Jesuit Centre for Theological Reflection

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AUDIT ON DEBT STRATEGIES/KEY LEGAL REFORMS THAT SUPPORT THE FINANCING FOR DEVELOPMENT AGENDA IN ZAMBIA

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AUDIT ON DEBT STRATEGIES/KEY LEGAL REFORMS THAT SUPPORT THE FINANCING FOR DEVELOPMENT AGENDA

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This report was compiled for the Jesuit Centre for Theological Reflection by Mbewe Kalikeka and Shebo Nalishebo, independent Policy and Research analysts/consultants specialized in issues of Public Finance Management. We also appreciate the feedback of colleagues whose contributions have undoubtedly improved the report.

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EXECUTIVE SUMMARY

Over the past decade, Zambia has increasingly relied on non-concessional borrowing for development finance. This has changed the face of debt. As Zambia transitioned from a low-income to a lower middle-income country in 2011, its borrowing options opened up and the country was able to participate in commercial debt markets. In 2012, 2014 and 2015, the country borrowed US$750 million, US$1.0 billion and US$1.25 billion, respectively, rapidly raking up a total (commercial) Eurobond debt of US$3.0 billion in less than 5 years. Other commercial loans obtained from commercial banks and other financial institutions such as the China Commercial Bank also came online. As the proportion of commercial debt in the total debt profile grew, so too did the debt service costs the country faced.

The rise in public debt has had adverse effects on inflation, exchange rates and ultimately growth, as well as reducing fiscal space for critical social spending. Further, the economy has been characterised by high fiscal deficits due to the expansionary fiscal path that has been maintained. As a result of the widening and perpetual fiscal deficit, the authorities have had to borrow more to finance the deficit.

In order to reverse the adverse effects of the debt, the Government has instituted a number of key public financial management reforms over the last few years. The supreme law of the land, the Constitution, was amended in 2016 and contains provisions for strengthened public debt management. In addition, key pieces of primary and secondary legislation were revised. These included the Public Finance Management Act in 2018 and more recently the Planning and Budgeting Act and the Public Procurement Act in 2020. With debt management becoming more sophisticated, the Government devised the 2017-2019 Medium-Term Debt Management Strategy to model costs and risks of the mounting debt and determine the best route to minimise these risks.

Zambia has also made headways in economic and business reforms. Over the past decade, Zambia implemented two Public Sector Development (PSD) reform programmes that were aimed at improving the business environment and reducing the cost of business. This has seen an improvement in the World Bank's Doing Business performance assessment, and as at 2019, Zambia was ranked number five in Sub-Saharan Africa on the Ease of Doing Business behind Mauritius, Rwanda, Kenya, and South Africa.

The enactment of these pieces of legislation, business reforms as well as the medium-term debt strategy, did little to reverse the fiscal imbalances. In addition, the primary legislation guiding the contraction and management of debt – the Loans and Guarantees (Amendment) Act of 1994 - is yet to be revised to conform with the constitutional principles. This has left room for infringements. There is a disparity between the Constitution (Amendment) Act No. 2 of 2016 and the Loans and Guarantees (Authorisation) Act No. 13 of 1994 on who has the final authority to approve loans before contraction. According to the Constitution, Parliament should have the final stamp, but the Loans and Guarantees Act grants the Minister of Finance through Cabinet this responsibility instead. The National Assembly's role remains limited to approving the debt ceilings and the Money Bills even though the Constitution requires the National Assembly to approve all contracted debt. With little restraint, the Executive has borrowed heavily.

Revenue mobilisation efforts are threatened by Illicit Financial Flows (IFFs) which continue to be a serious issue in Zambia. IFFs increased from K4.5 billion in 2017 to K6.1 billion in 2018. Though IFFs reduced to K984 million in 2019, an increase in corruption and illegal mining in precious metals and stones made IFFs to increase to K3.1 billion in 2020.

These and other loopholes have led to Zambia's debt being declared unsustainable as announced in August 2019 by the International Monetary Fund and the World Bank. The effects of the high debt have translated into macroeconomic instabilities that continued to distress the economy. After nearly a decade of faltering economic growth and fiscal imbalances, and exacerbated by the COVID-19 pandemic, the Zambian economy went into a recession in 2020, as real GDP was recorded at -3%. Inflation has also continued to breach the 6-8% set by BOZ and was reported at 24.6% as at end July 2021, and the kwacha continued to lose value and was trading at K22.6/US$ over the same period.

As a result of the rise in public debt and huge debt servicing, service delivery, particularly to the social sectors has now been impacted as the Government has had to shift expenditure from other priority areas of the economy to service the debt. Resource shifts from the social sectors especially in health and education have translated into reduced funding to these sectors. Social protection has also been hit by the reduced funding. This has been characterised by low disbursements to social protection programmes such as the Social Cash Transfer, pension benefits and Water and Sanitation. As a result, Zambia now runs the risk of losing all the important health and education gains it has made over many years and the reduced funding to social protection has the potential to undermine the country's efforts to attain the SDGs as well as the country's Vision 2030 of becoming a prosperous middle-income country. This has a negative effect on poverty alleviation and protecting the vulnerable.

In view of the above findings, this report offers the following recommendations:

1. Amend the legal framework guiding Public Debt Management

There is need to have an amendment to the Loans and Guarantees (Authorisation) Act No.13 of 1994 on who has the final authority on debt contraction. This will require the amendment to specify that National Assembly should have the final authority as espoused in the Constitution.

The scope of public debt needs to be widened in the Loans and Guarantees (Authorisation) Act No.13 of 1994 and should be aligned to that which is defined in the Public Finance Management Act, 2018. The definition in the Public Finance Management Act defines public debt as "financial material and other resources including guarantees acquired or borrowed by a public body in the interest of the Republic". This will surely broaden the scope of public debt and will also incorporate the treatment of SOEs and contingent liabilities.

The legal framework guiding PDM should also have provisions for the preparation of an MTDS. Given the importance of the MTDS as discussed earlier it is highly cardinal that the primary legislation backs the preparation of the MTDS so that it guides the borrowing plans of the Government in the Medium Term.

2. Safeguard the Social Sectors

The Government needs to protect the poor and vulnerable by safeguarding the social sectors, and this can only be achieved by financing the sector through domestic resources. But the current situation shows that the sectors has been characterised by low disbursements due to the shrinking fiscal space stemming from the high debt service costs. Therefore, the Government needs to pursue domestic resource mobilisation strategies to increase the pool of domestic resources.

3. Curb Illicit Financial Flows

In order for the Government to curb or reduce IFFs, there is need to strengthen institutional oversight, and also capacitate the Law Enforcement Wings with adequate technology to detect IFFs. Furthermore, there is need to protect them from undue pressure that may jeopardise the functioning of these institutions.

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LIST OF ACRONYMS

ERP	Economic Recovery Programme
ESGP	Economic Stabilisation and Growth Programme
DSA	Debt Sustainability Analysis
GDP	Gross Domestic Product
IFF	Illicit Financial Flows
IFMIS	Integrated Financial Management and Information System
IMF	International Monetary Fund
MTDS	Medium Term Debt Strategy
OECD	Organisation for Economic Co-operation and Development
PDM	Public Debt Management
SCT	Social Cash Transfer
SDG	Sustainable Development Goals
SOE	State Owned Enterprise
TSA	Treasury Single Account
WASH	Water and Sanitation
WB	World Bank
ZDA	Zambia Development Agency
7NDP	Seventh National Development Plan

1. INTRODUCTION

1.1 Context of the debt audit

Debt has been a major source of development finance for Zambia since independence in 1964. In the last decade, the country has been on a steep learning curve, moving from largely concessional borrowing to non-concessional and more market-based financing. Over the years, the complexion of debt has changed from largely bilateral and multilateral concessional debt to semi- and non-concessional suppliers' credit and commercial debt. As a result, debt management has become more sophisticated and includes using debt transactions such as debt swaps[1] and buy-backs[2] and more detailed modelling of costs and risks as well as macroeconomic and market conditions. However, the Government is yet to use these instruments. With principal paybacks of the Eurobond debt during 2022-2027[3], these avenues present both opportunities and challenges for Zambia as it considers these options for managing its debt portfolio in the coming years.

However, among other things, the legal framework guiding debt management has not moved in tandem with the changes in the debt complexities. With little consideration for risks and costs, epitomised by an expansionary fiscal policy, the country has experienced high fiscal deficits which have quickly accumulated into an unsustainable stock of public debt. According to the International Monetary Fund (IMF), the stock of public debt for Zambia was at 117% of GDP in 2020, which is way above the sustainability threshold of 35% of GDP for weak policy performers[4] as prescribed by the joint World Bank-IMF Debt Sustainability Threshold (DSF) for Low Income Countries (Figure 1).

Figure 1: Debt Burden Thresholds and Benchmarks under the DSF

	Present Value of external debt in percent of		External Debt service in percent of		PV of total public debt in percent of
CPIA performance rating	GDP	Exports	Exports	Revenue	GDP
Weak: CPIA < 3.25	30	140	10	14	35
Medium: 3.25 ≤ CPIA ≤ 3.75	40	180	15	18	55
Strong: CPIA > 3.75	50	240	21	23	70

Source: International Monetary Fund

This has had adverse effects on inflation, exchange rates and ultimately growth, as well as reducing fiscal space for critical social spending. To stem this tide, the Government has instituted a number of key public financial management reforms over the years. These included the revision of key pieces of primary and secondary legislation. The supreme law of the land, the Constitution, was amended in 2016 and contains provisions for strengthened public debt management. So was the Public Finance Management Act in 2018 and more recently the Planning and Budgeting Act and the Public Procurement Act in 2020. However, the primary legislation guiding the contraction and management of debt – the Loans and Guarantees (Amendment) Act of 1994 - is yet to be revised to conform to the constitutional principles.

[1] A debt swap is defined as an operation in which bondholders agree to sell their bonds to the issuer in exchange for a package of new bonds and, possibly, some cash.

[2] A buy-back refers to the process whereby the issuer approaches the open market and repurchases its bonds from holders

[3] On 20th September 2022, Zambia's first Eurobond will mature. Twenty months later in April 2024, the Government will have to settle the second Eurobond worth US$1 billion. The third US$1.25 billion Eurobond will be paid back in three instalments in July of 2025, 2026 and 2027.

[4] Zambia's Country Policy and Institutional Assessment (CPIA) score was 3.2 in 2019 (source: https://www.worldbank.org/en/data/datatopics/cpia/country/zambia)

This paper attempts to study the relationship between the debt management strategies/key legal reforms and changes in public debt. In this regard, the purpose of this assessment was to undertake a debt audit, develop an up-to-date debt database classifying Zambia's current stock of debt, and provide recommendations to the Government on how the legal framework can be strengthened and ultimately slow down the pace of debt accumulation.

1.2 Study objectives

The main objective of the study is to conduct an audit on debt strategies/key legal reforms. The specific objectives are as:

i. To review implementation status of key pieces of legislation governing the public debt management particularly the Loans & Guarantees (Authorisation) Act, Planning and Budgeting Act and the Public Finance Management Act. This will entail determining effects of delayed enactment, in relation to accountability and transparency and the drivers behind the effective or ineffective implementation status.

ii. To ascertain linkages between legal frameworks governing debt, accountability and transparency as a tenet of good governance. In the context of Zambia, this will include reviewing debt management strategies and its link to a lack of access to information law and the role it plays to hinder accountability and transparency.

iii. To determine the sufficiency of the Economic Recovery Programme (2020-2023) in providing legal frameworks that address debt contraction and application processes in Zambia by addressing sub-questions below:

   - Examine whether the policy programme provides for legal framework clearly and explicitly defining borrowing purposes.
   - Examine whether clear and explicit legal reporting requirements have been established.
   - To determine to what extent the legal framework provided for in the programme provides mechanisms to determine the maximum limit for the external debt the government can borrow.
   - Examine fiscal and debt sustainability strategies set out in the economic programme as a means to restoring macroeconomic stability. As outlined in the recovery programme, these will include domestic resource mobilisation (inclusive of tax and non-tax short term and long-term measures), rationalising and streamlining expenditure (as well as means to reduce revenue losses) and reducing the pace of debt accumulation.

iv. Establishing whether the Economic Recovery Programme (2020-2023) has a legal backing/mandate that compels all debt managers to accomplish necessary policy activities for the management of public debt. This will entail assessing whether the programme provides clear objectives to be achieved in undertaking of debt sustainability.

v. Ascertain the extent to which rising debt obligations have been an obstacle to the achievement of the Sustainable Development Goals (SDGs) and the long-term Vision 2030 goal.

vi. Develop trends of total debt servicing expenditure i.e. foreign and domestic, within the implementation cycle of the 7th National Development Plan (7NDP) 2017-2021 as a case in point of the slow operationalisation towards achieving the SDGs and the nation's long-term Vision 2030 established in 2006. The trend will be specific to social sectors: Education, Health, Social Protection and Water and Sanitation. For instance, SDG 3 aspires to ensure health and well-being for all. In the same manner Vision 2030 aims to provide equitable access to quality health care for all by 2030. It is therefore hoped that a trend of the impact of debt on the achievement of health outcomes within the stated period can be demonstrated.

vii. Considering that a weak legal system can undercut efforts to develop a modern, market-oriented economy, what is the relationship between legal reform and economic reform, and what specific steps can countries take to encourage adequacy in both spectrums?

viii. Provide recommendation from the study that under spells key and clear legal reforms needed to link debt contraction and application to financing for development in Zambia.

ix. What general policy recommendations can be made to enhance Zambia's sustainable debt management in the context of default payments?

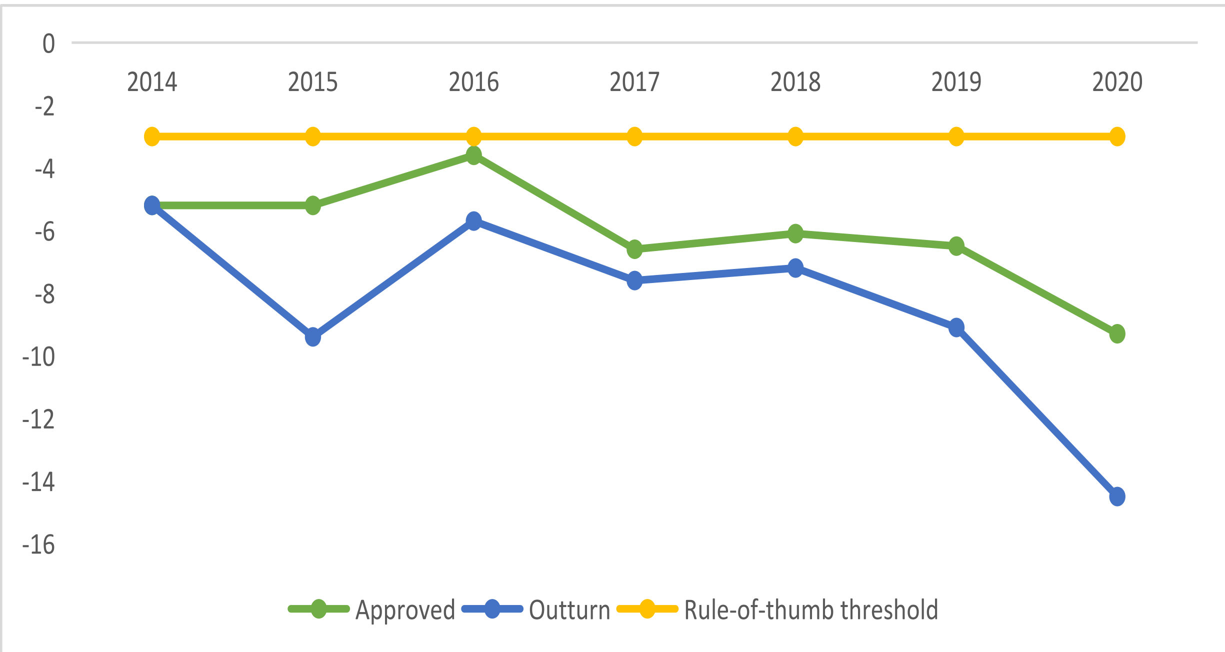
1.3 Organisation of the Report

This report is organised as follows: Section 2 provides an analysis of Zambia macroeconomic context. Section 3 gives a brief overview of the debt landscape, and section 3 discusses the legal framework guiding public debt. Section 4 analyses the impact of debt on the social sectors. Section 5 discusses the relationship between economic and legal reform in Zambia. Section 6 concludes the study and provides recommendations.

2. ZAMBIA'S RECENT DEBT LANDSCAPE

The Government has continued its expansionary fiscal path, with expenditure outturns continually outstripping those in the approved budgets, and consequently leading to a perpetually widening fiscal deficit. For instance, in 2020 the fiscal deficit was set at -9.3% of GDP but the outturn was -14.5% of GDP, and this has been the pattern in previous years as seen in Figure 1.

Figure 2: Fiscal Deficit % of GDP, 2014 - 2020



Source: International Monetary Fund

Due to the persistently widening deficit spending, the stock of public debt, which is the accumulation of years of deficits, has been mounting. The public debt stock, which was 18.9% of GDP[5] in 2010, was projected to reach 104% of GDP by the end of 2020[6]. As at end December 2020, the stock of external debt was US$12.74 billion compared to US$11.97 billion in December 2019[7]. Similarly, domestic debt has also increased to K130.21 billion as at end December 2020 from K80.2 billion as at December 2019.[8]

During the period, as Zambia transitioned from a low-income to a lower middle-income country in 2011, its borrowing options opened up and the country was able to participate in commercial debt markets. In 2012, 2014 and 2015, the country borrowed US$750 million, US$1.0 billion and US$1.25 billion, respectively, rapidly raking up a total (commercial) Eurobond debt of US$3.0 billion in less than 5 years. Other commercial loans obtained from commercial banks and other financial institutions such as the China Commercial Bank also came online. As the proportion of commercial debt in the total debt profile grew, so too did the debt service costs the country faced. Ultimately, in August 2019, the International Monetary Fund (IMF) and World Bank (WB), based on a joint Debt Sustainability Assessment (DSA), announced that Zambia's debt was no longer sustainable.

As a result of the mounting debt stock, the Government has been forced to spend more on debt service - given that debt service is part of non-discretionary spending - instead of national development programmes that can bolster economic growth. The high debt servicing costs have taken up a greater share of the fiscus which has now led to several defaults. In October 2020, the Government decided and communicated its intention to suspend debt service on all its non-multilateral external debt service except for a few bilateral and/or commercial creditors financing nearly completed priority projects. On 13 November, 2020, Zambia become the first African country in the Covid-19 era to default on its Eurobond debt after the Government missed a coupon payment of US$42.5 million on its 2024 Eurobond triggering a cross-default across all its outstanding dollar bonds. As a result by end December of 2020, debt service payments fell to US$639.7 million against a budget of over US$1.5 billion. Furthermore, the country skipped a US$56.1 million coupon payment on 30 January 2021 on the 2027 Eurobond, and a US$20 million on its 2022 Eurobond in March 2021.Arising from the debt service standstill with its creditors, Zambia accumulated external public debt arrears amounting to US$841.1 million as at end-December 2020 of which US$595 million were principal arrears (included in the debt stock), US$239 million were interest arrears and US$6.5 million other debt-related charges.[9]

[5] IMF. 2020. "World Economic Outlook, October 2020: A Long and Difficult Ascent", International Monetary Fund (IMF), Washington DC, October (https://www.imf.org/en/Publications/WEO/Issues/2020/09/30/world-economic-outlook-october-2020)

[6] MOF. 2020. "Presentation to Creditors", Ministry of Finance (MOF) of the Republic of Zambia, September

[7] MOF. 2021. "Government Debt Portfolio Review 2020 – Quarter 4

[8] MOF. 2021. "Government Debt Portfolio Review 2020 – Quarter 4

[9] MOF. 2020. 2020 Annual Economic Report

2.1 Effects of high Public Debt on Growth, inflation and Exchange Rates

The Government has acknowledged that debt levels have continued to distress and have been the root cause of the macroeconomic instabilities. Literature abounds about how high public debt can negatively affect investment and growth via heightened long-term interest rates, inflation, and a general constraint on fiscal policies, which may lead to increased volatility and lower growth rates.

Reinhart and Rogoff (2010), using data covering 1946 to 2009 from the International Monetary Fund (IMF), the World Bank, and the Organisation for Economic Co-operation and Development (OECD) for 44 countries, finds that across both advanced and emerging economies, high debt-to-GDP levels (90% and greater) are associated with notably less growth. Countries with debt-to-GDP ratios greater than 90% have median growth roughly 1.5% lower than that of the less-debt-burdened groups and mean growth almost 3% lower.[10]

Based on a yearly dataset of 99 developing and developed economies spanning a time period from 1980 to 2008, Caner, Grennes, and Koehler-Geib (2010) find that when the debt-to-GDP ratio exceeds 77%, each additional percentage point of debt costs 0.017 percentage points of annual real growth. However, these results are based on long-term averages over almost 20 years, so short-term deviations above the threshold may not negatively affect growth. The cumulative effect on real GDP could be substantial.[11]

Padoan, Sila, and van den Noord (2012) developed a simple and stylised analytical framework to examine how a combination of fiscal consolidation, structural reform, and financial backstops can help countries escape from the debt trap. Assessing data from 28 OECD countries from 1960 to 2011, the authors find that in all cases the estimated threshold effect is close to 90 percent, which is consistent with the findings of other researchers. Increasing public debt by 1 percentage point is associated with an average reduction of GDP growth by 0.012 percentage points in the following year, and it is associated with a reduction in average annual growth over the next five years by 0.028 percentage points.[12]

Inflation has been on an upward trend, and has continued to breach the 6-8% target set by the Bank of Zambia (BOZ). As reported by the Zambia Statistics Agency (Zamstats), inflation stood at 24.6% as at end July 2021 as shown in Figure 2. The main driver of inflation has been price increases in food items leading to increased cost of living for Zambians.

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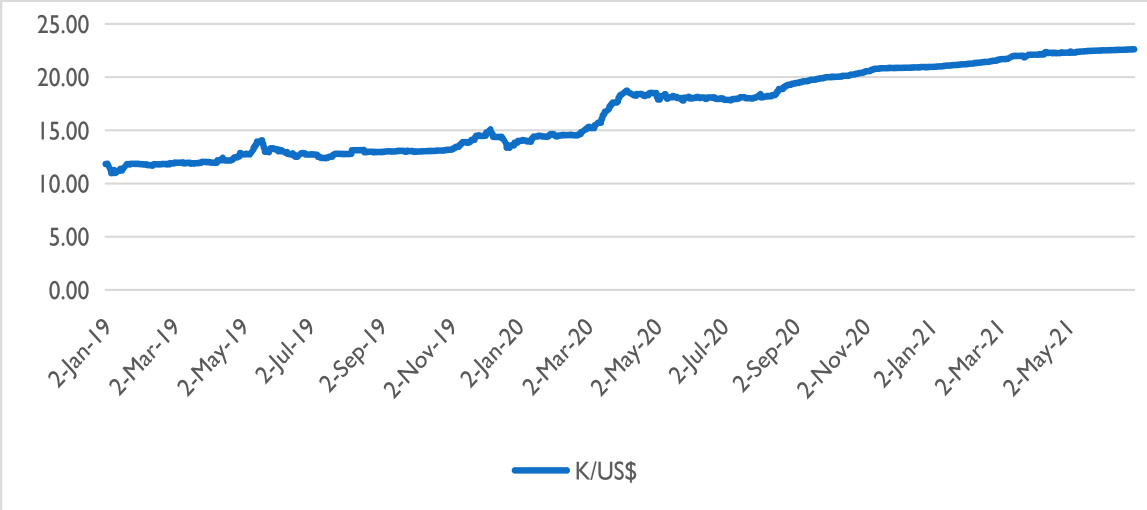
[10] Carmen M. Reinhart & Kenneth S. Rogoff (2010). Growth in a Time of Debt. Working Paper 15639 http://www.nber.org/papers/w15639

[11] Caner, Mehmet and Grennes, Thomas J. and Koehler-Geib, Fritzi N., Finding the Tipping Point - When Sovereign Debt Turns Bad (May 20, 2010). Available at SSRN: https://ssrn.com/abstract=1612407 or http://dx.doi.org/10.2139/ssrn.1612407

[12] Pier Carlo Padoan, Urban Sila and Paul Van den Noord (2012). Avoiding debt traps: Fiscal consolidation, financial backstops and structural reforms. OECD Journal: Economic Studies, 2012, vol. 2012, issue 1, 151-177

Figure 3: Kwacha/ US$ Exchange Rate Trends

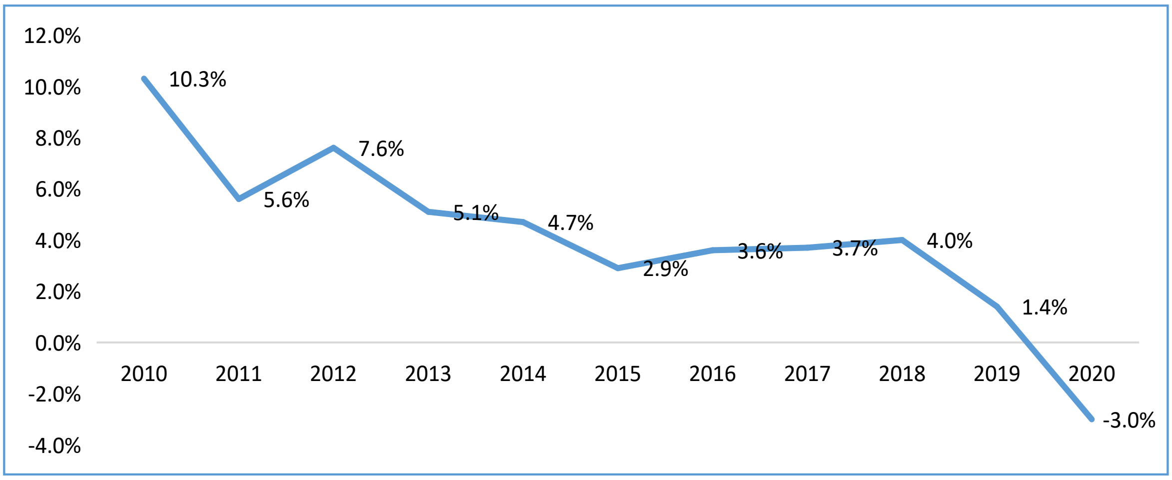


Source: BOZ Fortnightly

As a result of these and other macroeconomic instabilities, Zambia's economy has been experiencing declining economic growth over the past decade. In 2020, real gross domestic product (GDP) contracted to -3%, from 1.4% in 2019 as shown in Figure 4. The recession, the first in two decades, was a culmination of continued contraction of major sectors of the economy in the last few years, exacerbated by the COVID-19 pandemic in 2020. Manufacturing output fell sharply as supply chains were disrupted, while the service and tourism sectors were majorly hurt as private consumption, international travel and investment weakened due to measures taken to contain the spread of COVID–19. Mining output, which declined initially due to falling global demand for copper, is recovering amidst production disruptions in South America.[14] With an appropriate mining fiscal regime in place, the country is likely to attract more investments and ultimately boost economic growth. Sustained commodity price increases beyond the current forecast could lead to lower economic contraction. But, even before the pandemic, the economy was already shrinking due to challenging macroeconomic conditions. During the period 2010-2014, real GDP averaged 6.7%, while in the period 2015-2019, growth slowed down to an average of 3.1%.

[14] https://www.afdb.org/en/countries-southern-africa-zambia/zambia-economic-outlook

Figure 4: Real GDP Growth, 2010 - 2020



Source: Zamstats

The increased public debt has resulted in increased commercial bank interest rates and increased crowding out of the private sector. This has had a telling impact on growth. In addition, the increased debt servicing costs have led to expenditure switches from critical sectors such as the social sector. Expenditure to the social sectors has been less than 10% of GDP, affecting public service delivery. Moreover, this has introduced a vicious cycle requiring more borrowing to cover other expenditures since about 80% of revenues are used for personal emoluments and debt servicing.

2.2 Key Reforms to Reverse the Debt Build-Up

Recognising the adverse effects of debt in the last few years, the Government devised the 2017-2019 Economic Stabilisation and Growth Programme (ESGP). The ESGP was anchored on five pillars: (i) restore the credibility of the budget; (ii) enhance domestic resource mobilisation; (iii) improve economic and fiscal governance; (iv) ensure greater economic stability, growth and job creation; and (v) scale up government's social protection programmes. To ensure the success of the ESGP, it was envisaged that the programme would be accompanied by key economic and structural reforms such as promoting accountability and transparency by revising the Public Finance Act, enacting the Planning and Budgeting Bill, rolling out the Integrated Financial Management Information System (IFMIS) as well as the Treasury Single Account (TSA); phasing out costly subsidies by reforming the Farmer Input Support Programme and the role of the Food Reserve Agency.

However, during the implementation period, the economy was characterised by higher expenditures that continued to outstrip revenues leading to high fiscal deficits averaging 7.5% of GDP. These led to spending cuts and eventually an increase in payment arrears. Domestic arrears increased from K12.7 billion in 2017 to K27.7 billion in 2019. On the positive side, the Government managed to contain the wage bill within the set ceiling of 9% of GDP. This was largely as a result of restricting hiring of workers to priority sectors (health and education) over the Economic Stabilisation and Growth Programme period[15]. In addition, the Public Finance and Management Act (No. 1 of 2018) was also enacted, effectively legislating the IFMIS and TSA. The IFMIS was targeted at improving expenditure controls and fiscal reporting among Ministries, Provinces and Spending Agencies (MPSAs). The

[15] ZIPAR (2019). Toward Stability and Growth - A Review of Pillar I & II of the Economic Stabilisation and Growth Programme 2017-2019

TSA System, which is a unified structure of bank accounts gives a consolidated position of Government's cash resources and aims to improve the Government's ability to efficiently and effectively manage public financial resources by refining current payments processes, and eliminating redundant procedures between itself and its clients.

As a follow-up to the ESGP, the Government in 2020 launched the Economic Recovery Programme (ERP) that is meant to address the various dimensions of the current challenges. As with the ESGP, the ERP is anchored on five strategic areas namely: restoring macroeconomic stability; attaining fiscal and debt sustainability; dismantling the backlog of domestic arrears; restoring growth and diversifying the economy; and safeguarding social protection programmes [16] Key reforms under the ESGP included the effecting of the National Planning and Budgeting Act and the Public Procurement Act. However, the primary legislation guiding debt – the Loans and Guarantees (Authorisation) Act is yet to be revised. A detailed analysis on the ERP is in Section 4.

3. THE LEGAL FRAMEWORK

3.1 Introduction

The legal framework for public debt management (PDM) is comprised by a number of laws at various levels. In a broader sense, the PDM legal framework encompasses public law and private law components. Within the public law, there are laws that regulate the Government's authority to borrow and conduct its debt management activities the roles and responsibilities of various players in PDM, and other substantive and procedural matters that affect public debt. Private law in relation to public debt generally comprises the body of laws as may be reflected also in contractual arrangements that govern the economic interests or rights and obligations of Government and its relevant counterparties (such as creditors, and agents). [17]

3.2 Implementation status of key pieces of legislation

The Constitution (Amendment) Act No.2 of 2016 was assented on 5th January 2016 by the President of the Republic. It was amended by the repeal of Parts I and II of the Constitution. According to Article 1 of the Constitution it states that "This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practise that is inconsistent with its provisions is void to the extent of the inconsistency". In this regard, all subsidiary laws in Zambia need to be drawn from the Constitution, as they get their legal backing from it.

The Loans and Guarantees (Authorisation) Act No. 13 of 1994 is the primary legislation used for public debt in Zambia. [18] It draws its legal mandate from Article 207(1) of the Constitution on borrowing and lending by the Government, and grants power for the raising and granting of loans, guarantees and indemnities; specifies methods of raising loans; provides for the establishment of a sinking fund; and other supplemental debt related matters. Despite the change in the debt landscape over the last few years, the Loans and Guarantees (Authorisation) Act has not been revised to incorporate these changes.

[16] Ministry of Finance (2020). Economic Recovery Programme 2020-2023

[17] Awadzi. 2015 "Designing Legal Frameworks for Public Debt Management". International Monetary Fund Legal Department Working Paper No. 15/147

[18] Muleya, F.B, Kalikeka. M, Shingwele. Z, Ngongo. P and Nalishebo. S (2020) An Analysis of the Legal Framework for Public Debt Management in Zambia. ZIPAR Working Paper No.40

The Public Finance Act of 2004 was repealed and the Public Finance Management Act of 2018 was put into effect. The Public Finance Management Act of2018 is expected to provide a major impetus for financial control, accountability and transparency. It is now the principal act governing public financial management matters. Since its coming into force, the Act has helped to facilitate easy enforcement of regulations. It also offers clear guidance on management of financial resources and stipulates offenses and penalties related to mismanagement of public resources in both local and central governments. The Public Financial Management Act, 2018 is also embedded with provisions that have now operationalised the Integrated Financial Management Information System (IFMIS) and the Treasury Single Account (TSA) in law.

The National Planning and Budgeting Act No.1 of 2020 came into effect on 26 October, 2020. It provided for, among other things, an integrated national planning and budgeting process; strengthened accountability, oversight and participation mechanisms in the national planning and budgeting process; evidence-based decision making in national planning and budgeting; and enhanced budget credibility. It is also integrated with other legislation such as the Urban and Regional Planning Act. The enactment of the National Planning and Budgeting Act was 6 years after the National Planning and Budgeting Policy was put into effect in 2014.

3.3 Adequacy, accountability and transparency of the legal framework

The World Bank and IMF have proposed revised guidelines for PDM.[19] Firstly PDM guidelines should include the debt management objectives and coordination. This should include: the main objectives of public debt management; the scope of public debt; and the coordination with monetary, fiscal and financial sector policies. Secondly, the PDM legal framework should have provisions for transparency and accountability. Under this umbrella, the legal framework should include: clarity of roles, responsibilities and objectives of government institutions that are responsible for debt management; reporting of debt management strategies and operations; and accountability and assurances of integrity by agencies responsible for debt management.

In view of the above, this report adopts the methodology set by the WB and IMF but slightly modifies it to suit the objective of the study. In order to assess the legal framework, we use the following three step procedure in which the assess the Constitution (Amendment) Act No. 2 of 2016, the Loans and Guarantees (Authorisation) Act (LGAA) Act No 13 of 1994, the National Planning and Budgeting Act No.1 of 2020 and the The Public Finance Management (PFM) Act No. 1 of 2018. These pieces of legislation are assessed to gauge if they meet the criteria of adequacy, transparency and accountability.

[19] https://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Revised-Guidelines-for-Public-Debt-Management-PP4855

THE CONSTITUTION (AMENDMENT) ACT NO.2 OF 2016

Adequacy

i. Scope of Public Debt

The Constitution (Amendment) Act No. 2 of 2016 gives the scope of public debt under Article 208 (1) which states “A public debt shall be a charge on a Consolidated Fund or other public fund”. Furthermore, Sub Article (2) defines public debt to include “ … the interest on debt, sinking fund payments in respect of the debt and the costs, charges and expenses incidental to the management of the debt”.

ii. State Owned Enterprises (SOEs) and Contingent Liabilities

The Constitution (Amendment) Act No.2 of 2016 does not provide guidance on how debt of SOEs and contingent liabilities should be treated. This is covered within the Primary Legislation and subsidiary legislation governing public debt and public finances.

iii. Preparation of a Medium-Term Debt Strategy

The preparation of a Medium-Term Debt Strategy (MTDS) is an important exercise because it tends to implement the Government plan over the medium term in order to achieve a desired composition of the public debt portfolio. It provides a framework within which the authorities can make informed choices on how the Government’s financing requirement should be met, while taking due account of constraints and potential risks. In this regard, the MTDS is purely a function of the subsidiary law governing public debt. Therefore it is not is prescribed for in the Constitution.

Accountability

i. Roles and Responsibilities

Article 207 (1) stipulates that the Government will raise or guarantee a loan or grant on behalf of itself or other state organs, as well as undertake repayment of the loan by introducing it to the National Assembly. This entails that, before, the Government decides to borrow, the request must be tabled before the National Assembly and this is prescribed under Article 207 (2) (a). Further, the Constitution provides guidance on the powers to borrow and lend as stated in Article 207 (1) (a) and (b). It also states that the Government may raise and/ or guarantee loans or grants on the State’s behalf as well as on behalf of other State organs and other institutions. Article 207 (2) provides that legislation enacted for borrowing and lending – the Loans and Guarantees (Authorisation) Act in this case – shall provide for the category, nature and other terms and conditions of a loan, grant or guarantee.

ii. Audit Requirements

The Constitution Part XVI Article 211 (1) does provide for the audit of public debt contraction, which states that “the Minister responsible for finance shall, within three months after the end of each financial year, prepare and submit to the Auditor General the financial report of the Republic in respect of the preceding financial year”. Further under Sub Article 1 it states that “The Auditor-General shall within two months of receipt of the financial report, examine the financial report and express an opinion on the report” and Sub Article 3 states that “The Minister responsible for finance shall, within one month after the receipt of the Auditor-General’s opinion, lay the financial report before the National Assembly”.

Transparency

i. Debt Reporting

For PDM to be effective, there is need to have mandatory reporting of debt management activities. The Constitution does provide for mandatory reporting under Part XVI, Article 211 (4) to the National Assembly. It provides that the Minister responsible for finance shall prepare a financial report which should include information such as: revenues received during the financial year; expenditures made during the financial year; gifts or donations; debt repayments; other payments made during the financial year; and the financial position of the Republic.

THE LOANS AND GUARANTEES (AUTHORISATION) ACT NO.13 OF 1994

Adequacy

i. Scope of Public Debt

The primary legislation for debt management in Zambia, which is the Loans and Guarantees (Authorisation) Act No 13 of 1994, prescribes the scope of public debt to include guarantees and indemnities of other state organs and institutions.

ii. State Owned Enterprises (SOEs) and Contingent Liabilities

The Loans and Guarantees (Authorisation) Act No.13 of 1994 is silent on whether SOEs debt should be included as part of public debt. This remains a controversial issue because of [20]. (i) a State company should be responsible for its debts and the Government should not intervene in the repayment capacity of state companies, except in defaulted government-guaranteed debts; (ii) bankruptcy or default should not happen, especially if evaluation procedures are properly undertaken; (iii) some SOEs can operate efficiently and make positive contribution to the annual budget of the economy.

iii. Preparation of the Medium-Term Debt Strategy

As stated earlier, the primary aim of the MTDS is to raise the required amount of funding at the lowest possible cost over the medium to long run, consistent with a prudent degree of risk. [21] This therefore, should be prescribed in the subsidiary law governing public debt in this case, the Loans and Guarantees (Authorisation) Act. In Zambia, the first ever MTDS was published in September 2017 [22] , and specified the following:

- Domestic Debt: Increase the proportion of domestic debt budget financing to 60% over the medium term with a composition of 60% of government bonds and 40% treasury bills.
- External Debt: Reduce the proportion of external debt in budget financing to 40% of the medium term. In addition, was the prioritisation of concessional and semi-concessional debt.

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[20] Muleya, F.B, Kalikeka. M, Shingwele. Z, Ngongo. P and Nalishebo. S (2020) An Analysis of the Legal Framework for Public Debt Management in Zambia. ZIPAR Working Paper No.40

[21] Balibek. E, Haque. T, Rivetti. D and Tamene. M (2019) Medium-Term Debt Management Strategy: Analytical Tool Manual. Monetary and Capital Markets Development, IMF and WB

[22] https://www.mof.gov.zm/?p=5412

However, because the legal framework does not have provisions for the preparation of a MTDS, there was no obligation to follow the provisions of the strategy. During the implementation period of the MTDS, Government relied more on the external markets for financing rather than the domestic securities market, contrary to what was stated in the MTDS. The shift was informed by considerations not to further crowd out private sector investments as the domestic securities market remained under-developed and therefore inadequate to meet the government's borrowing requirements.

iv. Fiscal Rules

Fiscal rules are important because they have a legal binding on budgetary allocations or fiscal aggregates. These rules need to be tied to expenditure, deficit financing and debt contraction. In terms of debt contraction, the legal framework in Zambia provides for debt ceilings, which set the limits on the amount of public debt. This can be expressed either in nominal terms or as a ratio of GDP.

Statutory Instrument (SI) 53 of 1998, specified fiscal rules on debt contraction. The debt ceiling was set at K20 billion, but it was later revised to K35 billion under the Loans and Guarantees (Maximum Amounts) Order No.25 of 2014. There have been several revisions to the ceilings and by 2016 the amount was raised to K160 billion.

In 2019, there was another revision which stipulated that the maximum amount of external loans that can be raised within Zambia is K160 billion. From the domestic market, the maximum amount that can be raised which is payable under one year is K30 billion, and those loans exceeding a year is K70 billion. But the current situation tells a different story as external debt now stands at US$12.74 billion, presently equivalent to about K290 billion, and domestic debt is now at K130 billion.

Accountability

i. Roles and Responsibilities

The Loans and Guarantees (Authorisation) Act No. 13 of 1994 is the primary legislation that gives powers to the Minister of Finance to borrow on behalf of Government through different instruments, issue guarantees, lend and to set limits of the proposed borrowing. Article 3 of the Loans and Guarantees (Authorisation) Act No. 13 of 1994, the Minister is authorised to borrow within and outside Zambia, as he or she may deem desirable. But Article 3 (a) further stipulates that the Minister should not exceed at any one time the amount/ceiling he or she is authorised by the National Assembly. However, there seems to be a misalignment on the final authorisation on debt contraction between the Constitution which states that the debt should be approved by the National Assembly, and the Loans and Guarantees (Authorisation) Act No.13 of 1994 which calls for the Minister's approval. Furthermore, the Loans and Guarantees (Authorisation) Act No.13 of 1994 does not have provisions on the purposes of borrowing, and this gives the Minister too much power to commit the country to debt.

Part II section 7 of the Loans and Guarantees (Authorisation) Act No.13 of 1994, provides for the methods of raising loans through the issuance of bonds or stocks and issuance of treasury bills and should be in agreement in writing. This shall be raised in accordance with such conditions and terms as the Minster shall direct including the sum of money to be raised source of the loan; interest rate payable; tax exemptions; and maturity limitation.

ii. Audit Requirements

While the Constitution provides for audit of all debt activities as explained above, critical in helping to keep track on the usage of public funds and proceeds from debt, the Loans and Guarantees (Authorisation) Act No.13 of 1994) Act does not stipulate the tasks and responsibilities of auditors in PDM.

Transparency

i. Debt Reporting

The legal framework guiding PDM state that the Primary Legislation on public debt should have legal provisions on auditing and reporting of public debt activities.[23] The Loans and Guarantees (Authorisation) Act No. 13 of 1994 Article 23 clearly explains that a financial report should be prepared and should show the particulars of any loan granted. However, there have been concerns about the lack of transparency in the reporting of debt figures over the last few years. While the annual economic reports regularly report on debt, the level of detail of the report has been diminishing and is not consistent.

THE PUBLIC FINANCE MANAGEMENT ACT NO.1 OF 2018

Adequacy

i. Scope of Public Debt

The Public Finance Management Act, 2018 Part I Sub Article 2 defines "public debt" as financial, material and other resources including guarantees acquired or borrowed by a public body in the interest of the Republic.

ii. State Owned Enterprises (SOEs) and Contingent Liabilities

The Public Finance Management Act, 2018 does specify on how to deal with debt of SOEs and Contingent Liabilities. Article 26 (1) states an institution shall not borrow money, issue a guarantee, indemnity, security unless it is authorised by the Constitution or the Loans and Guarantees (Authorisation) Act 2018. It further states under Sub Article 2 that "A public body shall not borrow and lend monies except with the written authority from the Secretary to the Treasury".

iii. Preparation of a Medium-Term Debt Strategy

The Public Finance Management Act, 2018 does not have legal provisions for the preparation of a MTDS. This is because the Act is solely meant to provide legal provisions on the management and control of public finances.

iv. Fiscal Rules

Fiscal rules are legally set binding rules that provide long-standing quantitative restrictions on budgetary or fiscal aggregates, particularly on expenditure, deficit financing and overall debt contraction.[24] Article 25 (1) states that "There is established a Treasury Account Single Account (TSA)". Furthermore, it states that all monies received shall be deposited in the TSA and all expenditures shall be drawn from it.

[23] https://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Revised-Guidelines-for-Public-Debt-Management-PP4855

[24] Muleya.F.B. & Nalishebo. S (2018) "Reversing Zambia's high risk of debt distress" ZIPAR Working Paper No.31

Accountability

i. Roles and Responsibilities

The Public Finance Management Act, 2018 clearly lays out the roles and responsibilities of institutions and officers charged with the responsibilities of managing public finances. Article 21 gives powers to the Secretary to the Treasury to determine which public funds shall be credited to the Consolidated Fund, and which funds shall be disbursed from the Consolidated Fund and this is subject to the provisions of the Constitution.

ii. Audit Requirements

The Public Finance Management Act, 2018 does provide for audit of debt management activities under Part VI. Article 70 clearly give guidance on the preparation of a financial report for each financial year by the Treasury. Furthermore, Part VII gives powers to the Auditor General and an office holder or specialist consultant to audit all Government financial documents and the power to call for relevant information from persons responsible for the financial administration of any public body under audit examination or inspection.

Transparency

Debt Reporting

Similarly, the Public Finance Management Act, 2018 also provides for mandatory reporting to account for public funds for each fiscal year, and this is stipulated under Part VI.

THE NATIONAL PLANNING AND BUDGETING ACT NO.1 OF 2020

Adequacy

i. Scope of Public Debt

The National Planning and Budgeting Act, 2020 defines public debt as the meaning assigned to the words on the Public Finance Management Act and this is contained in Article 42 (7).

ii. State Owned Enterprises and Contingent Liabilities

The National Planning and Budgeting Act, 2020 does not have legal provision on SOEs and the treatment of contingent liabilities. This is carted for within the Public Finance Management Act, 2018.

iii. Preparation of a Medium-Term Debt Strategy

The National Planning and Budgeting Act, 2020 calls for the preparation of the medium-term budget plan by the Minister responsible for Finance under Article 36 Sub Article 1. This includes a review of the economic and fiscal performance for the last three years; proposed economic and fiscal performance for the next three years; and indicative resources and expenditure allocations by head of expenditure. Though the Act does not explicitly specify the preparation of the MTDS, it can be backed by Article 36 Sub Article 2(b) which calls for the Minister responsible for Finance to prepare a Medium Term Budget Plan which shall include proposed and economic and fiscal policies for the next three years.

iv. Fiscal Rules

Article 42 (1) states that Subject to the Constitution, the national budget shall operationalise the implementation of the National Development Plan. Sub Article 2 further states that the national budget shall include estimates of revenue and expenditures of the Government.

Accountability

i. Roles and Responsibilities

Article 43 gives power to the Minster responsible for Finance to prepare the National Budget for each financial year. The National Budget gives revenues and expenditure estimates as well financing for the upcoming year. Furthermore, it states the Minister responsible for Finance should present the National Budget to the National Assembly for approval. In addition, Article 46 (2) states that the Minister responsible for Finance get approval of excess expenditure from the National Assembly.

ii. Audit Requirements

Audit requirements are also provided in the National Planning and Budgeting Act under Article 47 (1) in which the controlling officer is accountable for the attainment of the output targets set out in the estimates of revenue and expenditure falling under the controlling officer's mandate.

Transparency

i. Debt Reporting

The National Planning and Budgeting Act, 2020 Article 48 calls for the Minister of Finance to submit a budget performance report to the National Assembly that should contain the previous year performance report. This should include revenue targets, expenditure targets and debt that has been accumulated.

3.4 Summary

Zambia's legal framework guiding PDM is guided by various pieces of legislation. The Constitution (Amendment) Act No.2 of 2016 clearly explains that before any form of debt is contracted within the Republic it has to be approved by the National Assembly. But there seems to be a misalignment between the Loans and Guarantees (Authorisation) Act No.13 of 1994 which gives power to the Minister of Finance to raise loans on behalf of the Republic in which he / she gets final approval from Cabinet.

Furthermore, the absence of an MTDS has made it easier for the Government to contract debt from the external market that has had serious consequences on the economy. This is because the preparation of an MTDS is not backed by legislation.

In addition, the definition of public debt is narrow. This has implications on the types of public instruments and institutions that the Government exercise control such as SOEs. This has a bearing on reporting the stock of public debt that the country has accumulated over time. The limited definition of the scope of debt also limits its management and the devising of fiscal policies. A key example of this is the setting of the fiscal deficit. Despite the high accumulation of arrears, the fiscal deficit is often reported on a cash basis only, instead of fiscal deficit on a commitment basis. A cash-based deficit underestimates the extent of a government's pre-emption of real resources. With most of the domestic arrears owed to enterprises, which, in turn, borrow from the banking system, the cash-based deficit concept underestimates the government's contribution to the growth of monetary aggregates and demand. Given the high stock of domestic arrears, the budget should be presented on both a cash and a commitments basis, with changes in arrears providing the principal link between the two concepts.

In terms of accountability and transparency, all the pieces of legislation evaluated in this study have provisions. For instance, the Constitution and the Loans and Guarantees Act calls for the Minster responsible for Finance to prepare a financial report at the end of each year. The Public Finance Management Act gives powers to the Treasury to report on all Government financials, whereas the National Planning and Budgeting Act requires the Controlling Officer to report on expenditures and revenues.

Table 1: Summary of the Adequacy, Accountability and Transparency of the Legal Framework Guiding Public Debt in Zambia

		The Constitution (Amendment) Act No.2 of 2016	The Loans and Guarantees (Authorisation) Act of No 13 of 1994	Public Finance Management Act No 1 of 2018	The Planning and Budgeting Bill Act No 1 of 2020
Adequacy	Scope of Public Debt	Article 208 (1)	PART 1 Sub Article 3	PART I Sub Article 2	Article 42 (7)
	Preparation of a Medium-Term Debt Strategy (MTDS)	No provision	No provision	No provision	No provision
	State Owned Enterprises and contingent liabilities	No provision	No provision	Article 26 (1)	No provision
	Fiscal Rules	No provision	SI 53; Loans and Guarantees (Maximum Amount) Order No.25 of 2014, 2016, 2019	Article 25 (1)	Article 42 (1) and (2)

		The Constitution (Amendment) Act No.2 of 2016	The Loans and Guarantees (Authorisation) Act of No 13 of 1994	Public Finance Management Act No 1 of 2018	The Planning and Budgeting Bill Act No 1 of 2020
Accountability	Roles and responsi-bilities	Article 207 (1) and (2)	Article 3	Article 21	Article 43 and 46 (2)
	Audit requirements	Article 211 (1)	No provision	Article 70	Article 47 (1)
Transparency	Debt reporting	Article 211 (4)	Article 23	PART VI	Article 48

4. SUFFICENCY OF THE ECONOMIC RECOVERY PROGRAMME

4.1 Introduction

The Economic Recovery Programme (ERP) sets out the choices we have to make as a nation over the four-year period (2020-2023) and provides a clear road map of strategic policy actions and enablers required to revive the economy and place it on a path of sustainable growth and development.

The Programme is anchored on five strategic areas, including attaining fiscal and debt sustainability; and dismantling the backlog of domestic arrears.

4.2 Attaining Fiscal and Debt Sustainability

To attain fiscal and debt sustainability, the Programme envisages to undertake measures to enhance domestic resource mobilisation, rationalise and streamline expenditures as well as reduce the pace of debt accumulation.

Domestic resource mobilization measures include tax policy reforms and enhancing tax administration. Reforms include increasing the tax base by, among other things, rationalizing the numerous tax exemptions, broadening the excise tax base, and improving property taxation. Improving tax administration includes enhancing institutional collaboration and coordination in revenue collection by interfacing Zambia Revenue Authority IT systems with those of Patents and Companies Registration Agency (PACRA), National Pension Scheme Authority (NAPSA), Zambia Development Agency (ZDA) and the Road Transport and Safety Agency (RTSA), through the Government Service Bus platform. Another measure is the Complete the roll out of electronic fiscal devices (EFDs) aimed at improving the performance of VAT as well as enforce wider use of electronic filling via the Tax Online system.

Revenue measures are provided through annual budgets (through the appropriation acts which authorise expenditure from the Consolidated Fund of monies as provided for in the annual budgets), annual practice notes of the Zambia Revenue Authority which describe the various changes introduced in the Income Tax Act, Value Added Tax Act, Customs and Excise Act and accompanying Statutory Instruments. However, while there are legislative provisions for revenue measures, it may not be practical to enforce some provisions. For example, the Value Added Tax (Amendment Act) of 2019 provides for the mandatory use of electronic fiscal devices to issue tax invoices for all tax payers registered for VAT. This enables the Zambia Revenue Authority to receive the information in real time and monitor transactions remotely, via a network. The reality, however, is that Government has not managed to fully procure these devices in which taxpayers were expected to pay a subsidised rental fee for the device and the bundles.[25]

[25] https://www.zra.org.zm/wp-content/uploads/2020/01/EFD-Leaflet.pdf

Expenditure rationalization measures include streamlining key drivers of expenditure such as Farmer Input Support Programme (FISP) by reducing the proportion of beneficiaries of FISP on the Direct Input Supply mode to migrate them to the more cost-effective e-voucher system. This is a purely administrative measure not necessarily backed by legislation. The rationalization of FISP is anticipated to reduce the expenditure from 2.8% of GDP in 2020 to 0.7% of GDP by the end of the ERP period. FISP has been a major source of fiscal imbalances over the last few years. Against a target of K1.1 billion, the Government spent K9.85 billion on FISP in 2020, thereby contributing to the higher than planned primary deficit. Largely financed through issuance of government securities, it contributes to increased stock and unsustainability of domestic debt and places huge demands on the limited foreign exchange to meet fertilizer import requirements.

Another key measure is to rationalise capital expenditure by implementing the Public Investment Management System (PIMS) that facilitates the appraisal of capital projects before inclusion in the National Budget. To this effect, the Government, through the Ministry of National Development Planning, has developed PIMS and accompanying Pubic Investment Guidelines to facilitate efficient and effective coordination and management of the PIMS. These guidelines provide for the coverage, tools, methodologies and institutional arrangements of the PIMS. This is provided for in Article 24 (1) of the National Planning and Budgeting Act of 2020: "The ministries responsible for development planning and budget shall appraise a major project and programme required to be appraised before being included in a national development plan, national budget and medium-term budget plan". Given that the funds used for most capital projects are sourced from external borrowing, the cost rationalization will help reduce waste which has hitherto contributed to the escalation of the debt burden.

Another measure is the introduction of numeric rules to cap expenditure growth and limit the deviations between appropriations and actual outturns. This is indirectly provided for in the Appropriation Act, Supplementary Appropriation Act, Excess Expenditure Appropriation Act as well as the National Planning and Budgeting Act. However, the continued deviations from the budget suggest that these provisions are not entirely followed as planned. Both direct and indirect election spending in 2020 contributed to spending overruns. Mobile and voter registration was 519% above target in 2020 from the originally planned K138.6 million to an outturn of K858.3 million. As earlier indicated, FISP spending was 787% above target; so were empowerment programmes which gobbled K517.5 million instead of the originally planned K30.5 million, an increase of 1,597%.

Reducing the Pace of Debt Accumulation: Debt sustainability measures include undertaking project rescoping, cancellation and restructuring of debt; increasing the maturity profile of the domestic debt through refinancing of shorter-term debt to longer-term debt.

The rescoping of projects is covered through the Public Investment Management System. Debt Management issues (cancellation, restructuring, refinancing) should be explicitly covered under the MTDS whose provisions are presently not covered under the primary legislation – the Loans and Guarantees Act. While the Act provides for the setting up of a sinking fund for loans with maturity exceeding 10 years, the Minister of Finance has the discretion of setting up sinking funds for the three Eurobonds. However, the Eurobonds are governed by the Laws of England and Wales. Any restructuring or refinancing of the Eurobonds would require the negotiating with the bondholders through a so-called bondholder committee.

Dismantling of Arrears: Dismantling domestic areas will involve making adequate budgetary provisions, implementing debt swaps and strengthening commitment control systems. The arrears are mainly in the areas of VAT refund, road and other capital projects on account of revenue shortfalls and weaknesses in the commitment control system. The National

Planning and Budgeting Act provides for making adequate budgetary provisions (check). Commitment controls are provided for through the IFMIS and TSA which are embedded in the Public Finance Management Act.

4.3 Summary

The ERP is anchored on five pillars as stated above. But this report focuses on PILLAR 2 which deals with attaining fiscal and debt sustainability. Domestic resource mobilization measures include tax policy reforms and enhancing tax administration. However, while there are legislative provisions for revenue measures, it may not be practical to enforce some provisions.

Expenditure rationalization measures such as the full migration of beneficiaries to the e-voucher is not necessarily backed by legislation but it is a purely administrative measure. The ERP also calls for the (PIMS) that facilitates the appraisal of capital projects before inclusion in the National Budget, and this is provided for in Article 24 (1) of the National Planning and Budgeting Act of 2020.

The ERP also provides for debt sustainability measures which include: project rescoping; cancellation and restructuring of debt; increasing the maturity profile of the domestic debt through refinancing of shorter-term debt to longer-term debt. However, the subsidiary law governing public debt does not have legal provisions for the preparation of an MTDS which makes it difficult for the authorities to undertake activities such as cancellation, restructuring and refinancing.

5. DEBT AND ITS IMPACT ON THE SOCIAL SECTORS

5.1 Introduction

The Social Sectors are arguably the most important of the Zambian economy in alleviating poverty and inequality, saving lives and sustaining livelihoods. They include several important components such as education, health and medical care, water supply and sanitation, poverty alleviation, housing conditions, etc., that play a vital contribution in enhancing human development.

Zambia's goal of being a prosperous, middle-income country by 2030 as stipulated in its Vision 2030 is dependent upon having a healthy, educated and productive population. This Vision, which is mainstreamed with the regional Agenda 2030 and the international Sustainable Development Goals (SDGs), is operationalised through national development plans, policies and strategies, three-year medium-term expenditure frameworks and annual national budgets.

The National Budget gives an ideal lens through which to examine the Government's commitment to the Social Sectors. The proportion of public expenditure allocated to the sectors and programmes that benefit the vulnerable and poor is a good reflection of this commitment. In this study, the Social Sectors comprise Health, Education, Social Protection and Water and Sanitation functions as classified under the Classification of Functions of Government (COFOG), a functional classification which categorises expenditure according to the purposes and objectives for which they are intended.

Table 2 shows the budget allocations by function for the period 2015-2021. Debt payments, which accounted for 44% of general public services in 2015 have almost doubled to 80% in 2021. On the other hand, the share of Economic Affairs, Education, Health, Defence, Public Order and Safety as well as Recreation, Culture and Religion have declined over the same period. Both education and health, the largest social sectors, recorded declines in their respective shares of social spending. Social Protection budget, which declined significantly in 2019 and 2020, was given a huge boost in 2021 when the Government significantly increased its budget for the Social Cash Transfer (SCT) and the Food Security Pack (FSP). Expenditure on Water and Sanitation (WASH) is gleaned from Environmental Protection COFOG Division (particularly the waste and waste water management classes [26] and Housing and Community Amenities Division (water supply class).

Table 2: Budget Allocations by Function, 2015 - 2021

	2015	2016	2017	2018	2019	2020	2021	Change 2020 / 2015
General Public Service	25.8%	36.1%	27.9%	36.1%	36.0%	41.6%	48.3%	22.5%
o/w: Debt Service	44%	37%	64%	55%	75%	77%	80%	
Defence	7.0%	5.9%	5.0%	4.9%	5.8%	6.2%	4.7%	-2.3%
Public Order & Safety	4.7%	3.5%	3.6%	3.0%	3.3%	3.8%	2.6%	-2.1%
Economic Affairs	27.3%	24.9%	31.2%	24.1%	23.8%	20.6%	18.0%	-9.3%
Environmental Protection	0.4%	0.3%	1.0%	1.3%	1.0%	0.6%	0.8%	0.4%
Housing & Community Amenities	1.7%	0.9%	1.3%	1.1%	2.6%	3.3%	1.9%	0.2%
Health	9.6%	8.3%	8.9%	9.5%	9.3%	8.8%	8.1%	-1.5%
Recreation, Culture & Religion	0.7%	0.5%	0.5%	0.6%	0.3%	0.4%	0.1%	-0.6%
Education	2.7%	17.2%	16.5%	16.1%	15.3%	12.4%	11.5%	-8.7%
Social Protection	2.7%	2.4%	4.2%	3.2%	2.5%	2.4%	4.0%	1.3%

Source: Author's compilation from National Budgets

Overall, the levels of budgetary allocations to the social sector expenditure increased substantially from K15.3 billion in 2016 to K30.4 billion in 2021 as shown in Table 3. While the absolute budget amounts indicate significant progress in social sector expenditure, using proportions of expenditure has the additional benefit of providing a standardised measure for assessing relative performance. [27]

During the period under review, social sector expenditure increased as a percentage of GDP from 7.0% of GDP in 2016 to 8.3% of GDP in 2021. While this is a positive development, it came at a time when economic growth has been slowing down. As a result, as a share of total expenditure, social sector spending has been reducing, largely due to the reduced share of the education budget (Table 3).

[26] However, there was no expenditure data for waste and waste water management in central government expenditure, a function which has been fully devolved to commercial water utility firms and local authorities.

[27] ACPF, 2013. The African Report on Child Wellbeing 2013: Towards Greater Accountability to Africa's Children, Addis Ababa: The African Child Policy Forum.

Table 3: Expenditure on Social Sectors, 2016 – 2021

Expenditure on Social Sectors (Nominal) K' millions

	Health	Education	Social Protection	Water and Sanitation	Total Social Sectors	Total Expenditure
2016	4,431.00	9,143.00	1,273.00	283.00	15,130.00	53,135.00
2017	5,762.00	10,641.00	2,693.00	391.00	19,487.00	64,510.00
2018	6,781.00	11,681.00	2,301.00	584.00	21,347.00	71,662.00
2019	8,069.00	13,274.00	2,187.00	1,984.00	25,514.00	86,807.00
2020	9,366.00	13,121.00	2,580.00	2,620.00	27,687.00	106,007.00
2021	9,653.00	13,772.00	4,820.00	2,172.00	30,417.00	119,616.00

Expenditure on Social Sectors (%of GDP)

	Health	Education	Social Protection	Water and Sanitation	Total Social Sectors	Total Expenditure
2016	2.1%	4.2%	0.6%	0.1%	7.0%	24.6%
2017	2.3%	4.3%	1.1%	0.2%	7.9%	26.2%
2018	2.4%	4.2%	0.8%	0.2%	7.6%	25.6%
2019	2.7%	4.4%	0.7%	0.7%	8.5%	28.9%
2020	2.8%	3.9%	0.8%	0.8%	8.3%	31.8%
2021	2.6%	3.8%	1.3%	0.6%	8.3%	32.6%

Expenditure on Social Sectors in relation to total spending

	Health	Education	Social Protection	Water and Sanitation	Total Social Sectors	
2016	8.3%	17.2%	2.4%	0.5%	28.5%	
2017	8.9%	16.5%	4.2%	0.2%	30.2%	
2018	9.5%	16.3%	3.2%	0.2%	29.8%	
2019	9.3%	15.3%	2.5%	0.7%	29.4%	
2020	8.8%	12.4%	2.4%	0.8%	26.1%	
2021	8.1%	11.5%	4.0%	0.6%	25.4%	

Source: Author's Construction from National Budgets

In this section, we seek to determine the possible impact that debt and debt service payments may have on the level of social sector expenditures or their share in total expenditures. We therefore seek to answer the following questions:

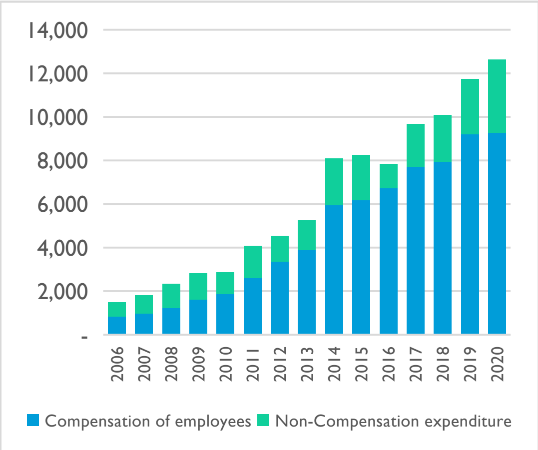
- Are social expenditures (as a share of GDP and as a share of total public expenditure) affected by changes in public debt ratios (over GDP), and in what direction?
- Is this effect due solely to the changes that occur in public debt service payments (as a share of GDP) when debt changes, or does the stock of debt have an effect of its own?
- Do different types of social expenditures (education, health, social protection, water and sanitation expenditures) behave in the same way in response to changes in debt ratios or debt service payments?

5.2 Relationship between debt and education expenditure

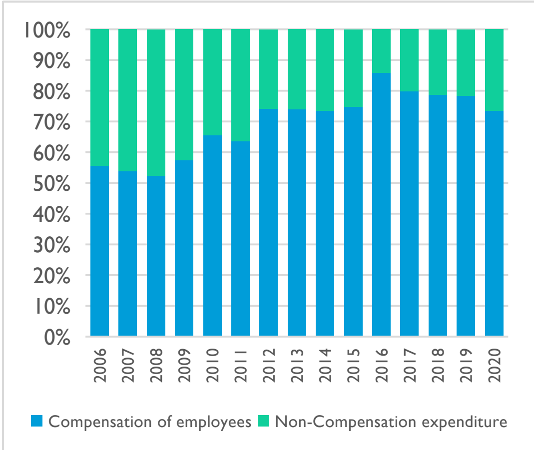
Personal emoluments take up the largest share of education expenditure. Personal emoluments are non-discretionary, protected against major fiscal shocks resulting from high debt levels. Over the years, the share of personal emoluments component of education expenditure has been on the increase, from about 55% in 2006 up to 85% in 2016. Despite declining to just over 70% by 2020, it still remains significant. Therefore, despite increased debt, a large part of the education expenditure is shielded from the adverse effects of the debt burden.

Figure 5: Education Expenditure by Wage and Non-Wage Components, 2006-2020

Nominal changes in wage and non-wage components of education expenditure, K'million, 2006-2020



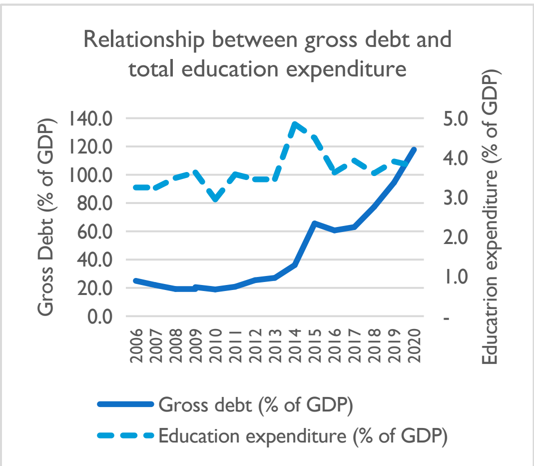
Percentage share in wage and non-wage components of education expenditure, 2006-2020

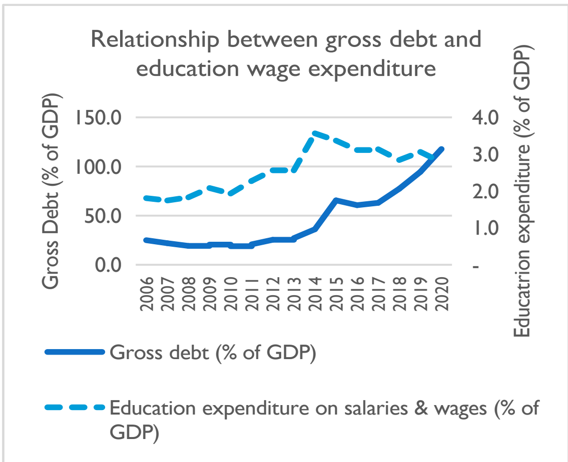


Source: Author's Construction from Yellow Books

Figure 5 shows a general increase in the total education expenditure and the education wage expenditure despite the increase in the stock of debt during the period 2006-2020, even though there has been a decline in the education spending since 2015.

Figure 6: Relationship between gross stock of debt, total education expenditure and education wage expenditure, 2006-2020

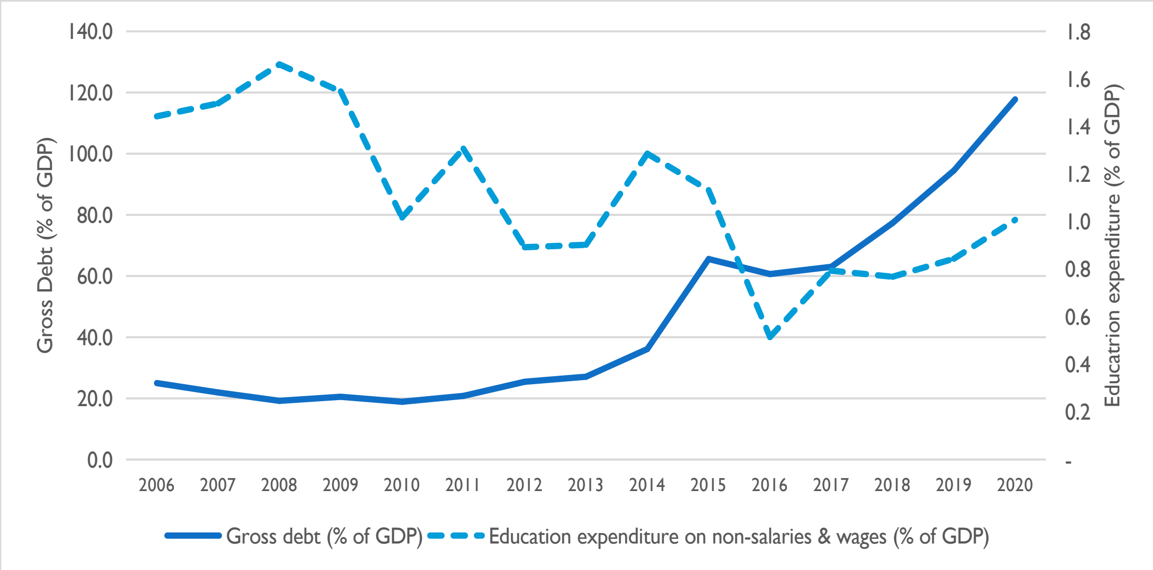




Source: Author's construction from Various Sources

Isolating the non-wage components of social expenditure and analysing the trends, it is clear that the non-wage component of the education expenditure (which is discretionary) has generally been on the decline while the stock of public debt has been increasing (Figure 6).

Figure 7: Relationship between gross debt and the non-wage component of education expenditure, 2006-2020



Source: Author's construction from Various Sources

Clearly, the non-wage component of education expenditure is not as protected as the wage component as observed in Figure 7. The non-wage component includes procurement of textbooks and other learning materials, curriculum and standards development and infrastructure development. The reduced spending on these non-wage components of education expenditure contribute to poor learning outcomes experienced in the last few years.

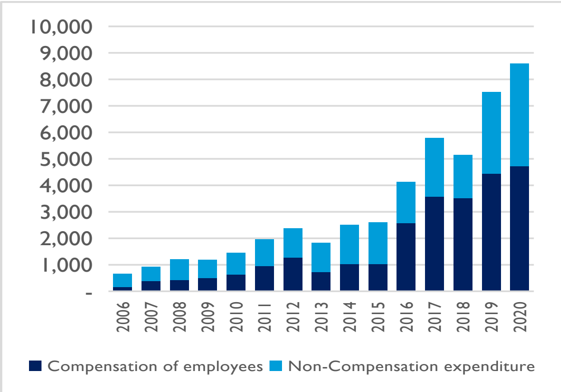
In addition, learners in rural areas are still covering long distances to access learning facilities. Furthermore, the COVID-19 pandemic requires more ICT learning facilities which the education sector cannot sufficiently provide presently especially in rural areas, thus affecting the quality of education.

5.3 Relationship between debt and health expenditure

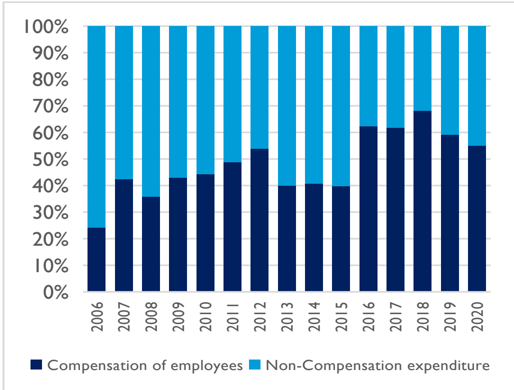
To understand the possible impact of debt on health expenditures, we also consider the composition of health spending. During 2006-2015, the share of the wage bill was significantly lower than the share of the non-wage component. Averaging 61% of the total health expenditure, the share of the wage bill increased to be higher than the non-wage component from 2016 onwards as shown in Figure 8.

Figure 8: Health expenditure by wage and non-wage components, 2006-2020

Nominal changes in wage and non-wage components of health expenditure, K'million, 2006-2020



Percentage share in wage and non-wage components of education expenditure, 2006-2020



Source: Author's construction from Yellow Books

The major challenge of the shrinking funding to the non-wage component of the health sector is that Zambia now risks the failure to attain its own development objectives as well as global targets such as the SDGs. Therefore, having a poor health system translates into having a very unhealthy population.

In addition, the reduced funding has led to human resource gaps in the health sector. Rural areas are the hardest hit as the Ministry of Health (MOH) has been struggling to dispatch qualified staff in rural health facilities.[28] Furthermore, infrastructural development is also affected by the reduced funding. This has resulted in infrastructural development being more skewed towards urban areas. According to the MOH only 50% of the rural population live within a 5 km radius to a health facility. The rest have to cover more than 5 kilometres in order to find the nearest health facility. Delivery of health services in rural areas is further compounded by lack of other services.

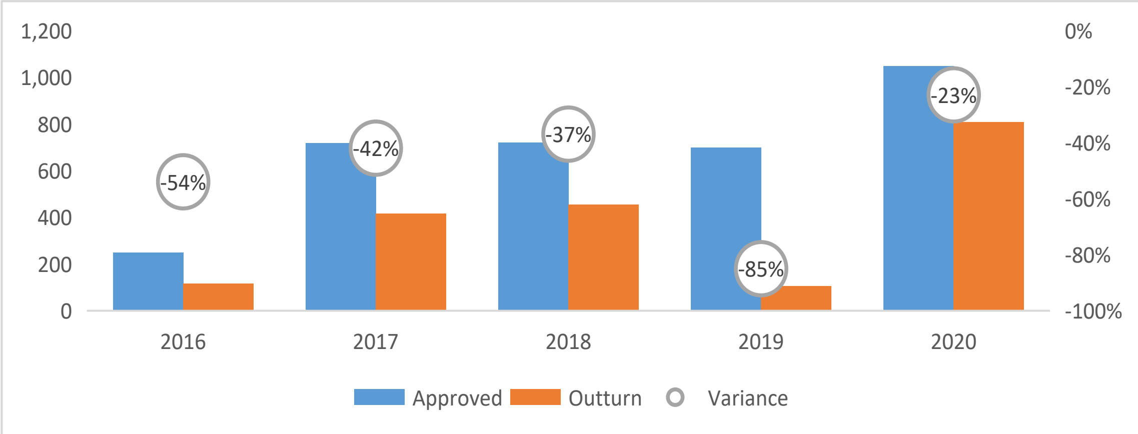
5.4 Relationship between debt and social protection, water and sanitation

The non-wage component of social protection and water and sanitation programmes has a larger share than the wage component. In social protection, the largest share of the budget is dedicated to transfers and subsidies, while the largest share of the water and sanitation sector is allocated to infrastructure development, given the enormity of infrastructure gaps in the sector.

Despite increases in the number of beneficiaries, the flagship social protection programme, SCT, has been faced with challenges in terms of disbursements. As can be seen from Figure 9, the released amounts have constantly been below what has been approved in the Budget. For instance, in 2016, Government allocated K250 million but only disbursed K118 million. This has been a continuous trend, and can be seen through to 2020, which the disbursed amount was 23% below what was approved.

[28] National Health Strategic Plan, 2017 - 2021

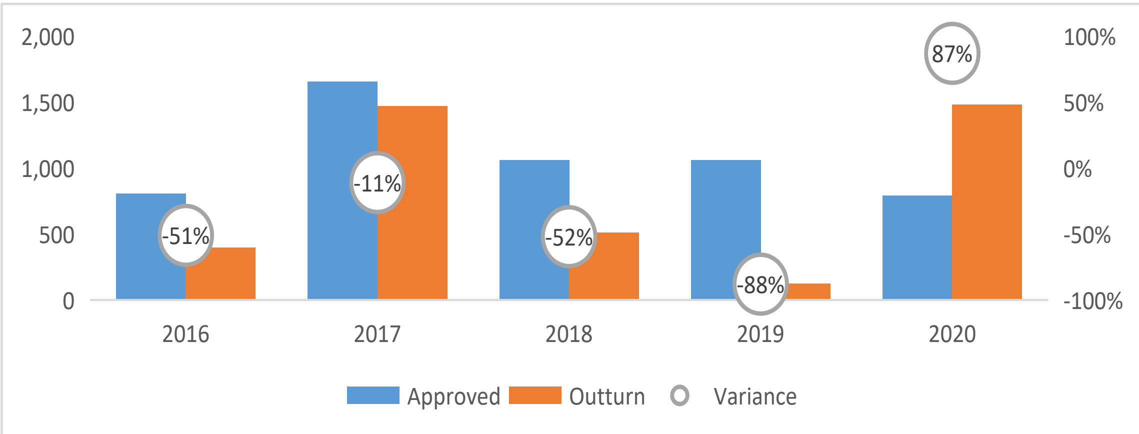
Figure 9: Social Cash Transfer Expenditure 2016 – 2020



Source: MOF Fiscal Tables

Pension benefits have also been marred with challenges. One of the notable challenges is the delay in disbursements, due to erratic funding. This has the potential to reverse the gains of empowering the beneficiaries and also alleviate poverty and build resilience. Figure 10 shows the approved and disbursed amounts to the pension fund. Generally, the Government has failed to disburse what has been approved, with budget variations of over 50%. However, in the wake of the COVID-19 pandemic, Government released K1.4 billion against a target of K792 million, and this was on account of the dismantling of arrears from the proceeds of the K8 billion COVID-19 bond.

Figure 10: Pension Fund Financing 2016 – 2020

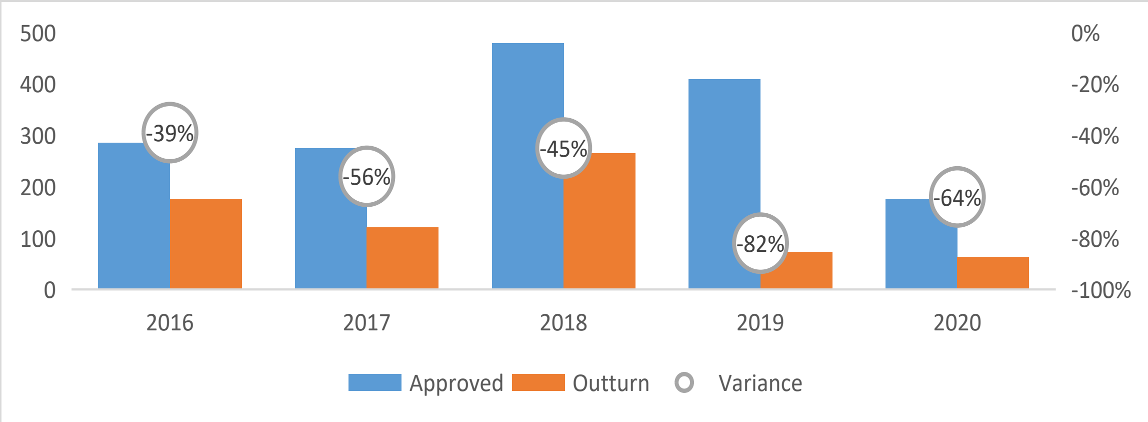


Source: MOF Fiscal Tables

WASH is an important social sector programme as it is critical for preventing various contagious diseases. Despite the importance of the WASH, the sector has been characterised by declining budgets as shown in Figure 11. In 2016, the Budgetary allocation was K285 million but only K175 million was released. In 2019, there was an underspend of 82% against a target of K409 million, and this is similar to the events of 2020.

In this regard, it can be seen that the WASH is highly underfunded, and risks the country to attain SDG 6 on water and sanitation. The current estimates by the World Bank show that the country will need to at least US$25 annually per person from now until 2030 in order to attain WASH related SDGs.

Figure 11: WASH Expenditures 2016 – 2020



5.5 Summary

Despite both education and health expenditures being affected by increases in debt payments, proportional to the size of the non-discretionary expenditure, the impact is likely higher on health, social protection and water and sanitation. The reduction in funding to the health sector has had a bearing on the quality of expenditure. In addition, the reduced funding has led to human resource gaps in the health sector. Rural areas are the hardest hit as the Government has been struggling to dispatch qualified staff in rural health facilities.

The education sector has also been affected by the shrinking fiscal space that the country is experiencing. The major risk of reduced funding, is that Government cannot have sufficient human resource in the education sector. In this case, rural areas tend be the sacrificial lamb as the Ministry cannot retain teachers there due to lack of social amenities in most of the schools. In addition, learners in rural arears have to cover long distances to access learning facilities. The greatest concern of the lack of funding to the education sector is that Zambia risks of losing all the gains it made in the education over the years.

Social protection has also been hit by the reduced funding. This has been characterised by low disbursements to social protection programmes such as the SCT, pension benefits and WASH. This has a negative effect on poverty alleviation and protecting the vulnerable. Furthermore, the reduced funding to social protection has the potential to undermine the country's efforts to attain its SDGs.

6. THE RELATIONSHIP BETWEEN LEGAL REFORM AND ECONOMIC REFORM

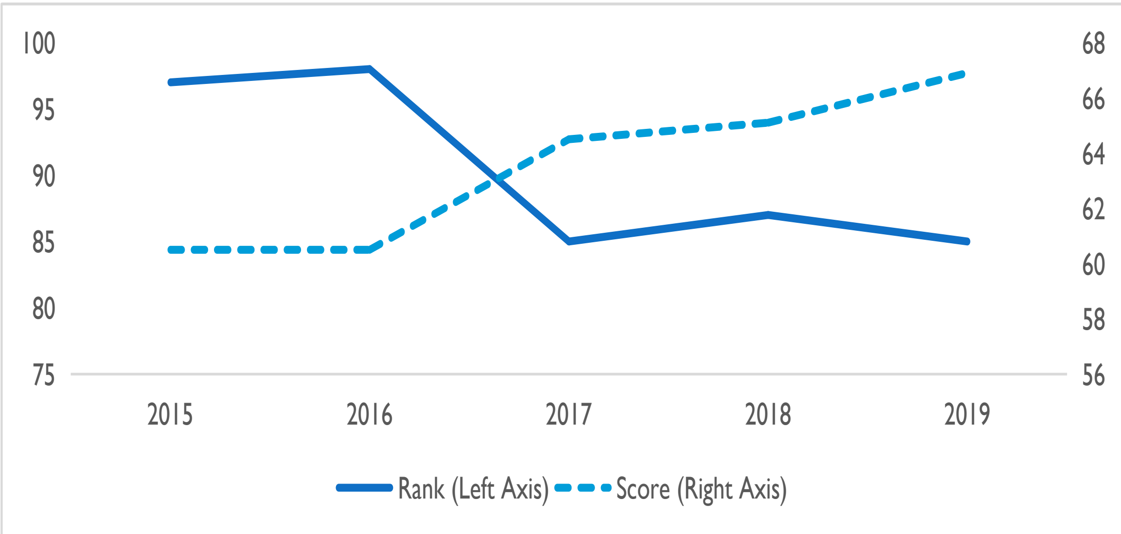
There are three ingredients that appear to be essential to a well-functioning legal system in a market economy—a supply of market-friendly laws, adequate institutions to implement and enforce them, and a demand for those laws from market participants. To assess the supply of market-friendly laws, this report examines the World Bank's Doing Business which documents changes in regulation in 12 areas of business activity to encourage efficiency and support freedom to do business. Further an analysis of the laws governing illicit financial flows are also examined. In assessing the institutions that implement and enforce these laws, we will determine the roles and autonomy of such institutions as the Financial Intelligence Centre, Drug Enforcement Commission whose mandate includes stemming money laundering, the Anti-Corruption Commission, Securities Exchange Commission, the Business Regulatory Review Agency and the Zambia Competition Commission.

6.1 Doing Business in Zambia

The Doing Business project provides objective measures of business regulations and their enforcement across 190 economies and selected cities at the subnational and regional level. The framework captures several important dimensions of the regulatory environment as it applies to local firms. It provides quantitative indicators on regulation for starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. The ease of doing business scores show an economy's absolute position to the best regulatory practice, while the ease of doing business ranking is an indication of an economy's position relative to that of other countries.

Over the past decade, Zambia implemented two Public Sector Development (PSD) reform programmes that were aimed at improving the business environment and reducing the cost of doing business. The main conduit to achieve this was done through providing good regulatory framework and business environment to attract quality investment into manufacturing through Foreign Direct Investment (FDI) and Public Private Partnerships (PPPs). Notable among these measures included: the creation of the Zambia Development Agency (ZDA) that was aimed at facilitating and promoting investments in the country; crafting legislation that is more business friendly; and streamlining of business processes covering registration, licensing and payment of taxes.

Figure 12: Zambia Ease of Doing Business, 2015 - 2020



Source: Author's Construction from World Bank Doing Business Report

In light of the above reforms, the country saw an improvement in the Ease of Doing Business as shown in Figure 12. However, the country went down the ladder between 2017 and 2018, as a result of progress on indicators relative to other countries. However, there was an improvement from 2018 largely on account of improved mechanisms in getting credit, payment of taxes, trading across borders, and enforcement of contracts and protection of minority investors. As at 2019, Zambia was ranked number five in Sub-Saharan Africa on the Ease of Doing Business behind Mauritius, Rwanda, Kenya, and South Africa.

6.2 Illicit Financial Flows

Illicit Financial Flows (IFFs) refer to illegal, unrecorded or wrongly recorded transfers of capital from an economy.[29] IFFs result in a loss of what are often desperately needed resources to fund public initiatives or critical investments, and this undermines the efforts of countries to mobilise more domestic resources in order to meet the internationally-agreed SDGs by the target date of 2030.[30]

Over the years, IFFs continue to be a serious concern in Zambia. In order to track IFFs in Zambia, the authorities set up the Financial Intelligence Centre (FIC). FIC was constituted to complement and support the work of the Law Enforcement Agencies such as the Drug Enforcement Commission (DEC) and the Anti-Corruption Commission (ACC) which are most commonly known as the investigative wings. The roles and responsibilities and autonomy are discussed below.

The Financial Intelligence Centre: The FIC is an independent and autonomous body and was established under the Financial Intelligence Centre Act No 46 of 2010. The main function of the FIC include: receive, request, analyse and evaluate Suspicious Transaction Reports (STRs); disseminate information to Law Enforcement Agencies where there are responsible grounds to suspect money laundering or financial of terrorism and proliferation; and educate the public and reporting entities of their obligations and inform them of measures to detect, prevent and deter money laundering and financing of terrorism and proliferation.

The Drug Enforcement Commission: The DEC is established under the Narcotic Drugs and Psychotropic Substances Act, 2021. According to the Act, the functions of the Commission include: prevent, investigate and control the supply and demand of a drug and precursor chemicals and also prevent and investigate money laundering and related offences. The detailed functions of the DEC are listed under Article 3 (1).

The Anti-Corruption Commission: The ACC is mandated under the Anti-Corruption Act No.3 of 2012 to spearhead the fight against corruption in Zambia. In summary, the functions of the ACC include the following: investigate and prosecute cases of suspected corruption; conduct public sensitisation on the dangers of corruption and fostering public support in the fight against corruption; putting in place mechanisms for preventing the corruption for preventing the scourge.

The Securities and Exchange Commission: The Securities and Exchange Commission (SEC) is mandated to regulate Capital Markets in Zambia, through an Act of Parliament, the Securities Act no. 41 of 2016. The role of the SEC is: to supervise and develop the Zambian Capital Markets; and to license, register and authorize financial intermediaries, issuers of debt and equity instruments and collective schemes.

Business Regulatory Review Agency: The Business Regulatory Review Agency (BRRA) was established under the Business Regulatory Act No.3 of 2014 and it is a statutory body under the Ministry of Commerce, Trade and Industry. The objectives of the BRRA are to improve the quality of business regulation, promote stakeholder consultation in the regulatory making process, ease and reduce the cost of compliance with regulation, and foster a business friendly, transparent, simpler, cost effective and efficient regulatory regime.

[29] https://gfintegrity.org/issue/illicit-financial-flows/

[30] https://gfintegrity.org/issue/illicit-financial-flows/

The Zambian Competition Commission: The Zambia Competition Commission is established under Article 4 (1) of the Competition and Consumer Protection Act No. 24 of 2010. The mandate of the Commission is to protect the competition process in the Zambian economy and also protect consumers.

In view of the above, all the institutions analysed have a mandate to support the economic and legal reform. One key ingredient is to have a trends analysis of IFFs. As stated earlier, FIC tracks IFFs and produces a trends reports which covers matters that have been referred to, and may be under active investigation by the investigative wings. For instance, there was an increase in IFFs from K4.5 billion in 2017 to K6.1 billion in 2018 as shown in Table 4. In 2019, IFFs reduced to K984 million in 2019, and this was on account of having more individuals than corporates which usually have higher values. However, IFFs increased in 2020 to K3.1 billion due to an increase in corruption and illegal mining in precious metals and stones.

In view of the above, all the institutions analysed have a mandate to support the economic and legal reform. One key ingredient is to have a trends analysis of IFFs. As stated earlier, FIC tracks IFFs and produces a trends reports which covers matters that have been referred to, and may be under active investigation by the investigative wings. For instance, there was an increase in IFFs from K4.5 billion in 2017 to K6.1 billion in 2018 as shown in Table 4. In 2019, IFFs reduced to K984 million in 2019, and this was on account of having more individuals than corporates which usually have higher values. However, IFFs increased in 2020 to K3.1 billion due to an increase in corruption and illegal mining in precious metals and stones.

Table 4: Losses due to IFFs in Zambia, 2017 - 2020 (K' Millions)

	2017	2018	2019	2020
Tax Evasion	3900	1000	144	717
Corruption	500	4795	332	2228
Fraud	3	110	53	26
Money Laundering	91	195	450	4
Illegal mining in precious metals and stones	0	0	0	165
Others	0	0	5	2
Total	4494	6100	984	3142

Source: Author's Construction from National Budgets

7. CONCLUSION AND RECOMMENDATIONS

This report attempted to conduct an audit on debt strategies and key legal reforms. It reviewed the legal framework governing Public Debt Management (PDM) by highlighting the strengths and weaknesses of various pieces of legislation. In addition, the report evaluated the impact of public debt on the social sectors. Furthermore, the report also sought to understand the relationship between the economic and legal reform.

The main messages in this report can be summarised as follows:

The Government has continued to maintain an expansionary fiscal path: Over the years, the Government has continued on an expansionary fiscal path that have led to widening and perpetual fiscal deficits. Ultimately, in August 2019, the IMF and the World Bank announced that Zambia's debt was no longer sustainable.

The effects of the high debt have translated into macroeconomic instabilities that have continued to distress the economy. After nearly a decade of faltering economic growth, the Zambian economy went into a recession in 2020, as real GDP was recorded at -3%. Inflation has also breached the 6-8% set by BOZ and was reported at 23.2% as at end May 2021, and the kwacha has continued to lose value and is now trading at K22.4/US$ over the same period.

In response to the macroeconomic instabilities, the Government crafted the ESGP 2017 – 2019 which was meant to stabilise the economy and bring the debt to sustainable levels. However, during the implementation period, the economy was characterised by higher expenditures that continued to outstrip revenues leading to high fiscal deficits averaging 7.5% of GDP. On the positive side, the Public Finance and Management Act (No. 1 of 2018) was also enacted, effectively legislating the IFMIS and TSA. The IFMIS was targeted at improving expenditure controls and fiscal reporting among Ministries, Provinces and Spending Agencies (MPSAs). The TSA System, which is a unified structure of bank accounts gives a consolidated position of Government's cash resources and aims to improve the Government's ability to efficiently and effectively manage public financial resources by refining current payments processes, and eliminating redundant procedures between itself and its clients.

The rising debt is as a result of the legal framework guiding public debt that has lacunas: The legal framework guiding PDM, has several matters that should be considered for amendment and or inclusion. There is a disparity between the Constitution (Amendment) Act No. 2 of 2016 and the Loans and Guarantees (Authorisation) Act No. 13 of 1994 on who has the final authority to approve loans before contraction. According to the former, Parliament should have the final stamp, but subsidiary law grants the Minister of Finance through Cabinet this responsibility instead. The National Assembly's role remains limited to approving the debt ceilings and the Money Bills even though the Constitution requires the National Assembly to approve all contracted debt. Thus, approval of debt contraction has eluded members of the legislature, because the provision has not been prescribed in the Loans and Guarantees (Authorisation) Act No.13 of 1994.

Furthermore, the absence of an MTDS has made it easier for the Government to contract debt from the external market that has had serious consequences on the economy. This is because the preparation of an MTDS is not backed by legislation, and this is partly the reason why the country has borrowed massively from the external markets.

The huge debt servicing costs have had a telling impact on social sector delivery: In the process of trying to meet debt obligations, the Government has had to shift expenditure from other priority areas of the economy such as the social sectors. The reduction in funding to the health sector has had a bearing on the quality of expenditure. In addition, the reduced funding has led to human resource gaps in the health sector. Rural areas are the hardest hit as the Government has been struggling to dispatch qualified staff in rural health facilities.

The education sector has also been affected by the shrinking fiscal space that the country is experiencing. The major risk of reduced funding, is that Government cannot have sufficient human resource in the education sector. In this case, rural areas tend be the sacrificial lamb as the Ministry cannot retain teachers there due to lack of social amenities in most of the schools. In addition, learners in rural arears have to cover long distances to access learning facilities. The greatest concern of the lack of funding to the education sector is that Zambia risks of losing all the gains it made in the education over the years.

Social protection has also been hit by the reduced funding. This has been characterised by low disbursements to social protection programmes such as the SCT, pension benefits and WASH. This has a negative effect on poverty alleviation and protecting the vulnerable. Furthermore, the reduced funding to social protection has the potential to undermine the country's efforts to attain its SDGs.

The Government has devised an Economic Recovery Programme that is meant to revive the economy: The ERP 2020 – 2023 provides a clear road map of strategic policy actions and enablers required to revive the economy and place it on a path of sustainable growth and development. Domestic resource mobilization measures include tax policy reforms and enhancing tax administration. However, while there are legislative provisions for revenue measures, it may not be practical to enforce some provisions.

Expenditure rationalization measures such as the full migration of beneficiaries to the e-voucher is not necessarily backed by legislation but it is a purely administrative measure. The ERP also calls for the (PIMS) that facilitates the appraisal of capital projects before inclusion in the National Budget, and this is provided for in Article 24 (1) of the National Planning and Budgeting Act of 2020.

The ERP also provides for debt sustainability measures which include: project rescoping; cancellation and restructuring of debt; increasing the maturity profile of the domestic debt through refinancing of shorter-term debt to longer-term debt. However, the subsidiary law governing public debt does not have legal provisions for the preparation of an MTDS which makes it difficult for the authorities to undertake activities such as cancellation, restructuring and refinancing.

Zambia has made positive strides in economic and legal reform: Over the past decade, Zambia implemented, two Public Sector Development (PSD) reform programmes that were aimed at improving the business environment and reducing the cost of business. This has seen an improvement in the World Banks doing business performance assessment, and as at 2019, Zambia was ranked number five in Sub-Saharan Africa on the Ease of Doing Business behind Mauritius, Rwanda, Kenya, and South Africa.

However, IFFs continue to be a serious issue in Zambia. IFFs increased from K4.5 billion in 2017 to K6.1 billion. However, IFFs reduced to 984 million in 2019, and this was on account of having more individuals than corporates which usually have higher values. In 2020 IFFs increased to K3.1 billion due to an increase in corruption and illegal mining in precious metals and stones.

From the above analysis, this report offers the following recommendations:

Amend the legal framework guiding PDM: There is need to have an amendment to the Loans and Guarantees (Authorisation) Act No.13 of 1994 on who has the final authority on debt contraction. This will require the amendment to specify that National Assembly should have the final authority as espoused in the Constitution.

The scope of public needs to be widened in the Loans and Guarantees (Authorisation) Act No.13 of 1994 and should be aligned to that which is defined in the Public Finance Management Act, 2018. The definition in the Public Finance Management Act defines public debt as "financial material and other resources including guarantees acquired or borrowed by a public body in the interest of the Republic". This will surely broaden the scope of public debt and will also incorporate the treatment of SOEs and contingent liabilities.

The legal framework guiding PDM should also have provisions for the preparation of an MTDS. Given the importance of the MTDS as discussed earlier it is highly cardinal that the primary legislation backs the preparation of the MTDS so that it guide the borrowing plans of the Government in the Medium Term.

Safeguard the Social Sectors: The Government needs to protect the poor and vulnerable by safeguarding the social sectors, and this can only be achieved by financing the sector through domestic resources. But the current situation shows that the sectors has been characterised by low disbursements due to the shrinking fiscal space stemming from the high debt service costs. Therefore, the Government needs to pursue domestic resource mobilisation strategies to increase the pool of domestic resources.

Curb IFFs: In order for the Government to curb or reduce IFFs, there is need to strengthen institutional oversight, and also capacitate the Law Enforcement Wings with adequate technology to detect IFFs. Furthermore, there is need to protect them from undue pressure that may jeopardise the functioning of these institutions.

Jesuit Centre for Theological Reflection

JCTR

Promoting Faith and Justice

The Jesuit Centre for Theological Reflection

Plot # 3813, Martin Mwamba Road, Olympia Park
P.O. Box 37774, 10101, Lusaka, Zambia

Email: jctr.sed@gmail.com | research.planning@jctr.org.zm | media.information@jctr.org.zm
Website: www.jctr.org.zm

Facebook: Jesuit Centre for Theological Reflection
Twitter: @JCTROrg Tel: +260 211 290410 | Fax: +260 211 290759

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Audit on Debt Strategies/Key Legal Reforms That Support The Financing For Development Agenda in Zambia

Mbewe, Kalikeka;Shebo, Nalishebo

Jesuit Centre for Theological Reflection