", these thresholds are not a perfect science. For instance, it is recommended that governments guard against succumbing to the allure of the seeming accuracy of numerical limits on debt-to-GDP ratios, and hence "*prudence dictates that countrie's target a debt level well below the limit*" [22].

There are several countries across the globe which have adopted numerous approaches as attempts at reforming the legal framework for debt management. Some of the countries which have succeeded in terms of reforming and consolidating legislation of debt management laws include Bulgaria, Nicaragua as well as Serbia [23]. In other countries, specifically Colombia, Croatia, and Pakistan, the authorities have introduced legislation designed for supporting a more medium-term focus which requires the introduction of multiannual budgeting frameworks [24]. Due to the delays that can be encountered in effecting legislative change, some countries such as Indonesia have adopted an approach in which they have sidestepped legislative change altogether during the early stages and have instead made use of secondary regulation such as decrees, regulations, and ministerial authority as a means of implementing urgent reform [25]. Other countries have a system in place in which they rely more on borrowing limits defined in terms of a debt ceiling or an annual borrowing limit. The most common structure is that the Parliament outlines an annual limit associated with the approval of the fiscal budget, which then acts as a way for controlling the budget [26]. One example of a legislative debt ceiling is the one which is used by Poland, where a requirement has been included in the country's Constitution stipulating that the total government debt, augmented by the number of expected disbursements on guarantees, must not exceed 60 percent of GDP. Some countries which have legislative limits on the stock of their outstanding debt include Denmark and the United States [27]. In some instances, reforms have gone as far as amendments to the constitution (such as in Tunisia's case) others (Bulgaria, Nicaragua, and Serbia) have been successful in merging legislation in new budget systems laws or debt management laws.

It should however be noted that, even though considerable progress has been made by several countries across the globe in terms of debt reform through adopting numerous approaches aimed at improving the legal framework, but the institutional and political realities have tended to impede reform [28]. More so, legislative debt management reforms have not been without their risks. For instance, they have in some cases added to the already complicated and fragmented legal frameworks in some countries like Colombia and Indonesia [29]. This point to the fact that, even though an appropriate legislative framework is required for managing debt an keeping it sustainable, it is by far not a simple feat to achieve.

3. Methodology

This paper was based on a qualitative approach. The paper relied on secondary data. Secondary data comprises of data which is not obtained from original or primary sources. Secondary data was collected through the review of literature from books, journals, publications and newspaper articles.

4. Finding and Discussion

4.1. Legislative Arrangements for the Management of External Public Debt in Zimbabwe

Public debt management in Zimbabwe is guided by four main pieces of legislation which are; the Constitution of Zimbabwe Amendment (No. 20) Act, 2013, Public Finance Management Act [Chapter 22:19] of 2009, Public Debt Management Act [Chapter 22:21] of 2015 and the Reserve Bank of Zimbabwe Act [Chapter 22:15] of 2010. The Constitution of Zimbabwe Amendment (No. 20) Act, 2013 comprehensively outlines the limits placed upon State borrowing, public debt and State guarantees, full disclosure as well as transparency regarding public debt among other factors. In addition to the Constitution, there is the Public Finance Management Act [Chapter 22:19] which acts as the principal piece of legislation guiding the management of public debt. Before the Public Finance Management Act was enacted in 2009, the legislation that was in place for the management of public debt in Zimbabwe was largely fragmented. This legislation comprised of, the Appropriation Act, State Loans and Guarantees Act, the International Bank Loans Assumptions Act [Chapter 22:08] of 1964 and Audit and Exchequer Act but all these Acts were consolidated into the Public Finance Management Act if 2009. The fragmented legislation was done away with by the enactment of the Public Finance Management Act in 2009 which effectively repealed the Audit and Exchequer and State Loans and Guarantees Act, thereby consolidating debt management in one comprehensive Act. The management of public finance and public debt was further strengthened by the amendment to the RBZ Act (prior to the promulgation of the Debt Management Act), the Constitution of Zimbabwe in 2013 and the enactment of the Public Debt Management Act in 2015, all which provided for a comprehensive framework of fiscal management. The new legislation framework was accompanied by requirements for rigorous reporting and the strengthening of Parliament’s role in terms of the management of public finances.

4.2. Constitution of Zimbabwe Amendment (No. 20), Act 2013

The Constitution of Zimbabwe Amendment No. 20, Act 2013 is the supreme legislation informing the management of public finance and well as the management of public debt in Zimbabwe. Since prudent management of public debt is a central aspect in terms of attaining good public financial management, the need to attain an acceptable level of management of public finances is reinforced by the Constitution. Debt management in Zimbabwe is thus rooted within the Constitution, which is the country’s supreme law. The constitution sets the principles for public finance management which encompass the general conditions for debt management.

There are several important provisions espoused in the Constitution that are critical to the management of the country’s external public debt. Section 298 (f) of the constitution stipulates that, “*public borrowing and all transactions involving the national debt must be carried out transparently and in the best interest of Zimbabwe*”. Therefore, the national debt must serve Zimbabwe’s best interests. Section 300 of the Constitution of Zimbabwe further sets out the Limits on State borrowings, public debt and State guarantees through calling for an Act of Parliament which regulates public debt management as well as the duties of the Minister responsible for finance as they relate to public debt management. The provisions espoused in the country’s Constitution with regards to the management of public debt largely focus on key issues such as setting the limits of State borrowing, complete disclosure and transparency regarding public debt amongst others. The Constitution is thus

the overarching piece of legislation which dictates how debt is to be acquired as well as managed and has provisions that seek to promote this such as;

- The requirement for the complete disclosure, transparency as well as accountability regarding public debt which must be done in a comprehensive manner as shown by Section 300 (3) of the Constitution provides that, the Minister responsible for Finance is required to gazette the terms of a loan agreement or guarantee which would have been concluded by the GoZ within a period of 60 days as well as ensure that there is a satisfactory level of accountability regarding all public debt matters.
- Section 300(5) of the Constitution requires the Minister responsible for Finance to biannually table before parliament a thorough report on the country's public debt.
- The Constitution requires for there to be transparency in terms of the country's public borrowing and. According to Section 298 (1)(f) *public borrowing and all transactions involving the national debt must be carried out transparently and in the best interest of Zimbabwe*.
- The Constitution further has provisions regarding how the country's public debt should be settled. According to Section 304 of the Constitution;
  (1) *All debt charges for which the state is liable must be charged upon the Consolidated Revenue Fund*.
  One key aspect regarding public debt which is espoused in the Constitution is the limits on borrowing. There are guidelines on borrowing limitations, specifically relating to the country's GDP which are contained in both the Constitution of Zimbabwe (No. 20) Act, 2013 and the Public Debt Management Act [Chapter 22:21] of 2015. Section 300 of the Constitution provides that the aggregate amount government is allowed to borrow within a particular financial year should not exceed 30% of the general revenue accrued by the government within the previous year. Section 300 further states that;
  an Act of Parliament must set limits on;
  (a) borrowings by the State;
  (b) the public debt; and
  (c) debts and obligations whose payment or payment is guaranteed by the State and those limits.

These limits should not be exceeded without the authority of the National Assembly. It has been noted that, exceeding limits on borrowing is one of the factors that compromise the sustainability of debt. In Zimbabwe however, it has become the norm that borrowing limits are often wantonly exceeded due to the failure by Parliament to pay a more active role in debt management.

More so, Section 300 (2) of the Constitution requires an Act of Parliament to prescribe the terms and conditions upon which the government may guarantee loans. In that regard, the Constitution thus delegates the authority for matters relating to the management of public finances and public debt to relevant Acts of Parliament specifically the Public Finance Management Act [Chapter 22:21] of 2009 and the Public Debt Management Act [Chapter 22:21] of 2015. It can thus be noted that "the Constitution is the supreme law of the land, and it sets out principles that must guide all aspects of public finance management in Zimbabwe".

4.3. Public Finance Management Act [Chapter 22:19] of 2009

Apart from the Constitution, the Public Finance Management Act [Chapter 22:19] of 2009 is one of the pieces of legislation which defines and governs public debt management in Zimbabwe. Before the enactment of the Public Finance Management Act in 2009, there were several Acts of Parliament that were used in the management of public debt, and these Acts included; the Appropriation Act, State Loans and Guarantees Act as well as the Audit and Exchequer Act. All these numerous Acts were subsequently consolidated into one Act (Public Finance Management Act) in 2009. Section 53 of the Public Finance Management Act [Chapter 22:19] of 2009 explicitly outlines the strict purposes upon which the Minister responsible for finance can borrow funds and these include;

(a) to refinance a maturing debt or a loan paid before the redemption date;
(b) to finance national budget deficits;
(c) to obtain foreign currency for any Government undertaking;
(d) to maintain credit balances on a bank account of the Consolidated Revenue Fund;

(e) to regulate internal monetary conditions should the necessity arise; or (f) any other purpose approved by the House of Assembly by special resolution.

With regards to the management of external public debt, it has been noted that the main purpose of the Public Finance Management Act [Chapter 22:19] of 2009 is to:

> "…provide for the control and management of public resources and the protection and recovery thereof; administration and repayment of loans by to provide for the State and for the giving of guarantees in respect of certain loans; to provide for general treasury matters; to provide for the examination and audit of public accounts" .

The Public Finance Management Act [Chapter 22:19] of 2009 was enacted as an instrument for refining the public finance management in Zimbabwe. Notably, the Public Finance Management Act [Chapter 22:19] of 2009 generally introduced positive changes in terms of the management of public finances, largely through guaranteeing that there is an increase in the provision of information to Parliament through regular reporting.

The Public Finance Management Act [Chapter 22:19] of 2009 requires the Minister to make regular reports on a monthly and annual basis with regards to State loans, as indicated in Section 72. Additionally, the Public Finance Management Act [Chapter 22:19] of 2009 clearly stipulates the limits on State borrowing. Section 61 (a-b) of the Public Finance Management Act [Chapter 22:19] of 2009, similar to Section 300 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013, provides that the aggregate amount which government can borrow in any financial year must not surpass 30% of the government's general government revenue obtained within the year prior [46; 47; 48]. More so, Section 61 (3) of the Public Finance Management Act [Chapter 22:19] of 2009 further provides that the aggregate of the funds which may be guaranteed in any financial year regarding indebtedness, or any other obligations raised, incurred or established, within Zimbabwe must not surpass 40% of the country's general revenues within the previous financial year. Such clear limitations are meant to ensure that government borrowing at any given time remains within a sustainable threshold and act as an important guide informing the extent to which the State is allowed to borrow. The Public Finance Management Act [Chapter 22:19] of 2009 further authorises the Minister of finance to use funds from the CRF for the payment of the country's debt. According to Section 58 on the Repayment of State loans;

> "The Minister shall, as circumstances require, pay from the Consolidated Revenue Fund, which is hereby appropriated to the purpose, moneys required to repay any State loan and any expenses or charges incurred thereon or in connection therewith."

This means that the Minister of Finance is mandated by the Public Finance Management Act [Chapter 22:19] of 2009 to be the individual responsible for the settlement of the country's loans. This responsibility is clearly espoused in Section 60 of the Public Finance Management Act [Chapter 22:19] of 2009 which explicitly states that;

> "The Minister may, on such terms and conditions as he or she may determine, and, when necessary, with the concurrence of the lender— (a) repay any State loan prior to the redemption date of that loan……"

However, it has been argued that the Public Finance Management Act [Chapter 22:19] of 2009, has done very little in terms of changing the previous system of external public debt management. For instance, Section 52 of the Public Finance Management Act [Chapter 22:19] of 2009 which stipulates the provisions on Borrowing Powers states that "*the President authorises the Minister to borrow for any purpose the President considers expedient with one limitation, being that borrowing within Zimbabwe can only be up to 30 % of the revenues of the general revenues of the country in the preceding financial year*". Such a provision affords the executive (President and Minister responsible for Finance) with disproportionate levels of discretion, thus essentially centralising external public debt management and putting it under the control of the executive. The efficacy of the Public Finance Management Act [Chapter 22:19] of 2009 has been criticised as an effective tool for ensuring prudent debt management in Zimbabwe by stating that;

> "Interestingly, Section 53 of the Public Finance Management Act [Chapter 22:19] of 2009 which focuses on the purposes for which the Minister responsible for Finance can

> borrow funds, further highlights under Section (f) that the Minister is authorised to borrow money for any other purpose approved by the Parliament through a special resolution, and this seemingly appears to award the legislature with further discretion with regards to borrowing."

Simply put, the Public Finance Management Act [Chapter 22:19] of 2009 empowers the Minister responsible for Finance with the authority to award guarantees on loans with the President's consent, which suggests that, the ideal set-up would be for loans or guarantees to be limited through the use of specific sustainability ratios, such as for instance against total debt or debt service. Further states that "*loans and guarantees must be executed with reference to some other entity (such as the Parliamentary Public Accounts Committee) which is authorised to carry-out an objective determination on, as well as bar the loan in question, if the need arises*." Such a scenario would enable Parliament to have an increased level of influence when negotiating the terms of a loan. However, the current state of affairs in Zimbabwe is that the role played by Parliament seems to be only that of ratifying loans that would have already been negotiated and signed by the executive.

Most notably, there seems to be a lack of alignment between the Constitution and the Public Finance Management Act [Chapter 22:19] of 2009. The principles espoused in the Constitution are not fully captured in the Public Finance Management Act [Chapter 22:19] of 2009. Section 3 of the Public Finance Management Act [Chapter 22:19] of 2009 states that the object of the Act is to secure transparency, accountability and sound management of the revenues, expenditure, assets and liabilities of any entity specified in section 4(1) of the Public Finance Management Act [Chapter 22:19] of 2009. Thus, the Act is silent on all the other principles of public financial management as stated in section 298(1) of the Constitution. To this extent Section 3 of Public Finance Management Act [Chapter 22:19] of 2009 must be aligned to the Constitution to incorporate the principles of public finance management. "*the Public Finance Management Act [Chapter 22:19] of 2009 is not cross-referenced with the Public Debt Management Act, despite public debt management being a central aspect in terms of having in place an effective and efficient public financial management system in place"*. Based on the above argument, the Public Finance Management Act [Chapter 22:19] of 2009 thus ends up giving limited advantage in terms of improving the management of external public debt.

4.4. Public Finance Management 2019

The Public Finance Management (Treasury Instructions), 2019 was introduced as Statutory Instrument 144 of 2019 [Public Finance Management (Treasury Instructions), 2019] as a means of tightening the government's grip on the management of public finances through devising methods for governing expenditure as well as the country's debt. The Treasury instrument (SI 144) was approved by the Minister of Finance and Economic Development, Professor Mthuli Ncube in terms of Section 78 of the Public Finance Management Act [Chapter 22:19] and replaced as well as superseded all the other previous instruments. Such a move was a deliberate attempt to reinforce the Public Finance Management Act [Chapter 22:19] of 2009 in as far as it applied to the management of Zimbabwe's public debt. The regulations espoused in Public Finance Management (Treasury Instructions) of 2019 aimed at supervising the CRF, State borrowing limits, public debt and State guarantees, safeguarding public funds and properties amongst other aspects. Public Finance Management (Treasury Instructions), 2019 takes into consideration the macro-economic framework, requirements for future borrowing by the GoZ as well as both domestic and international economic and international conditions. Basically, Public Finance Management (Treasury Instructions), 2019 set up the framework to be utilised in the management of government debt. Regulations contained in Public Finance Management (Treasury Instructions), 2019 required for "Treasury to formulate a medium-term debt management strategy for managing the GoZ's debt." Section 125 of the Public Finance Management (Treasury Instructions), 2019 further stated that; "*It is the responsibility of the Public Debt Management Office (PDMO) to prepare and publish the medium-term debt management strategy…….*" According to SI 144, in formulation the MTDMS, treasury is required to take into account such important factors as;

(a) the existing public debt portfolio especially (but not exclusively) the Government component of the public debt portfolio;
(b) the macroeconomic framework;
(c) the future borrowing requirements of Government;
(d) domestic and international economic and financial conditions; and

(e) such other factors or considerations as may be relevant for the development of the MTDS, including proposed guidelines or specified targets for acceptable debt levels and risks in the public debt portfolio..

The Public Finance Management (Treasury Instructions), 2019, further sets out the purposes for borrowing by government. According to Section 126. (1) Treasury shall borrow money on behalf of Government for the following purposes;

(a) finance national priority infrastructure and productive sector projects with high economic and social impact provided debt shall only be incurred on projects that can generate sufficient revenues to repay the loan;
(b) finance Government budget deficits;
(c) maintain a credit balance on the Treasury main account at a level determined by the Minister;
(d) provide such Government loans or credits to local authorities, public entities and any other entities as defined by legislation;
(e) honour obligations arising under Government guarantees;
(f) refinance outstanding debt or repay a loan prior to its date of repayment;
(g) immediately protect, mitigate or eliminate effects caused by a natural or environmental disaster or any other national emergency;
(h) replenish international reserves;
(i) meet requests by the Reserve Bank to issue Government securities for the sole purpose of supporting monetary policy objectives; and
(j) *fulfil any other purpose as the National Assembly may by resolution approve*.

The introduction of Public Finance Management (Treasury Instructions), 2019 was influenced by the government's Transitional Stabilisation Programme (TSP), which was a national short-term economic blueprint which ran from October 2018 to December 2020. Through this initiative, the GoZ made the commitment to strengthen the country's systems for the management of public finance, and formulating an MTDS. However, this has not yet been successful in its goal as the TSP has failed to induce macro-economic stability, and has further been associated with negative economic growth rates as shown by the fact that, under the TSP, in 2019, the economy contracted by -6,5% against a growth target of 9%. In addition, the Ministry of Finance is still country is yet to come up with an MTDS, which is one of the critical tools required for sustainably managing the country's external public debt.

4.5. Public Debt Management Act of 2015

The Public Debt Management Act [Chapter 22:21] of 2015 is the primary Act specific to the management of public debt in Zimbabwe. The Public Debt Management Act [Chapter 22:21] of 2015 is one of the more recent laws designed for the purposes of managing and servicing the country's debt with the aim of providing a comprehensive guidance with regards to the way debt is issued and the servicing and reporting of public debt issues. The Act outlines the main guidelines to be followed by the GoZ in terms of borrowing, maintenance, extinction of debt; definition of contingent liabilities; exposure of government; borrowing powers of the Minister; as well the Minister's powers to give guarantees; borrowing by local authorities and public entities among other issues. Also, the Act, just like the Constitution and the Public Finance Management Act [Chapter 22:19] of 2009 sets the limits on State borrowing. Section 11(2) of the Public Debt Management Act [Chapter 22:21] imposes an upper limit regarding the total outstanding Public and Publicly Guaranteed Debt as a ratio of GDP, which should not surpass 70% at the end of any fiscal year. However, there are exceptional instances where such a limit may be exceeded, as prescribed in the Act. Section 11 of the Public Debt Management Act stipulates that the Minister of Finance and Economic development can only exceed the statutory limitations if the National Assembly resolves under either one or more of the following conditions;

(a) When there is the occurrence of emergencies or other natural disasters which require exceptional expenditure;
(b) Where the cabinet deems a significant investment project within the public sector to be timely and prudent; or

(c) In the event of a general economic slow-down which requires a fiscal and monetary stimulus.

Part II of the Public Debt Management Act further provides for the functions and administration of the Public Debt Management Office through stating that;

> The department of the Ministry responsible for Finance known as the Public Debt Management Office, which existed before the commencement of this Act, shall continue to operate in accordance with this Act.

Regarding the expectations of PDMO, Section 8 of the Public Debt Management Act provides that the debt management office must prepare a MTDMS as outlined in Section 8 of the Act. The MTDMS essentially plays the role of guiding the country in terms of the management of its public debt in accordance with the country's wider objectives as well as international best practices. The MTDMS thus informs the country's borrowing place, stipulates the quantum of resources the country should borrow from both external and domestic sources, the terms and conditions of such borrowings and the financial options for minimising costs and risks. The MTDMS further enables the debt officials to draw-up a borrowing calendar from both the external as well as domestic sources and such a calendar must be shared with the RBZ so as to inform other stakeholders within the financial sector regarding the government's intentions as well as timing.

Overall, the Pubic Debt Management Act [Chapter 22:21] of 2015 is designed to control and manage the country's public resources, specifically in relation to public debt. The act aims to secure transparency, accountability and sound management of public revenues, expenditures and assets. The Act notably contains some clear fiscal rules that designed to be useful in terms of curtailing fiscal deficits, which in most cases are the leading causes of government's external borrowing. The failure to adhere to the fiscal rules is a major challenges to the attainment of sustainability of Zimbabwe's external public debt. The GoZ has set fiscal rules which it has time and again violated and failed to adhere to.

4.6. Reserve Bank of Zimbabwe of 2010

The Reserve Bank of Zimbabwe Act [Chapter 22:15] is one other piece of legislation which plays a part in the management of external public debt in Zimbabwe. The RBZ Act essentially empowers the central bank to act as the paying agent on behalf of the MoF&ED. According to Part II, Section 8 (3):

> "When authorized by the Minister to do so, the Bank shall act as agent for the State in the payment of interest and principal and generally in respect of the issue and management of the public debt of Zimbabwe and additionally, or alternatively, the debts of any statutory body."

Such a provision makes it the responsibility of the central bank to make external debt payments to the country's creditors but this has to be carried out under instruction from the MoF&ED. The RBZ Act further stipulates the limits regarding the funds which the Central Bank may lend to the State. Section 11(1) of the RBZ Act requires that borrowing by the GoZ must not surpass 20% of the revenues obtained within the previous year. The RBZ Act further requires that the country's public debt should not surpass 70% of GDP.

However, there are issues as well as challenges that have been noted especially with regards to violating the provision on borrowing limitations imposed on government by the RBZ Act, amongst others [17]. For instance, the GoZ's overdraft with the RBZ stood art $US 2.3 billion as of the 31st of August 2018, against the US$ 762.8 million statutory limit and such an amount was equivalent to 75.7% of the total revenues that were obtained in the previous year (2017) and this by far exceeded the stipulated 20% limit. More so, by end of 2018, Zimbabwe's GDP was estimated at US$20,5 billion, with the country's public debt during the same period being 87% of GDP, a figure way above the statutory limit [17]. It is apparent that the RBZ Act (which provides that borrowing from the RBZ must not at any point surpass 20% of government's revenue obtained in the previous year) has just like the other Acts governing public debt management been ignored and disregarded by the GoZ in its borrowing and management of debt. The RBZ Act further comes short in terms of offering a clear distinction between the objectives of the central bank, its powers as well as functions, a scenario which impedes robust decision making.

4.7. Southern African Development Countries (SADC) Protocol on Finance and Investment

On top of the domestic pieces of legislation informing the management of public debt, Zimbabwe is required to observe some fiscal rules that encompass debt management as provided for in the SADC Protocol on Finance and Investment. Zimbabwe is a signatory to the Southern African Development Community (SADC) Protocol on Finance and Investment and is thus bound by the debt sustainability threshold set out by SADC. The SADC Protocol on Finance and Investment sets the maximum debt which can be sustainably acquired by state parties. According to Annexe 2 of the protocol, member countries are compelled to ensure that the threshold of their debt-to-GDP ratio does not exceed the 60% of the debt-to-GDP ratio. Article 2, subsection 2(b) of the SADC protocol further states that, in order to achieve and maintain macroeconomic stability within the Region; State parties should aim at;

> "Maintaining a prudent fiscal stance based on the avoidance of large budget deficits, monetisation of deficits and high or rising ratios of public and publicly guaranteed debt to GDP."

However, despite such a provision, the GoZ through the Public Debt Management Act [Chapter 22:21] of 2015, set its debt-to-GDP ratio at 70%, a figure which violates the regional benchmark. The failure to hold the government to account by the citizens has been noted as being amongst one of the major reasons as to why the GoZ wantonly violates laws and policies often. It has been suggested that, it is quite rare that citizens often demand accountability from the government and this explains why the GoZ has been violating policies with facing any consequences as to their actions.

4.8. Overview of the Legal Framework for Debt Management

Zimbabwe seemingly has a legal framework for debt management which is clear and is regarded highly by developmental partners as well as regional organisations such as the World Bank and the Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI) and this legal framework is considered as meeting the minimum requirements for debt management. The enactment of relevant legislation for the management of public finance has been one important strategy of improving the external public debt management function in Zimbabwe. The Constitution of Zimbabwe makes provisions regarding the management of all public debt form a broader perspective, whereas the Acts are much more detailed. This suggests that, Zimbabwe seemingly has a fairly encompassing legal, regulatory and institutional public finance management framework.

Even though such a legal framework somewhat meets the minimum acceptable standards for the management of external public debt, it can be noted that there have some areas of concern with the current legislation framework that required attention. For instance, the enactment of the Constitution of Zimbabwe Amendment (No. 20) Act in 2013 was the basis upon which a robust public finance management system would be premised, but, several years after the adoption of the new Constitution, the legislation which notably has a bearing on public finance management, specifically the Public Finance Management Act [Chapter 22:19] which is the primary Act that regulates the management of public finances in Zimbabwe has still not been aligned to the Constitution. Furthermore, the Public Finance Management Act [Chapter 22:19] of 2009 is still not aligned with the other pieces of legislation which tend to impact sustainable fiscal policies and public finance management directly and indirectly such as Public Debt Management Act [Chapter 22:21] of 2015, Statutory Instrument 135 of 2019 (Public Finance Management (General) Regulations) and Statutory Instrument 144 of 2019 [Public Finance Management (Treasury Instructions), 2019]. Such non-alignment has resulted in a series of fiscal leakages as demonstrated by the yearly reports which have been issued by the Auditor General as well as deficiencies in terms of effective Parliamentary oversight in crucial areas of public finance management like public debt management. It can be noted that, even *though the legislation is there, there are challenges in terms of implementation as well as impunity.* For instance, the Minister of Finance, Mthuli Ncube has on a previous occasion arrogantly told the PAC that he was not aware he was supposed to table reports on the country's debt before parliament. An individual citizen had to litigate for the Minister to table the 2020 reports and make them public.

More so, the failure to align the Constitution, which is the supreme law of the land with the legislation for the management of public finances has notably led to a scenario where there is no appropriate frameworks that allow for the oversight by Parliament in terms of public borrowing. As a result, the State has found avenues for contracting loans which violate the constitutional provisions as well as the Public Debt Management Act [Chapter 22:21] of 2015. This has meant that there has been extremely low compliance with the legislative provisions, especially those associated with the

acquisition of loans and the management of public debt. Such unregulated and excessive borrowing, coupled with imprudent external public debt management has resulted in a scenario where Zimbabwe is saddled with a significant and unsustainable external public debt. It is apparent that the legal requirements of the Constitution and the Public Finance Management Act [Chapter 22:19] of 2009 as well as Section 11 (1) of the Reserve Bank of Zimbabwe Act [22:15] of 2010 have in recent times been ignored and disregarded by the GoZ. The continued violation and disregard of Section 300(1) of the Constitution and Section 11 of the Public Debt Management Act [Chapter 22:21] of 2015 presents several questions in terms of Zimbabwe's overall governance, its rule of law as well as the legitimacy of both external and domestic debt.

In addition, the existing legislative frameworks lack the adequate enforcement by the relevant government authorities. Simply put, the GoZ has been failing to comply with the law in terms of the acquisition and management of its public debt and this has been one of the major threats to debt sustainability. Most notably, the GoZ has been failing on several times to observe the limits on borrowing and its borrowing has often at times not been fixed by Parliament's resolutions. It is, therefore, not a secret that the bulk of Zimbabwe's national debt was acquired without Parliamentary approval or even following the constitutional and statutory requirements. The failure by the Ministry of Finance to present to Parliament a report on loans raised and guarantees issued by the State and a comprehensive report on public debt. The blatant inability to conform to the laws which govern the management of external public debt, especially the Constitutional provisions, the Public Finance Management Act and the Public Debt Management Act [Chapter 22:21] of 2015, has raised a lot of concern and has contributed to the country's challenges with debt sustainability.

5. Conclusion

This paper has reviewed the legislative framework for debt management in Zimbabwe where it was noted that there are several pieces of legislation which guide the management of the country's public debt. These pieces of legislation include; the Constitution of Zimbabwe, the Public Finance Management Act [Chapter 22:19] of 2015, the Public Debt Management Act [Chapter 22:21], the Reserve Bank Act [Chapter 22:15] of 2010, the Public Finance Management Act [Chapter 22:19] of 2009 and the SADC Protocol on Finance and Investment. Zimbabwe seemingly has a legal framework for debt management which is clear and is regarded highly by developmental partners as well as regional organisations such as the World Bank and the Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI) and this legal framework is considered as meeting the minimum requirements for debt management. However, such a legislative framework is not without its own faults as it lacks the adequate enforcement by the relevant government authorities Additionally, the failure to conform to the laws which govern the management of external public debt, especially the Constitutional provisions, the Public Finance Management Act and the Public Debt Management Act [Chapter 22:21] of 2015, has raised a lot of concern and has contributed to the country's challenges with debt sustainability.

This paper has noted that, there exists an institutional framework for the management of debt in Zimbabwe that is clear in terms of the responsibilities, roles as well as the objectives of the government institutions that have the responsibility of managing the country's debt. These institutions include the Parliament of Zimbabwe, the Ministry of Finance and Economic Development, the PDMO. It has however been noted that, there are challenges faced in the operations of these institutions. The Ministry of Finance and Economic Development was noted as holding the authority to borrow even without Parliament's approval at times. Section 52 of the Public Finance Management Act [Chapter 22:19] of 2009, allows the President to authorize the Minister responsible for Finance to borrow an amount of funds to be used for any purpose which the president regards as necessary. Such a scenario mean that, the Executive particularly the Minister of Finance enjoys too much authority over the contraction of loan and such a scenario has led to some questionable external borrowing behaviour0 such as loans contracted from China and from Afreximbank without Parliamentary approval. This study therefore recommends that, the Minister of Finance's borrowing powers must be reduced and no circumstances must be permitted to contract external loans without first going through Parliament. This can be achieved through removing Section 52 of the Public Finance Management Act [Chapter 22:19] of 2009. Additionally, the study also revealed that, the PDMO falls within the jurisdiction of the Ministry of Finance and Economic Development and such a scenario undermines the PDMO's independence. This study therefore recommends that, the PDMO should be given total complete autonomy and must be separated from the Ministry of Finance and made into a stand-alone

entity. This will increase the office's objectivity through reducing the level of political influence form the Minister who usually a political appointee is serving political ends. It is therefore apparent that, the effectiveness of the debt management function in Zimbabwe is hinged on the efficiency of these institutions working either jointly or independent of each other.

There have some areas of concern with the current legislation framework that require attention such as the fact that, the legislation which notably has a bearing on public finance management, specifically the Public Finance Management Act [Chapter 22:19] which is the primary Act that regulates the management of public finances in Zimbabwe has still not been aligned to the Constitution. Furthermore, the Public Finance Management Act [Chapter 22:19] of 2009 is still not aligned with the other pieces of legislation which tend to impact sustainable fiscal policies and public finance management directly and indirectly such as Public Debt Management Act [Chapter 22:21] of 2015, Statutory Instrument 135 of 2019 (Public Finance Management (General) Regulations) and Statutory Instrument 144 of 2019 [Public Finance Management (Treasury Instructions), 2019]. Such non-alignment has resulted in a series of fiscal leakages as demonstrated by the yearly reports which have been issued by the Auditor General as well as deficiencies in terms of effective Parliamentary oversight in crucial areas of public finance management like public debt management. Also, a result of these apparent loopholes in the legislative framework for debt management, the State has found avenues for contracting loans which violate the constitutional provisions as well as the Public Debt Management Act [Chapter 22:21] of 2015.This study therefore recommends that, the Parliament of Zimbabwe must introduce legislative reforms that will ensure that all the requisite debt management legislation such as the Constitution of Zimbabwe, the Public Finance Management Act [Chapter 22:19] of 2009 and the Public Debt Management Act [Chapter 22:21] of 2015 are aligned. Aligning the relevant pieces of legislation will improve the level of compliance with the legal requirements.

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