The Role of Parliament in Public Debt Management in Zambia

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Acronyms

AfDB	African Development Bank
AG	Auditor General
CSO	Civil Society Organisation
Covid-19	Coronavirus Disease of 2019
DDCC	District Development Coordinating Committee
DSA	Debt Sustainability Analysis
EXIM China	Export-Import Bank of China
GDP	Gross Domestic Product
GFC	Global Financial Crisis
GRZ	Government of the Republic of Zambia
FGD	Focus Group Discussion
HIPC	Heavily Indebted Poor Countries
IDA	International Development Association
IMF	International Monetary Fund
LCMS	Living Conditions Monitoring Survey
LIC	Low-Income Countries
LMIC	Low-Middle Income Countries
MMD	Movement for Multiparty Democracy
MoFNP	Ministry of Finance and National Planning
MDRI	Multilateral Debt Relief Initiative
MP	Member of Parliament
MTBS	Medium-Term Budget Strategy
MTDS	Medium-Term Debt Strategy
NAZ	National Assembly of Zambia
NDCC	National Development Coordinating Committee
NPB	National Planning and Budgeting
OAG	Office of the Auditor General
PBO	Parliament Budget Office
PDCC	Provincial Development Coordinating Committee
PDM	Public Debt Management
PFM	Public Finance Management
PPG	Public and Publicly Guaranteed
SAP	Structural Adjustment Programme
SOE	State Owned Enterprise
UNIP	United National Independence Party

Executive Summary

High debt levels shrink fiscal spaces, leaving insufficient resources for social sector and economic investments, exacerbating economic woes, deepening inequalities, and crippling growth prospects. Over the years, Zambia has grappled with fiscal problems reflected in widening budget deficits and soaring debt. Even after getting an almost clean debt slate following the debt forgiveness from the Heavily Indebted Poor Countries (HIPC) deal in 2005, about a decade later (in 2017), Zambia's debt levels were declared unsustainable by the International Monetary Fund (IMF). In 2020 and 2021, the debt levels had exceeded the size of the economy, and Zambia was spending more on debt servicing than the social and economic sectors, posing significant threats to economic recovery and macroeconomic stability.

After concerted efforts, the Zambian Government clinched a debt deal of $6.3 billion with official creditors approved by the IMF, representing a 40 percent reduction in debt in June 2022. Given the experience of fiscal slippages and the recurrence of debt crises, the Government fortified the frameworks for debt management by enacting the Public Debt Management Act (PDM), 2022. Cognizant of the crucial role of Parliament in public finance management, this study evaluated the oversight role of Parliament in debt sustainability, highlighting the main impediments to effective parliamentary oversight in debt management. The study makes the following recommendations to strengthen parliamentary oversight over debt management, safeguarding Zambia's fiscal health and assuring fiscal sustainability.

To Strengthen the Legal Frameworks:

- The Government should consider passing a statutory instrument outlining extensive details of what should be in the annual borrowing plans presented to the National Assembly and measures for ensuring that the statutory instrument is effectively implemented. Depending on the nature of the loan, the borrowing plans should include the terms and conditions for acquiring or guaranteeing loans. This will give members of parliament (MPs) more information to scrutinise loans from a more informed perspective. With this information, MPs may be more effective in their oversight role over the contraction and management of public debt.
- Although the PDM Act 2022 has strengthened the role of Parliament in the management of public debt, the Minister of Finance (Incorporation) Act still vests the Minister with broad discretionary powers to bind the Government in loan agreements without Parliamentary oversight. Therefore, this Act must be amended to align with the standards set out in the PDM Act in order to remedy the anomalous situation where the Minister has extensive discretionary powers to borrow outside the restrictive framework of the PDM Act.
- The public debt management chain could still be vulnerable to abuse without a legal framework for public access to key information on debt throughout the chain, as shown by the Chiluba case. The PDM Act has introduced mechanisms to enhance transparency by requiring regular public reports by the Minister of Finance to Parliament and the public. However, some aspects of debt management might be outside the framework of the PDM Act, as shown by the Chiluba case. There is, therefore, a need for the Government to enact the Access to Information legislation to allow members of the public access to information about public debt, from its contraction to the repayment of the loans.

- The Auditor General (AG) must be expressly empowered to audit Government debt and highlight debt-related issues in the audit report. This audit would help bridge the information gaps and provide transparency about the conditions, composition, and size of the public loans, guarantees, and grants. The audit should include information on disbursements and the usage of borrowed money. Additionally, the AG should publish timely and regular audit reports to ensure transparency and accountability in the entire public debt management process.

To Enhance Parliament's Capacity:

- Parliament, including relevant committees such as the Planning and Budgeting Committee, must be given ample time to review individual loans, guarantees, and grants contained in the Annual Borrowing Plan and consult widely with key stakeholders such as the Ministry of Finance and National Planning (MoFNP), Civil Society Organizations (CSOs) and research organizations, rather than just reviewing the entire Annual Borrowing Plan.
- There is a need to enhance technical capacity among MPs on matters related to public debt management. This could be done via workshops, stakeholder engagements, and training programs. The capacity-strengthening programs should be done in partnership with the National Assembly and Parliamentary Budget Office to ensure that MPs are adequately equipped with the required knowledge and analytical skills to interrogate and debate debt issues. Such capacity-enhancing programs would also help the MPs effectively influence public discourse on matters related to debt sustainability. The capacity building should include development of appropriate tools such as manuals and guidelines.
- Debt composition should be clearly defined and extend the composition of the debt covered by the sixty-five percent threshold to include Government guarantees to ensure that public debt remains within the set limits. MoFNP could commission a study to review best practices for defining debt composition while incorporating views from key stakeholders. The clarity will help enhance Parliament's capacity to effectively debate issues, strengthening its oversight role in debt management.
- Debt ceilings should be reviewed by Parliament. This also entails researching the feasibility of reducing debt levels to the legislative requirement of 65 percent of GDP within five years. Working with more realistic debt targets would also enhance parliament's capacity to oversee debt management. This is because the Government is more likely to adhere to realistic debt ceilings than unrealistic ones, reducing the occurrence of deviations from the targets, in turn lowering the scrutiny workload for parliament.

1.0 Introduction

1.1 Background

Over the past decade, particularly between 2012 and 2021, Zambia had been grappling with economic and fiscal challenges manifesting in subdued economic growth, a deterioration in macroeconomic fundamentals, and crippling debt levels. Over this period, public sector debt swelled to unsustainable levels, exceeding the size of the economy. The economy slowed, and in 2020, Zambia recorded its first recession in years when the GDP shrank by 2.8 percent. The rest of the macroeconomic fundamentals were in free fall, reflected in the rapidly weakening Kwacha, rising inflation, and widening fiscal deficits. From 2012 to 2021, the Kwacha had depreciated by 288.9 percent, inflation averaged 11.0 percent and the fiscal deficit increased from 2.8 percent of GDP to 9.3 percent. These economic challenges posed a major threat to the Government's economic recovery program and macroeconomic stabilization agenda.

Until 2010, Zambia's debt had remained relatively sustainable. However, the fiscal stance changed after the 2011 elections when the Government embarked on a massive infrastructure expansion program. The ambitious infrastructure program, amidst sluggish economic growth and weak governance systems, accelerated the erosion of the fiscal space, narrowing the Government's financing options and triggering a change in the debt landscape from concessional bilateral debt to more costly commercial debt, including Euro bonds. China dominated the commercial debt portfolio, and by 2020, Chinese debt accounted for 30 percent of Zambia's debt. The country's lower middle-income (2011 to 2021) status which disqualified Zambia from concessional borrowing, also constricted Zambia's financing options. The change in debt profile set Zambia on an unsustainable fiscal path, culminating in the debt crisis and eventual default in 2021.

A combination of unsustainable debt levels accompanied by increased debt servicing costs, weak governance environment, and economic stagnation significantly narrowed the fiscal space, which adversely affected social and economic investments. These disinvestments contributed to the deterioration in economic and social sector indicators Zambia has been experiencing over the past decade. As Section 2 shows, budgetary allocations to education, health, water, sanitation, and health declined between 2015 and 2021, a period associated with rapid debt accumulation and high debt servicing costs.

In 2020, Zambia became the first country to default on its debt obligations in the COVID-19 pandemic era. The default came at the back of immense economic headwinds from multiple fronts, including macroeconomic instabilities, fiscal vulnerabilities, compromised governance systems, and global shocks. Attempts in 2020 by Dipak Patel, a former minister, to enforce constitutional provisions giving parliament power to approve all public debt failed as the Constitutional Court dismissed the case.

The new Government ushered in August 2021[1] embarked on an aggressive economic stabilization and recovery agenda. Reigning in debt through debt restructuring and strengthened public finance management (PFM) were crucial first steps toward economic recovery and macroeconomic stability. As a result, in 2023, Zambia became the first country to reach a debt restructuring agreement under the G20 and Paris Club Common Framework for Debt Restructuring.

1 In August 2021, Zambia elected Hakainde Hichilema of the United Party for National Development as its president.

Although the debt restructuring process has yet to be fully concluded, Zambia has met some of the recommendations advanced by scholars on resolving its debt crisis. In August 2022, the country qualified for a 38-month IMF Extended Credit Facility (ECF) amounting to USD 1.3 billion[2] and sealed a debt restructuring agreement with the Official Creditors Committee (OCC) of the Common Framework[3] in June 2023. To strengthen the regulatory frameworks for debt management, the Government also enacted the Public Debt Management (PDM) Act in 2022.

1.2. Objectives

Despite the Government clinching the debt restructuring deal and having strengthened the institutional and legislative frameworks for debt management, concerns remain on whether the recent reforms provide sufficient guardrails to prevent a recurrence of a debt crisis. Thus, understanding the evolution of Zambia's debt crisis and legislative framework, including the parliamentary oversight role, is crucial.

Against this backdrop, this study evaluates the Zambian Parliament's oversight role in the management of public finances, particularly public debt. It identifies capacity or process gaps that have hindered or may hinder effective Parliamentary oversight of public debt and proposes remedial actions to fill them.

Specifically, the study focuses on the following objectives:

i. Provide a brief overview of the country's public debt obligations.

ii. Review the legal framework underpinning debt contraction and Parliamentary budget and debt processes to identify gaps.

iii. Make recommendations for establishing strong Parliamentary budget and public debt oversight processes and enhancing transparency and accountability in public financial management.

1.3. Methodology

The study uses a combination of a desk review and key informant interviews to gather the relevant data. The desk review involved conducting a detailed and critical review of relevant literature, secondary data, national documents, and international reputable data sources such as the World Bank, and the IMF. To triangulate the findings from the desk review, Focus Group Discussions (FGDs) with MPs from the Planning and Budgeting Committee of the National Assembly of Zambia (NAZ) and opinions from select civil society organizations such as Transparency International Zambia were conducted. The FGDs took place at a workshop held with the MPs in Lusaka on September 26, 2023. The FGDs provided nuance and context to the findings from the desk review.

2 https://mediacenter.imf.org/news/imf-zambia-s-extended-credit-facility-arrangement/ s/45ff4f0d-ab95-44b4-995b-499fa4f273d1

3 https://www.imf.org/en/News/Articles/2023/06/22/pr23235-imf-welcomes-debt-treatment-agree ment-reached-by-zambia

The public debt statistics were compiled using data from the IMF and the MoFNP. Since the PDM Act 2022 covers both debt accrued by the central Government and other public bodies, the study uses external public and publicly guaranteed debt as a measure for external public sector debt. Public and public guaranteed (PPG) debt is the total debt accrued by public entities or institutions (this includes the general Government and other public bodies - i.e. state-owned enterprises) including guaranteed private sector debt obligations. It is broader than general Government debt and central Government debt. General Government debt is the total debt of various levels of Government (central and local governments), whilst central Government debt is the total debt of the central Government.

1.4. Structure of Report

The rest of the report is structured as follows: Chapter Two provides a comprehensive review of Zambia's public debt obligations. This is followed by Chapter Three, which evaluates the legal and institutional frameworks for debt contraction and management. The role of Parliament in debt management is provided in Chapter Four. Conclusions and recommendations are left to Chapter Five.

2.0 Overview of Zambia's Debt Obligations

Zambia's post-HIPC debt problem can be traced back to 2011, when the Government took an expansionary fiscal stance to finance economic programs, including a massive infrastructure program. Weak PFM and debt management frameworks opened doors to rapid debt accumulation, including from commercial sources. PPGD increased from 20.6 percent of GDP in 2011, to 119.3 percent in 2021. During this period, Zambia also became increasingly reliant on external debt. The ratio of external debt to domestic debt was 54:46 in 2021 compared to 40:60 in 2011. Additionally, external debt increased to 64.9 percent of GDP in 2021 from 8.3 percent in 2011, while domestic debt constituted 54.4 percent of GDP in 2021 compared to 12.3 percent in 2011. The rest of the section analyzes Zambia's debt profile and the consequences of the debt surge.

2.1 Review of Zambia's Debt Profile (2010-21)

Like other low-income countries (LICs), Zambia has a long history of debt crises, culminating in the debt forgiveness crusade in the early 1990s and early 2000s, and the consequent attainment of the Heavily Indebted Poor Countries (HIPC) and Multilateral Debt Relief Initiative (MDRI) completion point in 2005.[4] The HIPC and MDRI debt relief programmes had been instituted to provide debt relief to developing countries that had accumulated unsustainable levels of public debt. The HIPC and MDRI initiatives provided Zambia with debt relief after close to three decades of debt distress. The attainment of HIPC completion in late 2005 led to a total of USD 6.5 billion of external debt being canceled. This reduced the external debt-to-GDP ratio from 86 percent in 2003 to 6 percent in 2006.

The debt relief expanded the fiscal space for social and economic investment that contributed to an economic boom (averaged at GDP growth of 8.7 percent from 2006 to 2010 and largely attributed to a surge in copper prices) that helped the country to graduate from a Low-Income Country (LIC) to a low-middle-income country (LMIC) in 2011. It is worth noting that the LMIC (2011 to 2021) status came with some costs, including disqualifying Zambia from concessional borrowing.

At the onset of the 2010s, Zambia had a relatively low public debt estimated at 20 percent of GDP in 2010.[5] In 2013, the IMF even classified Zambia's debt status, in 2012 and 2013, as low risk of debt distress. However, Zambia's debt swelled during the Patriotic Front administration, tripling (as a share of the economy) by the end of the party's first term. Total public debt increased from 20.6 percent of GDP at the end of 2011 (Figure 1) to 61.4 percent in 2015. The rapid accumulation of debt is attributed to the expansionary fiscal policies, including the huge infrastructure program, and expanded civil service. During the second term of the PF Government, Zambia's fiscal position deteriorated further, as public sector debt shot to 128.1 percent of GDP in 2017 from 20.6 percent in 2011. Other factors contributing to rapid debt growth during this period include legal loopholes around the usage of borrowed funds and the Loans and Guarantees (Authorisation) Act lacking a specific provision for requiring that final loan authorisation be passed by the National Assembly in line with the Constitution.[6]

4 Jubilee-Zambia, 2007. An Evaluation of the Strengths and Weaknesses of Public Debt Management in Zambia and the JCTR Comprehensive Public Debt Management Legal Review, Lusaka: Jubilee-Zambia: Debt Cancellation and Trade Justice Campaign. https://repository.jctr.org.zm/handle/20.500.14274/85

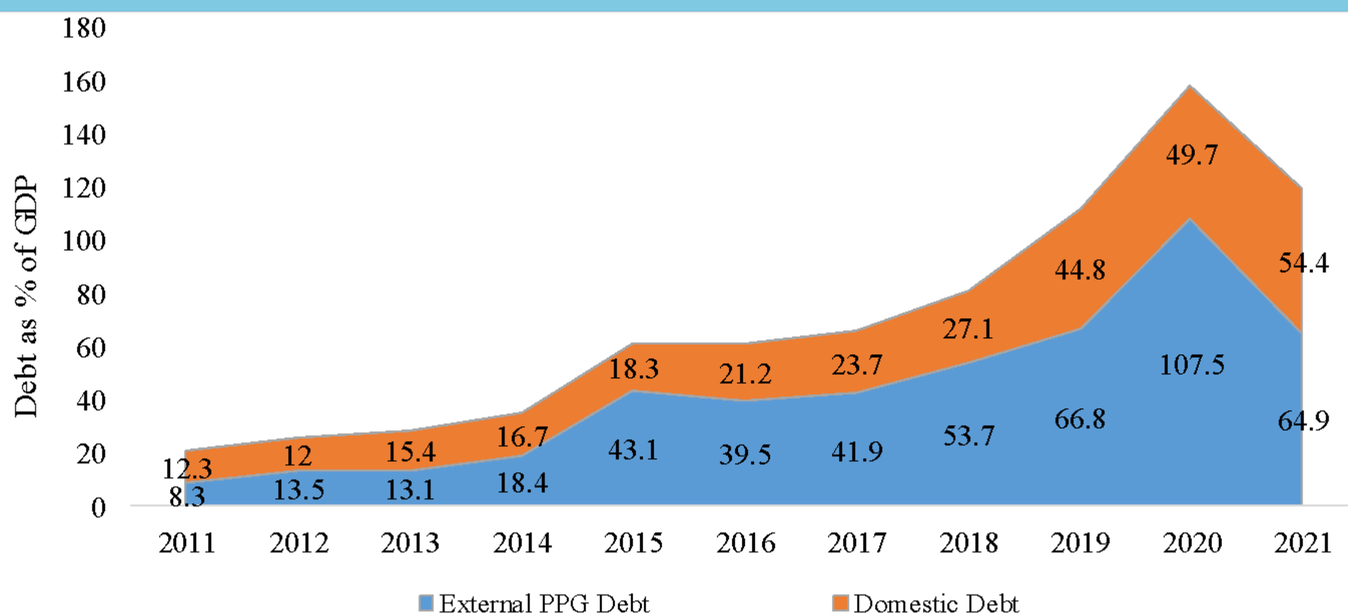
5 Siwale, T. (2020). The structural constraints limiting Zambia's economic response to COVID-19. Retrieved from International Growth Centre: https://www.imf.org/-/media/Files/DSA/external/pubs/ft/dsa/pdf/2017/dsacr17327.ashx

6 CUTS (2020) An Analysis of the Legal Framework for Public Debt Management in Zambia

The debt composition also changed over the same period, with external debt soaring and dominating the landscape. While domestic debt increased from 12 percent of GDP in 2011 to 52.3 percent in 2017, external debt PPG leaped from 8.3 percent to 75.8 percent over the same period. It is, therefore, not surprising that the 2017 IMF Debt Sustainability Analysis (DSA) report signaled the risk of debt distress. And less than two decades after receiving debt relief in 2005, Zambia was back seeking debt relief, having been reclassified as a LIC and defaulted on its external debt repayments in 2020.

The surge in public debt was mainly caused by expansionary fiscal policies and weak governance and PFM frameworks. Specifically, the rise in public debt is attributed to the increase in non-concessional (more expensive debt) commercial debt mainly in the form of Eurobonds to fund huge infrastructure projects. For instance, the Government issued three consecutive Eurobonds in 2012 (USD 750 million), 2014 (USD 1 billion) and 2015 (USD 1.25 billion) totalling USD 3 billion. Furthermore, a combination of sluggish economic growth, macroeconomic instabilities, weak governance systems, and global shocks (Covid-19 pandemic) pushed the public debt to GDP ratio to an all-time post-HIPC high of 157.2 percent in 2020 (as the economy went into recession) before slightly declining to 119.3 percent of GDP in 2021.

Figure 1: External PPG Debt, Domestic Public Debt and Total Public Sector Debt (2011-21)



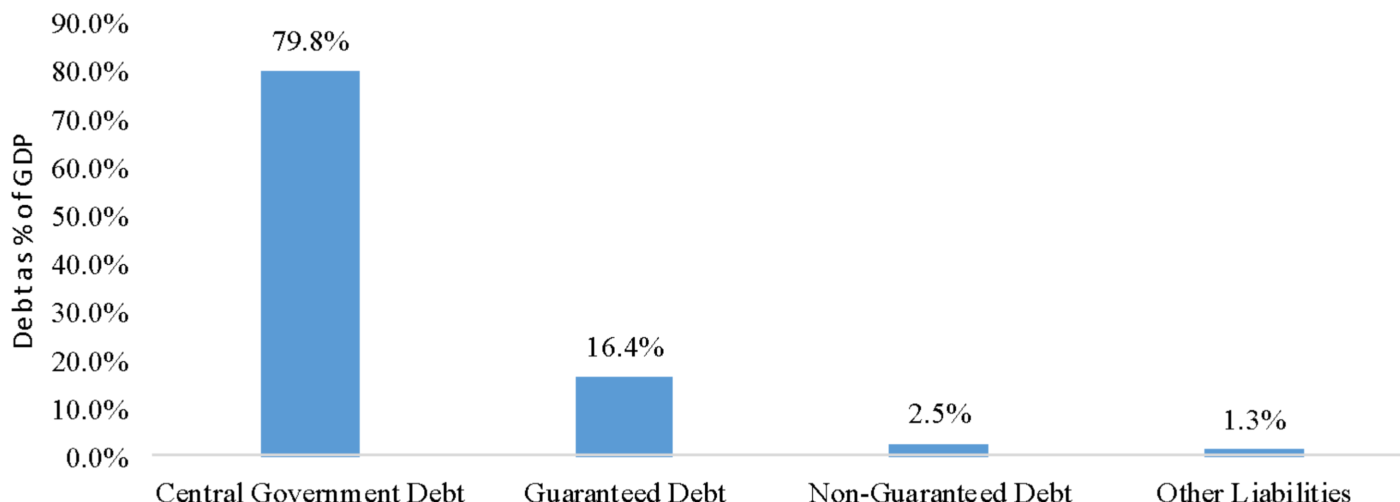
Source: IMF DSA Reports (2015, 2019 and 2022) and MoFNP Debt Summary Statistics

Before 2012, the Government relied more on domestic debt to bridge the funding gaps However, costly infrastructure projects coupled with low domestic revenue mobilization, and weak fiscal frameworks narrowed the Government's financing options, pushing the country to resort to external sources. While both domestic and external debt were on an upward trajectory, external debt increased much faster than domestic debt. From 2011 to 2021, domestic public debt averaged 26.9 percent of GDP, while external PPG averaged 42.8 percent of GDP.

However, Zambia's debt crisis, financing restrictions associated with lower middle-income status, Covid-19 induced global funding squeeze and global economic downturn (in 2020) reduced Zambia's access to external financial markets and cheaper concessional loans. Government was thus forced to resort to domestic sources of finance. According to MoFNP Public Debt Summary Statistics, domestic debt drastically increased from USD 7.8 billion in 2020 to 14.5 billion in 2021.

The MoFNP 2021 Public Debt Summary reports that Zambia's external PPG debt stood at USD 17.3 billion (54.1 percent of GDP) in 2021. When divided by category, central government debt accounts for the bulk (80 percent, USD 13.8 billion) of the PPG debt, foreign currency guaranteed debt of (16 percent; USD 2.8 billion), non-guaranteed (3 percent; USD 443 million) and other liabilities (1 percent; USD 217 million) (Figure 2).

Figure 2: Disaggregation of Public Sector Debt in Zambia, 2021

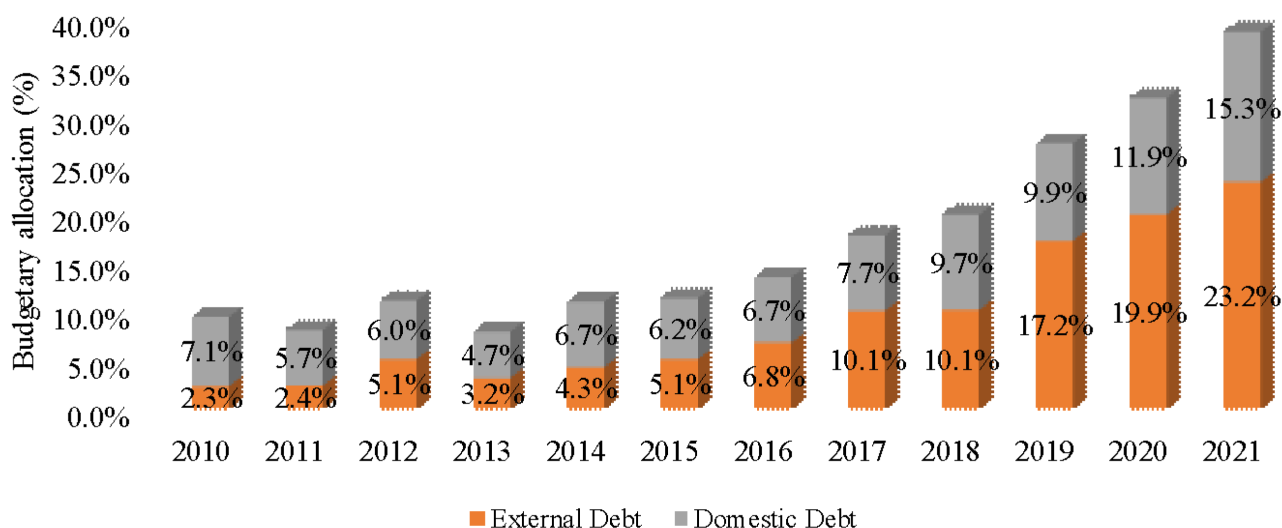


Source: MoFNP Public Debt Summary Reports (2021)

2.1.1 Debt Servicing

The rapid debt accumulation placed additional pressures on the fiscal space through debt servicing, leaving little resources for social and economic sectors. In 2010, 7.9 percent of the budget was allocated to debt servicing, increasing to 38.6 percent by 2021 (Figure 3). To put this in context, proposed allocations to debt servicing and dismantling of arrears exceeded allocations to economic affairs and social services, creating an enabling environment for debt distress (when a country cannot pay its debt), and a cycle of economic stagnation.

Figure 3: Expenditure on Debt Servicing (% of Budget, 2010-21)



Source: Ministry of Finance (2010-21 Budget Speeches)

From 2016, external debt servicing represented the majority of the total debt servicing costs. The rise in external debt servicing costs coincided with the period of rapid increase in external borrowing mainly comprising commercial debt. These findings underscore the need to strengthen frameworks for debt management, including bolstering Parliamentary oversight on debt issues.

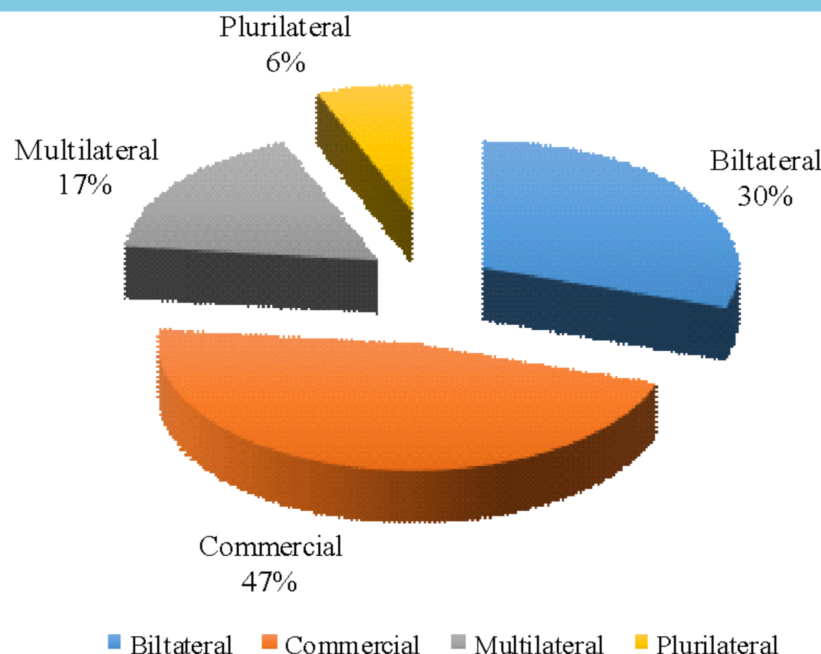
2.1.2 Creditors Profile

The composition of Zambia's debt has changed over time. Commercial debt has increased while multilateral debt, which had accounted for the majority of Zambia's external debt, reduced. In 2010, bilateral and multilateral debt accounted for over 70 percent of external debt. By 2021, however, the composition of public debt had significantly changed. As Figure 4 shows, commercial debt made up the largest portion (47 percent or USD 6.4 billion) of the USD 13.78 billion central Government debt. This is compared to bilateral debt (30 percent or USD 4.14 billion) of central Government debt, multilateral debt (17 percent or USD 2.37 billion) and plurilateral[7] (arrangements involving a few like-minded countries) debt (6 percent or USD 833 million). As earlier explained, the expansionary fiscal policies, weak governance frameworks, and financing restrictions associated with lower middle-income status contributed to the change in creditor profile.

The change in debt structure has a bearing on the country's fiscal health and pace of debt accumulation. This is because non-concessional and commercial debt attracts exorbitant interest rates, resulting in higher debt servicing costs, and, consequently, risks of a fiscal squeeze, and reduced social sector and economic spending.

Eurobonds accounted for more than half (USD 3.34 billion) of the commercial debt in 2021. It is worth noting that the Export and Import Bank of China (EXIM China) accounts for the bulk of the bilateral debt at USD 3 billion, with over 90 percent of this amount borrowed for infrastructure projects. On the other hand, multilateral debt included USD 1.39 billion from the World Bank/IDA and USD 513[8] million from the African Development Bank (AfDB).

Figure 4: Central Government External Creditors Profile for Zambia (2021)

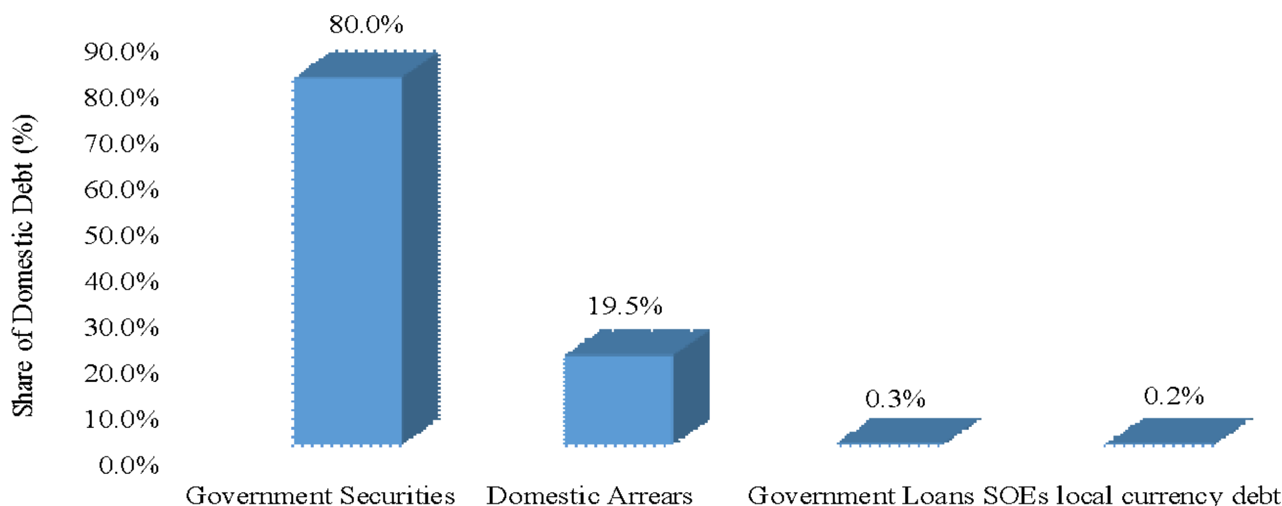


Source: MoFNP Public Debt Summary Report (2021)

7 A good example is the Arab Bank for Economic Development in Africa (BADEA)
8 2021 National Economic Report

Domestic debt is dominated by Government securities (i.e., treasury bills and treasury bonds), accounting for 80 percent of total domestic debt (USD 11.58 billion) in 2021. Domestic arrears[9], which accumulated to USD 2.82 billion in 2021, accounted for 19.5 percent of domestic public debt (Figure 5). Government loans and state-owned enterprises (SOEs) local currency debt amounted to USD 40 million (0.3 percent) and USD 30 million (0.2 percent), respectively.

Figure 5: Public Sector Domestic Creditors Profile for Zambia (2021)



Source: MoFNP Public Debt Summary Report (2021)

2.2 Consequences of High Debt Levels

Public debt has several effects on the national economy. This section evaluates the association between public debt and fiscal space (as reflected by the fiscal deficit), and the economic environment (exchange rate, inflation, interest rates and economic growth). Overall, this subsection finds that high debt levels are associated with a deterioration in the macroeconomic environment and reduced social sector spending.

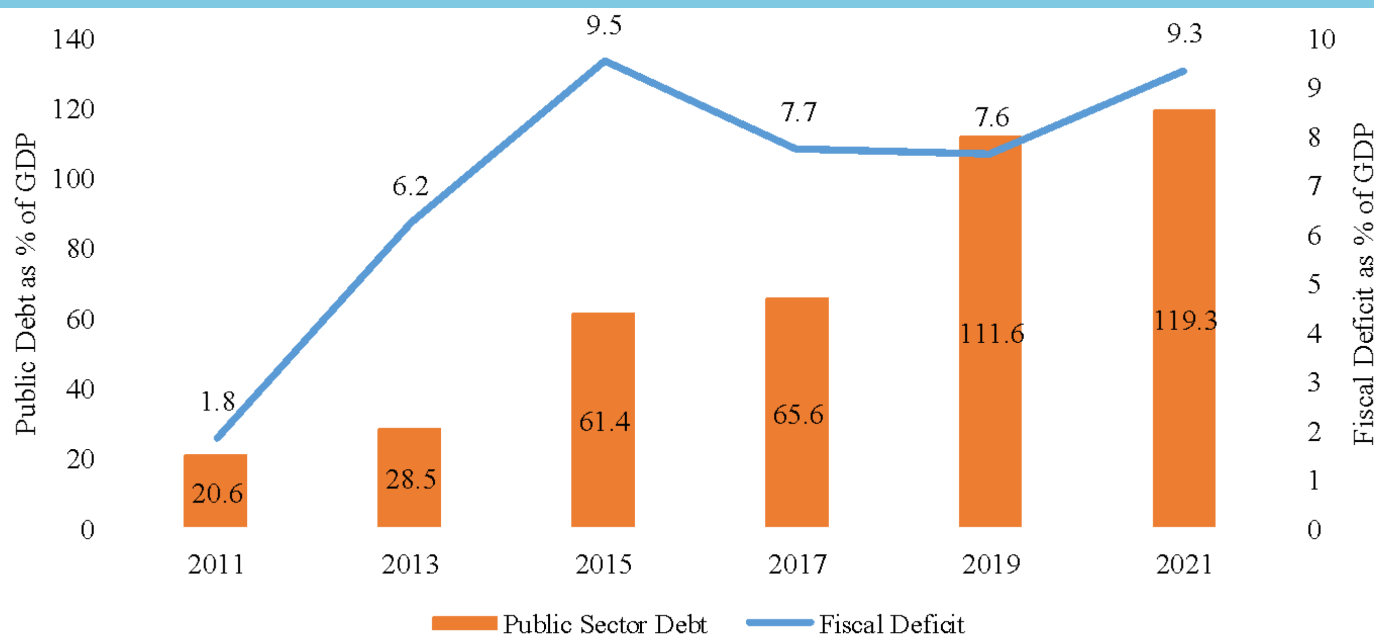
2.2.1 Fiscal and Macroeconomic Consequences

Zambia's debt crisis has been attributed to economic slowdown and imprudent fiscal policies, hence the positive association between fiscal deficits and debt. For instance, the fiscal deficit increased from 1.8 percent in 2011 to 9.5 percent in 2015, while public sector debt increased from 26.6 percent to 61.4 over the same period (Figure 6). The positive association between fiscal deficits and public debt is best illustrated by the fact that both debt and fiscal deficits peaked in 2020.

Although the decline in copper prices and a drought adversely affected the economy in 2011 and 2012, the expansionary fiscal policy adopted by the Government contributed to the widening fiscal deficits. An ambitious public infrastructure programme and a 200 percent increase in the Government's civil service wage bill contributed to a fiscal crisis in the period 2012 to 2020. To ease this crisis, the Government increased non-concessionary borrowing, mostly from China.

9 The Ministry of Finance usually excludes domestic arrears from domestic debt.

Figure 6: Public Sector Debt and Fiscal Deficit as percentage of GDP (2011-21)



Source: MoFNP Economic Reports (2011-21) and IMF DSA (2017, 2019 and 2022)

2.2.2 Exchange Rate

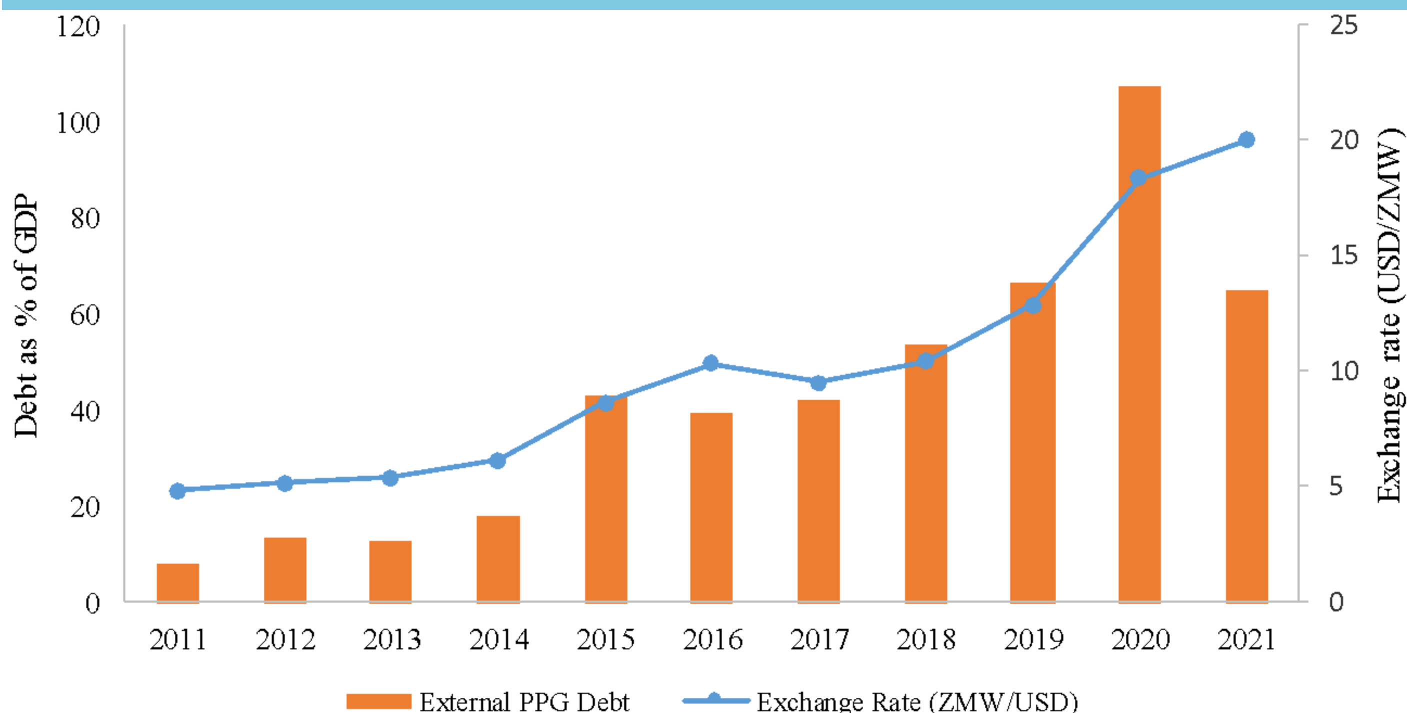
High debt levels are associated with a weakening Kwacha because the Government has to draw down its reserves to service external debt, which is denominated in foreign currencies. This increases the demand for foreign currency and causes the local currency (in this case the Kwacha) to depreciate further.

It is, therefore, not surprising that the high debt levels are associated with a weaker Kwacha. For instance, the Kwacha depreciated by about 26.6 percent from 2011 to 2014 as the external PPG debt increased from 8.3 percent of GDP to 18.4 over the same period (Figure 7). This rapid depreciation of the Kwacha was exacerbated by a fall in copper prices. Copper prices declined by 22.5 percent from USD 8,828.2 per tonne in 2011 to USD 6,863.4 in 2016.[10] The price of copper continued to fall reaching USD 4,867.9 per tonne in 2016, its lowest since 2005. It remained well below its 2011 value of USD 8,828.2 until 2021 when it surged by 50.9 percent from USD 6,173.8 per tonne in 2020 to USD 9,317.1 USD in 2021. The low copper prices from 2012 to 2020 and ballooning public debt created uncertainties in the mining sector, an important source of export earnings. The Zambian Kwacha depreciated by more than 225 percent from 2014 to 2021, and external PPG debt increased from 18.1 percent of GDP to 64.9 percent.

It is worth pointing out that poor mining sector performance (low output and earnings) is also a crucial driver of debt, implying that global shocks such as commodity price fluctuations (including mineral, inputs, and food) will hit Zambia hardest if it is heavily indebted. The mining sector, Zambia's key source of tax revenue and foreign exchange earnings, accounted for about 30 percent of tax revenues in 2021. Thus, low productivity in the mining sector results in lower revenues and drains foreign reserves (weakening the Kwacha), forcing the Government to look to external sources (debt) to bridge the funding gap. Additionally, since Zambia is import-dependent, it is more susceptible to external shocks and commodity price fluctuations, which weaken the Kwacha, resulting in higher debt servicing costs (since most debt is denominated in foreign currency-Dollars) and higher debt burdens. Hence, high indebtedness compounds the effects of global shocks on the Zambian economy.

10 Computed using Statistics from the Bank of Zambia Fortnight Statistics

Figure 7: External PPG Debt and Exchange Rate (2011-21)

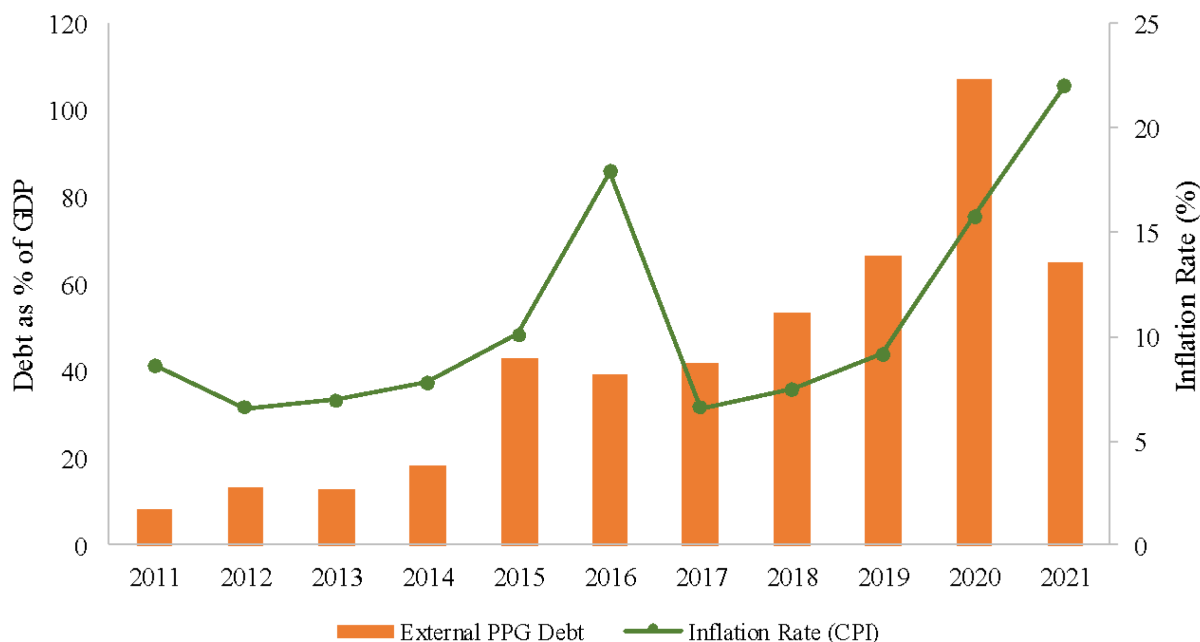


Source: IMF DSA (2010-21) and World Bank WDI (2021)

2.2.3 Inflation

Domestic inflation is linked to the performance of the local currency. The linkage is particularly stronger for net importer countries such as Zambia. Although there are other drivers of inflation, such as supply shocks, rising debt levels also contribute to inflationary pressures as shown in Figure 8.

Figure 8: Public Sector Debt as a percentage of GDP and Inflation rate (2010-21)

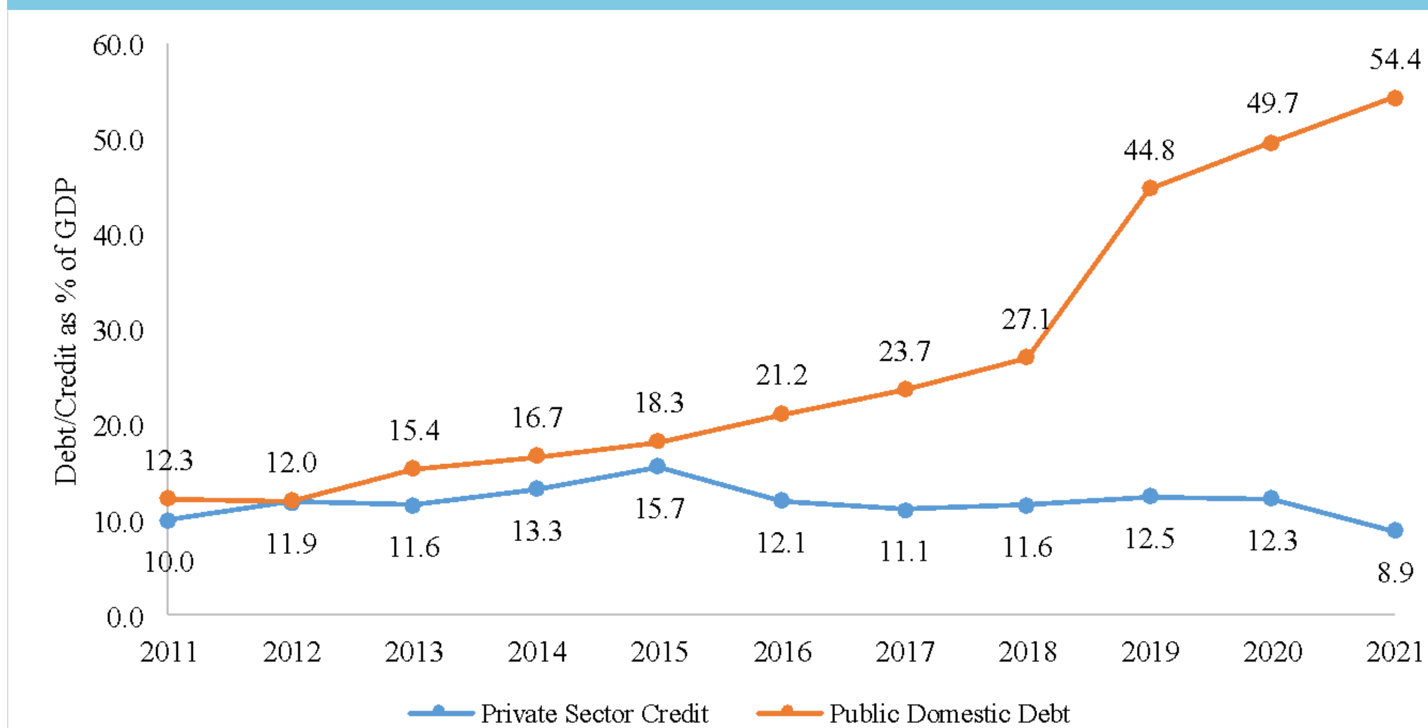


Source: World Bank WDI (2021) and IMF DSA

2.2.4 Private Sector Credit

Excessive Government borrowing can crowd out the private sector through higher interest rates, making it difficult for businesses to access credit. As Figure 9 shows, private sector credit (financial sector loans to the private sector) and domestic debt have been moving in opposite directions since 2012, with the divergence getting more pronounced at higher domestic debt levels, which characterized the 2015 to 2021 period. For instance, from 2015 to 2018, public domestic debt increased from 18.3 percent of GDP to 27.1 percent, whereas private sector credit declined from 15.1 percent to 11.6 over the same period. Similarly, from 2018-2021, the share of public domestic GDP increased from 27.1 percent to 54.4 percent, while private sector credit declined further from 11.6 percent to 8.9 percent over the same period.

Figure 9: Public Domestic Debt and Private Sector Credit as percentages of GDP (2010-21)



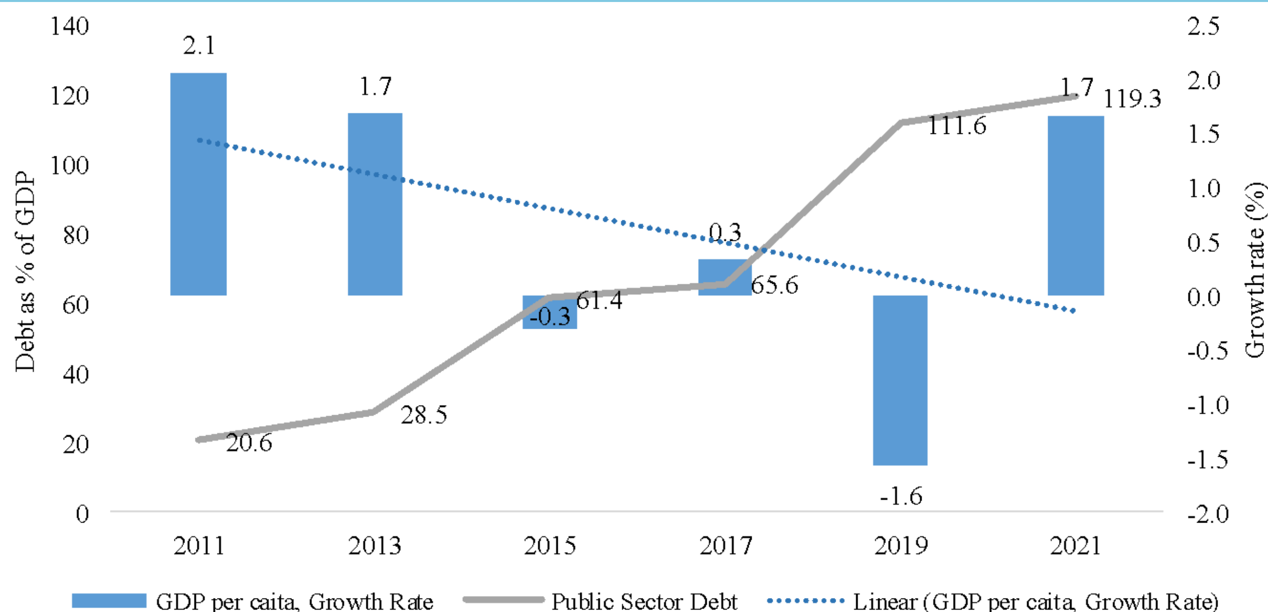
Source: Ministry of Finance and BoZ Statistics

2.2.5 Economic Growth

Although the decline in economic growth experienced in the 2010s and early 2020s is attributed to several factors, including a decline in copper prices, climate change, and weak governance systems, poor fiscal health reflected in swelling debt levels and widening fiscal deficits also contributed to the economic slowdown.[11] As shown in Figure 10, periods of high debt levels coincided with rapid economic decline.

11 Bertelsmann Stiftung, 2022. BTI 2022 Country Report - Zambia, Gutersloh: Bertelsmann Stiftung. https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_ZMB.pdf

Figure 10: GDP per Capita Growth Rate and Public Sector Debt (2011-21)



Source: IMF World Economic Outlook (2023), IMF DSA (2013, 2015, 2016, 2019 and 2022) and World Bank WDI (2023).

2.3 Consequences on Social Sector Investments

High debt erodes fiscal space, placing countries in a policy conundrum: choose among debt servicing, interventions to mitigate the effects of macroeconomic shocks and investments in social and economic sectors. With severely constrained fiscal spaces, developing countries struggle to meet the Sustainable Development Goals (SDGs). According to the United Nations Secretary-General, "As the global economic environment is set to remain unstable, it is becoming more difficult for developing economies to leverage debt financing for sustainable development".

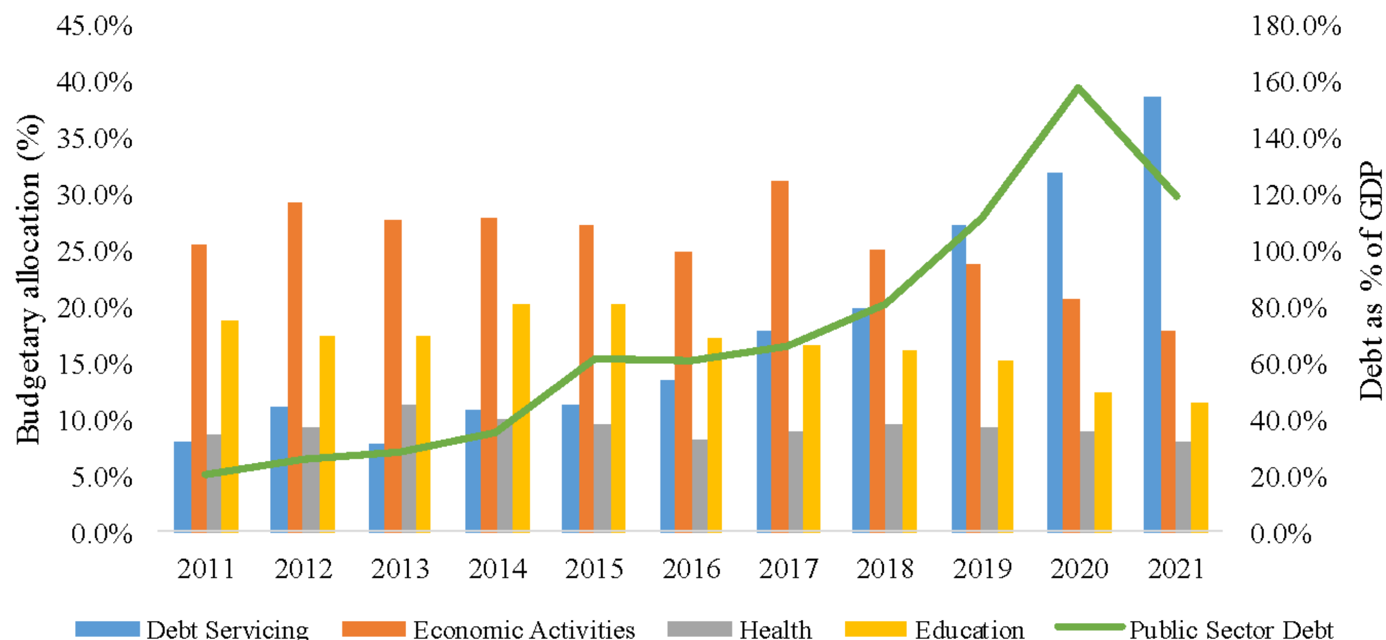
The ballooning of public debt had crowded out social spending and threatened the livelihoods of millions of Zambians.[12] For instance, from 2015 to 2021 (a period of excessive borrowing), the budgetary allocation to debt servicing increased from 11.3 percent of the total budget to 38.5 percent while planned expenditure on economic activities, health and education declined over the same period (Figure 11). Specifically, planned expenditure on economic activities reduced from 27.3 percent to 18.0 percent, health from 9.6 percent to 8.1 percent, and education from 20.2 percent to 11.5 percent from 2015 to 2021.

Social sector spending cuts affect women and other vulnerable groups disproportionately, deepening social and income inequality and gender disparities in socioeconomic indicators. When debt levels rise significantly, the Government is forced to redirect resources to debt servicing, away from the much-needed safety nets. As a result, the poor and marginalized, including women and persons with disabilities, end up bearing the brunt of the socioeconomic costs of debt distress. It is worth noting that given the gender income gap and caregiver responsibilities, women tend to be more dependent on public services (health, education, social protection), making them more vulnerable to budgetary cuts from austerity measures and debt servicing costs. Spending cuts to social sectors aggravate the gender disparities.[13]

12 Muyunda, K., 2019. Understanding the Impact of Zambia's Growing Debt on Different Stakeholders, Lusaka: CUTS International. https://cuts-lusaka.org/pdf/Understanding_the_Impact_of_Zambias_Growing_Debt_on_Different_Stakeholders.pdf

13 https://cuts-lusaka.org/pdf/policy-brief-tax-justice-for-women-and-girls.pdf; https://www.lusakatimes.com/2021/06/11/zambias-debt-to-affect-women-more-cuts-international-zambia/

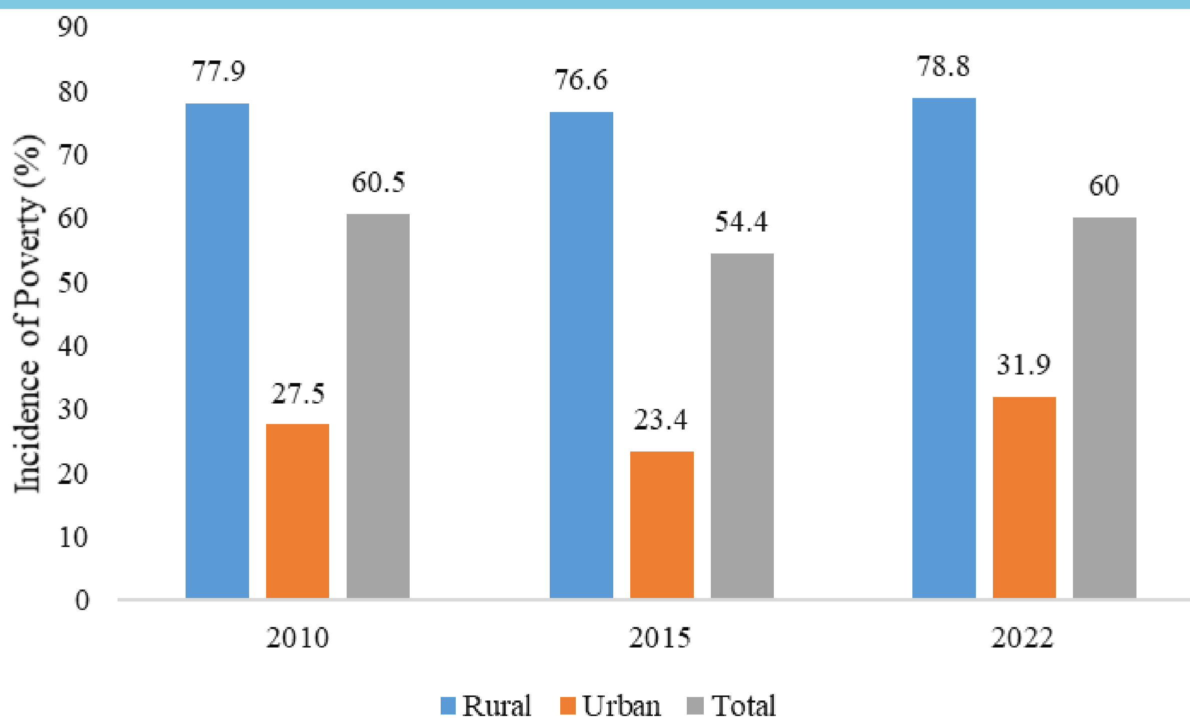
Figure 11: Expenditure on Debt Servicing, Economic Activities, Health and Education, and Public Sector Debt as a percent of GDP (2011-21)



Source: MoFNP (2010-21 Budget Speeches) and IMF DSA Reports (2010-21)

The high debt levels could also explain the entrenched poverty levels Zambia has been grappling with over the past decades. The 2022 Living Conditions Monitoring Survey indicates that the proportion of Zambians living in poverty has remained almost the same between 2011 and 2022. In 2010, 60.5 percent of Zambians lived in poverty compared to 60 percent in 2022 (Figure 12).

Figure 12: Poverty Trends by Residence (as percent of the population) 2010, 2015 and 2021



Source: Zambia Statistics Agency (2023)

3.0 A Review of the Legal and Institutional Frameworks for Debt Contraction and Management

This section highlights the institutional and legislative framework governing PDM in Zambia, focusing on the role of parliamentary oversight in debt management. It starts with a review of the institutional framework and then provides a historical review of the legislative framework.

The first subsection identifies main key stakeholders in PDM in Zambia: MoFNP, the Bank of Zambia (BoZ), the Office of the Auditor General, Parliament, and civil society organisations. The second sub-section provides an historical account of the legal framework of PDM in Zambia from 1964 to 2016, when Parliament had a limited role in PDM, and the post-2016 era, when Parliament had an improved role in PDM. Overall, the section shows that Zambia has taken concrete steps to strengthen the frameworks for debt contraction and management.

3.1 Institutional Stakeholder Roles

The management of public debt in most countries involves several institutions. These institutions form the formal and informal governance structure of public debt management in a country. The institutions include the executive (this includes the Office of the President, MoFNP and the Cabinet Office) and legislative branches of Government (National Assembly), the Central Bank, civil society organisations (CSOs), and the Office of the Auditor General (OAG). The main players in Zambia's debt management space are highlighted below.

3.1.1 The Ministry of Finance and National Planning

The MoFNP is responsible for public finance management. The Ministry borrows on behalf of the Government of the Republic of Zambia (GRZ) and guides debt structure and management. Within the Ministry, the Debt Management Office, established under the Public Debt Management Act, 2022, is the unit responsible for public debt management. The roles of the office include conducting debt management operations; risk assessment of Government liabilities; formulation of the Medium-Term Debt Strategy (MTDS); record keeping of Government debts and debt contracts; negotiation of debt contracts and guarantees; preparation of annual borrowing plans; preparation of public debt and grants reports and monitoring; and evaluating all borrowing and debt related transactions.

3.1.2 The Bank of Zambia

The Bank of Zambia (BoZ) is an integral part of the institutional framework for public debt management in Zambia. This is because to undertake its price and financial stability function, BoZ trades securities (treasury bills and treasury bonds) for the Government. It is worth pointing out that treasury securities are the main components of Zambia's domestic debt. The BoZ uses various tools to realise its objectives, including direct participation in financial markets to purchase foreign exchange reserves and set the Monetary Policy Rate (MPR). These actions directly affect macroeconomic indicators such as the exchange rate, inflation, and interest rate, which alter the value of public debt, with implications on debt management decisions.

3.1.3 The Office of the Auditor General

The Office of the Auditor-General (OAG) is the supreme audit institute in Zambia with the legal mandate to audit all Government institutions and public bodies. Article 250 of the Constitution gives it broad mandate to audit all public finances, which includes public debt. The Public Finance Management Act No. 1 of 2018 allows the OAG to audit the financial books, records, returns, reports and management systems of the Government. This makes the OAG an important stakeholder in the national budget cycle and debt management. The OAG also examines the usage of funds in Government institutions and public bodies and submits audit reports to the President and Parliament. Parliament relies on the reports to evaluate the performance of the national budget. The audit report is also a crucial reference document for parliamentarians during discussions of debt issues.

3.1.4 Parliament/National Assembly

The Zambian Parliament is a creation of the Constitution. The Parliament has several functions including enacting laws and overseeing the performance of the executive. Parliament combines the two functions to provide oversight on public debt management. The legislative mandate provides Parliament an opportunity to enact laws that promote accountability and transparency in debt management. In recent years, Parliament has enacted three laws that influence public debt management, including the Public Finance Management Act No. 1 of 2018, the National Planning and Budgeting Act No. 1 of 2020 and the Public Debt Management Act No.15 of 2022. These laws allow Parliament to provide oversight on public debt management through its various functions and internal organisations (i.e. the National Planning and Budgeting Committee). Given the pivotal role of Parliament in debt management, Chapter 4 of this report is dedicated to evaluating the adequacy of the current debt management frameworks in ensuring effective parliamentary oversight over debt.

3.1.5 Civil Society Organisations and the Media

CSOs and media promote and advocate for accountability in public debt management. CSOs also promote informed debates on public debt management and advocate for improved Parliamentary oversight. To achieve their objectives, CSOs conduct awareness and sensitization campaigns on the pros and cons of public debt and the consequences of imprudent management of public debt. Additionally, CSOs create platforms that allow their members and the public to engage Government and other political leaders on issues related to debt management. Additionally, CSOs appear before Parliamentary committees to submit their views and reports. CSOs have been instrumental in pushing for debt forgiveness and international debt relief initiatives.

The media, on the other hand, informs the public about the contraction and management of public resources, including public debt. The media also offers a platform for debate, enlightenment and sharing of insights about public debt.

3.2 Historical Analysis of the Frameworks for Debt Management

3.2.1 Analytical Background

The story of debt contraction and management in Zambia reflects the nature of the state and power politics defining the post-colonial state in Zambia. Although the law matters, to a great extent, good financial stewardship is dependent on the predisposition of the sitting President, as institutions are weak and the Executive overreaches all institutions. As a result, both legislative provisions and implied powers, when the sitting president is not committed to fiscal probity and discipline, aid rather than limit the encroaching Executive. The law "presumes, rather than spells out, the character of Governmental power."[14] As Jeremy Gould asserted in a recent book:

> Herein lies a crucial paradox of postcolonial power - the explicit constitutional provisions which create executive prerogative do not define its limits. Rather, explicit constitutional provisions create the possibility of an opaque realm of power, beyond democratic scrutiny, where absolute discretion reigns.[15]

As will be seen below, historically financial laws governing the contraction of public debt have been disregarded or changed to fit the disposition of the ruling Government. In this sense, the legal framework has often been used to legitimize and not regulate and enforce good financial conduct by various ruling governments.

For example, when Members of Parliament were asked during a focus group discussion about some of the challenges making them less effective in providing oversight on debt contraction, leading to the current debt crisis, they indicated as follows:

> Parliament usually approves all Government bills and plans. This is primarily because the ruling party usually has a majority in the legislature and uses it to rubber-stamp its decisions. Parliament tends to have inadequate information on the debt the Government plans to contract.[16]

This section is divided into five parts. The first part looks at the legal framework from the time of independence in 1964 to 2016 when the Constitution was extensively amended to include a clause expressly clothing Parliament with oversight over contraction of public debt. It is followed by a discussion of the current epoch since the 2016 constitutional amendment. The third part deals with the judicial interpretation of the seemingly progressive provisions of the 2016 Constitution on public debt, while the final part briefly analyses the implication of the historical nature of the opaque state on debt.

14 Jeremy Gould, *Postcolonial Legality: Law, Power and Politics in Zambia* (Routledge, 2023) 3
15 Ibid, 8
16 Focus Group discussion with Members of Parliament on 26 September, 2023

3.2.2 1964 to 2016

The Independence Constitution of Zambia did not provide an express role to Parliament over the contraction and management of public debt. However, it stated that all public debt for which the Government was responsible was a charge on the general revenues of the Republic.[17] This, however, did not mean the Government could do whatever it pleased. An Act of Parliament regulated the contraction of debt and provided for a role for Parliament. This was regulated by the General Loan and Stock Act of 1931. Section 3 of the Act provided:

> Whenever by any Act authority shall have been given, or shall hereafter be given, to raise any sum of money for the purposes mentioned in such Act, the Minister, or the Crown Agents acting on his behalf, may from time to time, as he or they may deem expedient, raise such sum either by debentures or by Zambia stock, or partly by debentures and partly by stock, or by a loan raised in any other manner.[18] (emphasis author's)

The provision required Parliament not only to approve public debt[19] but to specifically pass an Act of Parliament authorizing that debt and providing parameters for its management. It further established a sinking fund for the repayment of all public debt. The departing colonial Government seems to have largely followed the provision, as did the first Zambian indigenous Government in the first few years after independence. All the major loans were approved by an Act of Parliament and a specific Act was always passed to govern the contraction of the debt to finance certain projects. There are several examples and these include the General Loans (Mediobanca) Act, passed to solicit funding for the construction of an oil pipeline in 1967; the Loan Act of 1931, as amended in 1965 to authorise the borrowing of K4.5 million for a number of developmental projects; and the General Loans (International Bank) Act, enacted in 1966 to enable the Government to raise loans from the World Bank in hard currency.[20]

However, as the fortunes of the then-ruling United National Independence Party (UNIP) began to wane and as criticism from the opposition grew, the Government began a programme of dismantling the liberal architecture of the legal framework. In 1969, the Government conducted a referendum intended to remove the entrenchment clause in the Constitution which required any amendment to the Bill of Rights to be subjected to a referendum. This was known as a "referendum to end all referenda." UNIP justified this illiberal change to the law on the ground that restrictive provisions in the law were unnecessary hurdles in the path of Government taking development across the country. This made it easy later in 1973 to impose the one-party Constitution, as new amendments to the Constitution and the Bill of Rights no longer required a referendum.

But of interest is that once the UNIP Government embarked on this illiberal assault on buffers of democracy, it also targeted restrictions in public financial laws that were intended to foster fiscal discipline and oversight over the contraction of public debt. Soon after the 1969 referendum, the Government quickly enacted laws to give the UNIP Government more discretion in the management and utilization of public funds, including the contraction of public debt. As Munalula argued, "Eliminating referenda and setting up a one-party state, gave the UNIP Government substantial powers to enact laws giving the executive excessive financial autonomy over public resources, including the power to contract external debts."[21]

17 Section 12 Constitution of Zambia 1964
18 Section 3 General Loan and Stock Act 1931
19 Ibid, sections 15 and 16
20 Margaret Munalula, "A Critique of the Legal Framework Governing Sovereign Debt in Zambia," (2001) 33 *Zambia Law Journal* 72
21 Mulela Margaret Munalula, "A Critique of the Legal Framework Governing Sovereign Debt in Zambia," (2001) 33 *Zambia Law Journal* 62-82

As a result of these reforms, the General Loan and Stock Act, which required Parliamentary approval of public debt, was repealed. Instead, the Government passed two pieces of legislation to govern public finance. These are the Finance (Control and Management) Act 1969, which articulated the powers of the Minister of Finance, and the Loans and Guarantees (Authorisation) Act 1969, which became the sole authorizing legislation for raising loans on behalf of the Government.

The Finance (Control and Management) Act gave the Minister of Finance extensive discretionary powers over the management of public funds.[22] The Loans and Guarantees (Authorisation) Act divested Parliament of its oversight role in the contraction of public debt. Parliament no longer had the power to approve loans. Instead, the Act gave the power to the Minister of Finance to raise loans or give guarantees on behalf of the Government "as he may deem desirable."[23] The role of Parliament was relegated to simply setting the threshold for the Minister beyond which the Minister could not borrow. But because the Minister could now borrow without resorting to Parliament, there was no way for Parliament to effectively implement its threshold on loans as only the Minister knew how much he/she had borrowed. Further, only the Minister could determine the terms of borrowing. Section 7 of the Act categorically stated: "Any loan raised under this Act shall be raised in accordance with such conditions and upon such terms as the Minister shall, in respect of such loan, direct."

Section 6 of the Act provides for raising loans and section 14 allows the Minister of Finance to guarantee loans "if it appears to him necessary or expedient in public interest" and to do so "on such terms and conditions as he may think fit." The provision sets no objective standards the Minister should be guided by, not even the national development plans. The power was completely discretional and open to abuse.

Section 15 of the Act governs the limit that can be placed upon the amount the Government could guarantee. The section states that the amount the Government could guarantee shall not exceed such amount as "the Minister shall from time to time be authorized by resolution of the National Assembly to prescribe by statutory instrument."[24] This effectively removed Parliamentary oversight in setting the ceiling on Government guarantees as the Minister can vary the ceiling by statutory instrument. The same weakness relates to setting the ceiling for overall public debt. An example can be given from a relatively more recent application of this law. For instance, the Minister of Finance, increased the debt ceiling in 2016 through a statutory instrument, from K60 billion (US$6 billion) to K160 billion (about US$16 billion), without recourse to Parliament.[25] Moreover, section 26 of the Act vests the Minister of Finance with unilateral power, any time when the legislature is not in session, to contract any loan or give any guarantee. The only 'safeguard' is that the Minister must be authorized by the President. An Executive who is desirous of avoiding Parliamentary oversight would simply wait for the legislature to go on recess and act.

These reforms cleared the way for the UNIP Government to abuse public resources and slide the country heavily into debt. Although many other factors contributed to the public debt and the debt crisis created by the UNIP Government, a lot was due to opacity and lack of fiscal discipline, following the divesting of Parliament of a role in debt contraction and management. Public resources were henceforth at the mercy of the ruling party and the executive. Munalula summarized the outcome of these reforms thus:

---

22 Section 3 Finance (Control and Management) Act 1969

23 Sections 3 and 14 Loans and Guarantees (Authorisation) Act 1969

24 Loans and Guarantees (Authorisation) Act, section 15(1).

25 Alvin Chiinga, 'Increasing Borrowing for Development- Kambwili' (*Zambia Daily Mail*, February 27, 2016), <https://www.daily-mail.co.zm/increased-borrowing-development-kambwili/> accessed May 18, 2018.

> The executive's excessive power over matters of finance was abused by the UNIP Government in the process of borrowing from external sources. There was much waste of borrowed resources. While most people suspected such abuse, most of it was not confirmed until the last few years of its governance. During the last decade of UNIP's Government, financial control systems had lapsed and a lack of professionalism pervaded the key organisations handling the country's finances. State elites lived conspicuously rich and extravagant lifestyles and corruption was rampant as patron-client relations and cultural norms were used to rationalise the privatisation of power and public resources. It has been documented that billions of Kwacha were spent by the UNIP Government during their last election campaign in office, but most of it could not be accounted for because UNIP shredded vital documents before surrendering power.[26]

Following the exit of the UNIP Government from office, the Movement for Multiparty Democracy (MMD) Government, with the support of the international community, redressed the debt problem. The reforms, however, did not touch the law. Thus, both the Finance (Control and Management) Act and the Loans and Guarantees (Authorisation) Act remained in place. These entailed that the benefits of the good economic reforms by the MMD Government (1991-August 2011) in the area of finance and public debt were not accompanied by any supporting and progressive legal regime. It was, therefore, not surprising that within 10 years of the PF rule (September 2011-2021), the country was soon in another debt crisis. The legal framework remained that of UNIP which left the contraction of debt at the discretion of the executive. There were no major legal reforms until 2016.

3.2.3 2016 to date

In 2016, the Zambian Constitution was extensively amended.[27] One of the major areas of reform was the management of public funds, and more specifically, the contraction of public debt. Because of the Country's experience with the economic challenges that resulted from heavy indebtedness, and the painful experiences with structural adjustment programmes (SAPs), the 2016 Constitution included three provisions trying to redress the problem.

The new clauses subject the Government's power to borrow or guarantee loans to the approval and oversight of the legislature. The goal was to enhance transparency and accountability in the contraction of loans and to avoid burdensome and irresponsible borrowing. The first clause made it a mandatory function of the National Assembly to approve public debt before its contraction. To this effect, Article 63(2) (d) provides: "The National Assembly shall oversee the performance of executive functions by—(d) approving public debt before it is contracted." This provision expressly divests Government of the power to borrow without approval from Parliament.

To emphasize this point, Article 114(1)(e), which allocates functions to Cabinet, makes it clear that Cabinet can only recommend to the National Assembly loans to be incurred or guaranteed. It states:

> The functions of Cabinet are as follows: (e) recommend, for approval of the National Assembly—
>
> i. loans to be contracted by the State; and
>
> ii. guarantees on loans contracted by State institutions or other institutions.[28]

26 Mulela Margaret Munalula, "A Critique of the Legal Framework Governing Sovereign Debt in Zambia," (2001) 33 *Zambia Law Journal* 68

27 Constitution of Zambia (Amendment) Act No. 2 of 2016.

28 Ibid, Article 114(1)(e).

These two more specific provisions are followed by a third one, which is more general and states:

1. The Government may, as prescribed—
   a. raise a loan or grant on behalf of itself, a State organ, State institution or other institution;
   b. guarantee a loan on behalf of a State organ, State institution or other institution; or
   c. enter into an agreement to give a loan or grant out of the Consolidated Fund, other public fund or public account.
2. Legislation enacted under clause (1) shall provide—
   a. for the category, nature and other terms and conditions of a loan, grant or guarantee, that will require the approval by the National Assembly before the loan, grant or guarantee is executed.[29]

These are the provisions introduced into the Constitution in 2016 aimed at fostering transparent, accountable and responsible borrowing.

The constitutional change in 2016 was followed by the enactment of the Public Finance and Management Act No. 1 of 2018. The Act was mainly a response to pressure from the IMF and World Bank to demonstrate that the Government was prepared to enhance fiscal discipline to receive a concessionary loan to help deal with the fiscal crisis. In relation to public debt, the reforms in this Act were superficial and inconsequential. The statute has no special focus on public debt. Section 26, which is the main provision dealing with public debt, simply purports to limit public entities and persons who may borrow or issue guarantees on behalf of the state. This, however, is subject to what is "authorized by the Constitution" or what is authorized by the Loans and Guarantees (Authorisation) Act. By cross-referencing the Loans and Guarantees (Authorisation) Act, the new Act simply preserved the status quo as it is subjecting its debt provisions to this Act. As a result, the Loans and Guarantees (Authorisation) Act remained the main piece of legislation for contracting debt.

Following the change of Government, in 2022 the new Government, as part of tackling the public debt crisis, enacted the Public Debt Management Act No. 15 of 2022. The Act buttresses the provisions in the Constitution on debt management and includes fairly progressive standard debt management mechanisms. The Act repeals and replaces both the Loans and Guarantees (Authorisation) Act 1969 and the General Loan and Stock Act 1931. As a result, it is now the principal law, besides the Constitution, governing the contraction and management of public debt. The Act establishes a Debt Management Office as the entity responsible for the management of public debt.[30] The specific functions of the Debt Management Office are to:

a. conduct debt management operations of the Government;
b. conduct credit risk assessment of Government guarantees and loans issued out of the Consolidated Fund;
c. formulate the Medium-Term Debt Strategy;
d. conduct annual debt sustainability analysis;
e. maintain and keep an updated database of outstanding public debt and guarantees;
f. prepare an annual borrowing plan;

29 Ibid, Article 207(1) and (2).
30 Section 5 Public Debt Management Act No 15 2022

g. monitor and evaluate all borrowing and debt-related transactions to ensure compliance with the medium-term debt strategy;

h. conduct a credit risk assessment of a public body that intends to borrow money or issue a guarantee in accordance with section 22;

i. keep and maintain a record of loan contracts, other debt contracts related to Government debt and guarantee contracts;

j. negotiate a loan, other debt contracts or a guarantee contract on behalf of the Government;

k. prepare the annual public debt, guarantees and grants execution report in accordance with section 42; and

l. perform any other functions necessary for this Act as the Minister may prescribe.[31]

The Government is required to develop annual borrowing plans, which shall be approved by the National Assembly.[32] The approval of the annual borrowing plans constitutes the approval of the loans contained in the annual borrowing plans for that year.[33] This entails that the National Assembly may not have to approve loans on an individual basis. In a focus group discussion, the MPs noted this as a new challenge: "The lack of detailed information on loans, guarantees and grants contained in the annual borrowing plans makes the committees less effective."[34] The MPs were, however, quick to point out that this provision has only been tested once, in 2022 when the first budget was presented under the new Act and hoped that as implementation continues, they will be given more information. They would like information about the proposed source of funds, and the terms and conditions of borrowing to be disclosed in the borrowing plan. On the other hand, the MPs recognized that in some kinds of borrowing, such as through treasury bills and Government bonds, it might be impossible to give all the details because of the nature and structure of those types of debts.

Revisions of the annual borrowing plans are also subject to approval by the National Assembly.[35] Further, the Minister is required to submit bi-annual reports to the National Assembly on the implementation of the annual borrowing plans.

Although the power to borrow is vested in the Minister of Finance (with the approval of the National Assembly), there are two inbuilt limits to the power of the Minister. These are that the:

a. amount outstanding of total Government debt borrowed from within and outside the Republic, shall not exceed sixty-five percent of the GDP at current market prices computed for the immediate past financial year; and

b. aggregate amount of the debt service cost due and payable during a financial year for outstanding loans raised outside the Republic shall not exceed twenty percent of the average annual recurring revenue computed on the basis of the three preceding financial years.[36]

31 Ibid, section 6
32 Ibid, section 8
33 Ibid, section 8(7)
34 Focus Group Discussion with Members of Parliament on 26 September, 2023
35 Section 9 Public Debt Management Act 2022
36 Ibid, section 11(2)

Considering that the debt is already more than 65 percent of the GDP, it is unlikely that these restrictions or ceilings will be followed religiously as the current debt crisis makes them look impractical in the short term. It is for this reason that the Act expressly states that the debt ceilings shall not come into effect until five years after the commencement of the Act.[37] When asked during the focus group discussion if it is possible to reduce the current public debt from the current figure of 119.3 percent of the GDP to less than 65 per cent, the MPs were not very sure. They suggested that there is need for research on the feasibility of achieving the 65 percent threshold in the next five years. It was also mentioned that with the 2-year halt on debt repayment, it might be possible to reduce public debt to 65 percent of GDP in the next five years and that it would be important to track the first few years (2-3 years) of repayment, which will help to assess if it is realistic.

The Act requires public bodies intending to raise a loan to get the written authorization of the Secretary to the Treasury, and where the source of the funds is external, the public body is required to get the approval of the National Assembly.[38] Similarly, the guarantee of debts by other entities by the Government is subject to approval by the National Assembly.[39]

The Act provides for the establishment of a sinking fund for the purpose of repaying loans.[40] The Minister is required to publish quarterly debt statistical bulletins[41] and annual public debt and guarantees reports.[42] The annual reports are required to be submitted to the National Assembly.

To enhance transparency and accountability, section 40 of the Act requires the Minister to conduct a debt sustainability analysis annually and publish it each year in the first quarter. Section 41 requires the Minister to provide a quarterly statistical bulletin on debt. This bulletin is required to be posted on the website of the Ministry for easy accessibility. Section 42 further enjoins the Minister to submit to parliament, within the first three months after the end of each fiscal year, a public debt, guarantees and grants execution report. The report is required to be made public.

Significantly, the Act forbids contraction of public loans or offers of guarantees except under the framework of the Act. Any loan or guarantee outside of the Act shall not bind the Government.[43] Although this looks progressive considering the history of public debt in the country, it is contradicted by the Minister of Finance (Incorporation) Act Chapter 349 of the Laws of Zambia which constitutes the Minister of Finance as a corporate body and vests him/her with extensive powers to bind the state on financial matters. Section 3 of the Minister of Finance (Incorporation) Act states:

> The Minister of Finance shall be a corporation sole by that name, with perpetual succession and an official seal, and with power to acquire and hold in that name lands, Government securities, shares in any company, securities for money, and real and personal property of every description, to sue and be sued, to execute deeds, to enter into agreements binding on himself and his successors in office, and to do all other acts necessary or expedient to be done in respect of the above matters or any of them.

From this, it is clear that the law that creates the Minister of Finance as a corporate sole still vests in the Minister's extensive discretionary powers not subject to Parliamentary oversight. There is, therefore, need to amend this Act to align it with the Public Debt Management Act 2022.

37 Ibid, Para 3 Second Schedule
38 Ibid, sections 22 and 23
39 Ibid, sections 31 and 32
40 Ibid, section 25
41 Ibid, section 41
42 Ibid, section 42
43 Ibid, section 43

3.2.4 Judicial Interpretation of the Law on Public Debt

A well-crafted legal framework, starting with the national Constitution, can significantly help foster transparency and accountability. This is not to argue that a good law is of itself sufficient to redress the problem. This is because the Constitution, as the prime norm of the nation, offers an opportunity to enshrine fundamental aspirations and values that ought to underpin that society. These are the values that the people collectively desire to be governed by and by which they seek to discipline their Government. In the words of Justice Ismail Mohammed, the national Constitution is a "mirror reflecting the national soul, the identification of the ideals and aspirations of a nation, the articulation of the values binding its people and disciplining its Government."[44] For this to happen, the good provisions in the Constitution and other laws must be implemented effectively.

But considering that in 2016, the Constitution was amended to include robust provisions on the contraction of public debt, why were the provisions not implemented immediately to foreclose the debt crisis in time?

The case of *Dipak Patel v Minister of Finance and Another*[45] in 2020 is important as it illustrates the challenge of constitutional implementation and of the judiciary helping to facilitate constitutional infidelity on debt contraction and management. Dipak Patel, a former Minister of Commerce under the MMD Government and the petitioner in this case, sought the help of the Constitutional Court to enforce the Constitutional provisions that required Parliament to approve and provide oversight over the contraction of public debt by the Government.

Although there were several reliefs or remedies sought by the petitioner, the main reliefs were a declaration that the failure by Government to "present all loans contracted and sought to be contracted on behalf of the Government of the Republic of Zambia, which constitutes public debt, to the National Assembly for prior approval is in breach of the Constitution of Zambia as it is an illegal abrogation of the Constitution of Zambia; " an order compelling the Government to "present to the National Assembly of Zambia, within 14 days of the judgment of this Court or within such other timeframe that the Court may prescribe, a full and complete statement of the state of public debt contracted from 2016 to date [2020] including the terms and conditions of the loans;" and an "order directing that from the date of the Judgment of this Court, all public debt, whether local or foreign, sought to be contracted on behalf of the Government of the Republic of Zambia must be presented to the National Assembly for prior approval."[46]

Considering that the Constitution is supreme, and its provisions bind all arms of Government, it looked straightforward that the Constitutional Court would grant the relief and send a clear message to the Government to respect the new constitutional norms governing the sector of contraction of public loans. It was not to be. By a majority of 4 to 1 (Justice Munalula dissenting), the Constitutional Court dismissed the petition.

In dismissing the petition, most of the Court reasoned that the Constitution did not confer a mandatory function on the legislature to approve loans before they were contracted. In the view of the majority of the Court, Article 63(2)(d) of the Constitution did not contain any details on how the National Assembly should perform its specific oversight function and did not state whether all or just some of the loans would be subject to its oversight function before being contracted. Due to this, the majority thought that the provision was meant "merely to assign to the National Assembly the function of approving public debt before it is contracted."[47] The Court, however, did not articulate why "merely" being assigned a function negates the performance of that function by the entity assigned the responsibility.

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44 *S v Acheson* 1991 (2) SA 805, p.813.
45 *Dipak Patel v Minister of Finance and Attorney General* 2020/CCZ/005 [30 June 2021].
46 *Dipak Patel v Minister of Finance and Attorney General* 2020/CCZ/005 [30 June 2021], p.3.
47 Ibid, p. 38.

The majority of the Court, instead, chose to dispose of the case on the interpretation of Article 207. The majority observed that Article 207 (1) (a) of the Constitution gives the Government the power to raise a loan or grant on its behalf or behalf of a State organ, State institution or other institution as prescribed. It considered the keyword in the provision to be "prescribed," which is defined under Article 266 of the Constitution to mean "provided for in an Act of Parliament." This means that the Constitution required an Act of Parliament to prescribe how the provisions of Article 207 will be effectuated. Having taken this route, the Court concluded:

> Having considered the provisions of Articles 63 (2)(d) and 207(1) and (2) of the Constitution together, we find that there is no mandatory requirement in Article 63(2)(d) of the Constitution for the executive to submit all loans, without exception, to the National Assembly for its approval before the loan is contracted.

By taking this route, the Constitutional Court effectively turned the Constitution on its head, subjecting constitutional norms to an indeterminate subordinate law. This case highlights the weaknesses in the constitutional implementation mechanisms for the country in general. More specifically, it shows that having good laws on debt is not sufficient. There should be more institutional reforms, especially for key oversight institutions such as the judiciary. Without strong and independent institutions, the implementation of good laws is likely to falter. The enactment of the Public Debt Management Act 2022, to a great extent, mitigates the decision of the Constitutional Court and cures the seeming loophole.

3.2.5 Opaque State and Debt Management

Not every exercise of power is strictly governed by clear and specific rules of law. A lot is in the hands of Government officials. This discretion allows officials to make decisions on facts as they unfold. The downside of discretion is that it leads to the existence of opaque spaces for the Government to operate almost unrestrained by any law and are invisible to the public view. This is the same for the public debt management cycle. While many aspects of debt may be public, other details may remain invisible and vulnerable to abuse. This is best demonstrated by the case of former President Fredrick Chiluba, who was tried by the London High Court. The Chiluba case demonstrates that even the money put aside for the management of public debt is not beyond the encroaching corruption of an executive not committed to the rule of law and fiscal probity.[48] Chiluba was President of Zambia from 1991 to 2001. From 1995 to 2001 the Ministry of Finance transferred large sums of money mainly into the Zamtrop account held by the Zambian Government at the Zambia National Commercial Bank branch in London. The money was transferred for purposes of servicing or repaying the country's external debts. Chiluba and his senior officers, including the Permanent Secretary in the Ministry of Finance and his intelligence chief, conspired to abuse these resources whereby most of the money transferred for debt servicing was diverted for personal use. This money was then laundered through Meer Care and Desai, a law firm, using its client accounts, whereby Zambia officials would subsequently instruct the law firm to release the funds to support personal expenses. The money laundered in this manner was then used to buy enormous amounts of expensive clothes and luxurious properties in Belgium and South Africa. The High Court in the United Kingdom found that through this mechanism the culprits defrauded the Zambia people and found them liable to pay back a total of US $58 million.[49]

48 *Attorney General of Zambia V. Meer Care and Desai (a firm) and others [2007] EWHC 952 (ch).* See also John Hatchard, *Combating Corruption: Legal Approached to Supporting Good Governance and Integrity in Africa* (Edward Elger publishing Limited, 2014), 34 and 189.

49 Ibid

In relation to Chiluba the London High Court had this to say:

> At the end of the day, he was the President at the top of the control of Government finances. He was uniquely positioned to prevent any corruption. Instead of preventing corruption he actively participated in it and ensured it happened. It is difficult to find an adjective that adequately describes the failure on the part of FTJ [Chiluba]. He has defrauded the Republic. He has deprived the people over whom he was exercising stewardship on their behalf of huge sums of money which was supposed to be spent for their benefit. He has diverted those monies for wide-ranging benefits of the Co-conspirators but has not shown restraint himself in the amount of money which he "plundered" from the Government coffers. It is a shameful series of actions, and he should be ashamed.[50]

This case, although occurred prior to the enactment of the 2016 constitutional amendment and the passing of the PDMA, demonstrates that there may still be opaque sites in the debt management chain that may still be negatively exploited. There is, therefore, a need for transparency and accountability throughout the debt management chain. Any area of debt management hidden from the people is a potential area of abuse and mismanagement of public debt. This, in a sense, shows why having a robust access to information law might be a useful indirect tool in the implementation of the new laws on debt contraction and management.

50 *Attorney General of Zambia V. Meer Care and Desai and other [2007] EWHC 952 (Ch),* para 443

4.0 Role of Parliament in Public Debt Management: A Review of Impediments

The role of Parliament in public debt management can be divided into legislative and oversight. The legislative function allows Parliament to enact laws that promote prudent public debt management to ensure that public debt remains sustainable over a foreseeable period. The Zambian Parliament has enacted several pieces of legislation aimed at preventing a recurrence of the debt crisis. These laws grant Parliament and Parliamentarians the mandate to play an oversight role in debt management in Zambia.

4.1 Legislative Role of Parliament in Public Debt Management

The National Assembly has enacted several legislations to improve public finance and debt management in Zambia, which include the PFM Act of 2018, the NPD Act of 2020 and the PDM Act of 2022 on public debt. These Acts were designed to strengthen Parliamentary oversight of public finances and debt processes. According to the MPs, the effectiveness of Parliament to provide an oversight role on matters related to public debt hinges on the laws. Before the enactment of the PDM Act of 2022, Parliament had no significant role in public debt management. However, that Act strengthened Parliamentary oversight over debt contraction and management. The Act compels the Executive to obtain Parliamentary approval of the Annual Borrowing Plan. The Act also introduced a limit on Government debt and external public debt servicing.

Although the PDM Act is new, MPs (during the focus group discussion) identified some of its shortfalls that may limit its effectiveness, including misalignment with other pieces of legislation such the Minister of Finance Incorporation Act. The Minister of Finance Incorporation Act authorises the Minister to borrow on behalf of the country, while the PDM Act subjects the Minister's actions on public debt management to its clauses and other legislation on debt (not specified). This gap in the legislative framework presents challenges for debt management as it may allow the Minister to contract debt outside of the PDM Act. For example, if the Minister contracted a loan outside the framework of the PDM Act, that loan agreement would be invalid, going by the provisions of the PDM Act. However, the Finance Incorporation Act, which constitutes the Minister of Finance as a legal person, gives the Minister plenary powers to contract debt and bind the state. This implies that loans contracted outside the framework of the PDM Act may still have to be honoured as the Minister cannot plead the PDM Act as a basis for declining to repay a loan.

During the consultative discussions, MPs observed that the Act does not clearly define the composition of debt which is subject to the 65 percent of GDP ceiling. Specifically, the PDM Act does not specify whether the debt includes the debt from public bodies. However, the Act is expansive in defining public debt and invariably includes debt contracted by public bodies. Section 2 of the Act defines public debt as follows: "public debt" means a financial liability created as a result of borrowing by Government, a local authority, parastatal, State owned enterprise, or other body appointed by the Government or established by or under, any written law, but excludes a professional association or body." The discrepancy between the views of the MPs and the actual provision of the law indicates that the parliamentarians may not always be familiar with the technical provisions of the law and, therefore, may need enhancement of their skills.

The MPs also noted that the Act does not cover the OAG. According to the MPs, the Act does not explicitly grant the OAG the mandate to audit Government and public bodies' debt. Although the PDM Act does not expressly assign the OAG a role in auditing public debt, it should be noted that sections 14 and 15 of the Public Audit Act 2016 and article 250 of the Constitution give the OAG broad powers to audit all public funds. However, for avoidance of doubt, the PDM Act should have a clause giving the OAG express power to audit public debt.

Given that the Government has been accused of concealing some of its debt and the terms and conditions of the debt, these legislative gaps pose threats to the fiscal and debt sustainability agenda.

4.2 Oversight Role of Parliament on Public Debt Management

The Parliament's public debt management oversight role also occurs during the national budget cycle. Parliament scrutinises and reviews the national budget and its implementation throughout the budget cycle. The budget cycle has four stages: formulation; legislative process (approval); execution; and auditing and evaluation. Although Parliament 's key role is in the second, MPs also participate in the first stage.

MPs in the Planning and Budgeting Committee also participate in the pre-budget stage. This stage allows MPs to influence Government expenditure and how much the Government plans to borrow. The NPB Act of 2020 requires the Minister of Finance to present the Medium-Term Budget Strategy (MTBS) to the Expanded Planning and Budget Committee for a consultative engagement. The MTBS contains the proposed national budget. MPs can use this consultative engagement to understand the Government's revenue sources, spending priorities, and attitude towards public debt management. In addition, they can also use the opportunity to consult other stakeholders (i.e. academicians, CSOs, and Government agencies).

The second stage of the budget cycle requires the Minister of Finance to present the national budget to Parliament for approval. The presented budget is scrutinised by the Expanded Planning and Budgeting Committee, which includes chairpersons of the Portfolio and General-Purpose Committees. The findings of the committee are then presented to Parliament. It is then up to the whole house to accept or not accept any or all of the positions of the committee. The report of the committee informs the debate in the house as it contains detailed scrutiny of the budget. Like any parliamentary committee, however, its findings are subject to the final decision of the whole house which votes on the budget.

In the third and fourth stages of the budget cycle, Parliament, through the Planning and Budgeting Committee, plays an oversight role in the implementation of the national budget. According to the MPs, the Planning and Budgeting Committee reviews and monitors the implementation of the national budget. This function of the committee promotes accountability and transparency in the usage of finances.

MPs also indirectly participate in the District Development Coordinating Committees (DDCC) through their constituency officers and directly participate in the Provincial Development Coordinating Committees (PDCC). The PDCC reviews the plans and budgets of the DDCC and submits them to the National Development Coordinating Committee (NDCC), which advises the ministers on the budget.

The National Assembly established the Parliamentary Budget Office (PBO) in 2017 to help Parliament achieve its mandate of providing oversight on budget-related matters. The PBO provides technical assistance to the Parliamentary committees on public finance, including public debt management. The PBO is designed to be a professional unit that does not engage in partisan politics. Its functions, in public debt management, include analysis of the annual borrowing plan, research on fiscal policies, and preparation of submissions and briefs on economic matters. Despite the creation of the PBO, the MPs identified inadequate technical capacity among themselves as one of the bottlenecks to effectively providing oversight over debt management and contraction.

Inadequate technical capacity and limited stakeholder consultations hinder Parliament from effectively undertaking its oversight role. MPs struggle to understand the cash flows, projections, and quantitative parts of the annual borrowing plans and the PDM Act. Additionally, MPs noted that limited stakeholder consultations adversely affect their ability to review borrowing plans.

The introduction of the PDM Act contains provisions, which, if effectively implemented, could enhance parliamentary oversight and promote transparency and accountability. The Act compels the Minister of Finance to present an annual borrowing plan to Parliament for approval. The annual borrowing plan has details on (the amounts, the debt instruments to be used, the timings and the limits) on the loans and guarantees the Government plans to accrue in a financial year. The annual borrowing plan must also be in tandem with the Medium-Term Debt Strategy (MTDS). The current MTDS is running concurrently with the Medium-Term Budget Plan (MTBP) After approval, any revisions to the plan require Parliamentary approval. Besides, the MoFNP must update Parliament on the implementation of the annual borrowing plan. Additionally, public bodies (such as SOEs) have to obtain Parliamentary approval through the MoFNP for them to borrow externally. The Minister is mandated to submit a public debt, guarantees and grant execution report to Parliament.

Although the annual borrowing plans should align with the objectives of the MTDS, Parliament is not engaged in the formulation of the strategy. This removes Parliament from medium to long-term planning for public debt management, which forms the anchor for the annual borrowing plan. In addition, Parliament does not have the mandate to approve individual loans, rather it reviews and approves the borrowing plan in its entirety. However, the annual borrowing plan does not provide Parliament with information on the terms and conditions of the loans, such as the interest rates and the repayment periods, it only approves an aggregated sum. The MPs are also not given enough time to interrogate the annual borrowing plan.

The MPs acknowledged that the executive could manipulate the debt process to borrow without Parliamentary approval. For instance, the executive had initially sought Parliamentary approval before accruing a particular loan. However, after Parliament refused to approve the loan, the Minister removed the proposal from the house and proceeded to borrow without Parliamentary approval. The MPs referenced cases where the Minister is offered loans while on international engagements and signs them before Parliament approves.[51] The MPs are also of the view that the executive only uses Parliament to rubber-stamp the budget and borrowing plans. As noted above, where the Minister contracts a debt in violation of the PDM Act framework, that agreement is null. The law, therefore, gives recourse to aggrieved members of the public to approach the courts to enforce the PDM Act and stop illegal loan contracts.

Partisan politics and voting also blunt the effectiveness of Parliament in debt contraction and management. Partisan politics tend to limit the debates on public debt management in Parliament. Political parties use a "whipping system" to ensure their MPs do not cross the line. Some MPs noted that Committees are more effective, whereas voting on bills is mostly along party lines. Despite these shortcomings, MPs are against increasing the threshold from the current simple majority to two-thirds majority to pass the borrowing plan because it could lead to a standoff that may suspend Government activities.

Further, the existing legislative frameworks do not provide recourse to the Planning and Budgeting Committee for the prosecution of individuals who have misappropriated or embezzled public funds.

51 Considering the practice in Government where all contractual agreements have to be approved by the Attorney General, it is unclear if the MPs were talking about an actual binding contract or simply a memorandum of understanding (MOU)

5.0 Conclusion and Recommendations

This study analysed trends in debt levels and documented the evolution of frameworks for debt contraction and management, focusing on the role of Parliament in budget oversight in Zambia's debt management. A set of actionable recommendations to strengthen parliamentary oversight on debt management are highlighted below.

To Strengthen the Legal Frameworks:

- The Government should consider passing a statutory instrument that will list details that should be in the annual borrowing plans presented to the National Assembly. Depending on the nature of the loan, the borrowing plans should include the terms and conditions for acquiring or guaranteeing loans. This will give MPs more information and help scrutinise loans from a more informed perspective. With this information, MPs may be more effective in their oversight role over the contraction and management of public debt.
- Although the PDM Act 2022 has strengthened the role of Parliament in the management of public debt, the Minister of Finance (Incorporation) Act still vests the Minister with broad discretionary powers to bind the Government without Parliamentary oversight. There is, therefore, a need to amend this Act to align it with the standards set out in the PDM Act. This will cure the anomalous situation where the Minister has extensive discretionary powers to borrow outside the restrictive framework of the PDM Act.
- The public debt management chain could still be vulnerable to abuse without a legal framework for public access to key information on debt throughout the chain, as shown by the *Chiluba* case. The PDM Act has introduced mechanisms to enhance transparency by requiring regular public reports by the Minister to Parliament and the public. However, some aspects of debt management might be outside the framework of the PDM Act, as shown by the *Chiluba* case. There is, therefore, a need for the Government to enact the Access to Information legislation to allow members of the public access to state information that may be necessary to hold the Government accountable.
- The Auditor General (AG) must be expressly empowered to audit Government debt, including the audit report. This audit would help bridge the information gaps and suspicions about the conditions, composition, and size of the public loans, guarantees, and grants. The audit should include information on disbursements and the usage of borrowed money. Additionally, the AG should publish audit reports to ensure transparency and accountability in the entire public debt management process.

To Enhance Parliament's Capacity:

- Parliament, including relevant committees such as the Planning and Budgeting Committee, must be given ample time to review individual loans, guarantees, and grants contained in the Annual Borrowing Plan and consult widely with key stakeholders such as the MoFNP and research organizations, rather than just reviewing the entire Annual Borrowing Plan.
- There is a need to enhance technical capacity among MPs on matters related to public debt management. This could be done via workshops, stakeholder engagements, and training programs. The capacity-strengthening programs should be done in partnership with the National Assembly and Parliamentary Budget Office to ensure that MPs are adequately equipped with the required knowledge and analytical skills to interrogate and debate debt issues. Such capacity-enhancing programs would also help the MPs effectively influence public discourse on matters related to debt sustainability.
- There is a need to clearly define debt composition and extend the composition of the debt covered by the sixty-five percent threshold to include Government guarantees to ensure that public debt remains within the set limits. The clarity will help enhance Parliament's capacity to effectively debate issues, strengthening its oversight role in debt management.
- There is a need to review the debt ceilings. This also entails researching the feasibility of reducing debt levels to the legislative requirement of 65 percent of GDP within five years. Working with more realistic debt targets would also enhance parliament's capacity to oversee debt management.

The Role of Parliament in Public Debt Management in Zambia

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