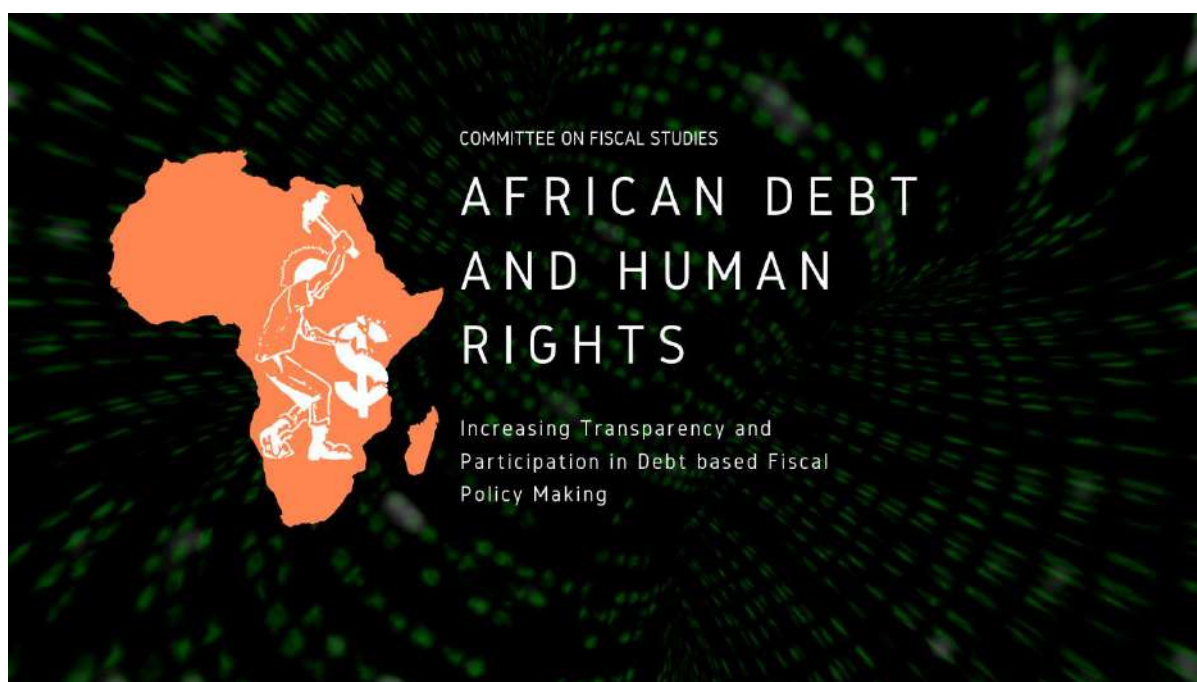
Working Paper 1 (March 2022)
Committee of Fiscal Studies, ADHR

Is Africa's Fiscal Space Undermined by Debt related Illicit Financial Flows?

A Case Study of Selected SADC Member States



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Summary

Fiscal activism relates to the extent to which African governments can generate revenue to meet their financing needs. It is, therefore, a priority policy issue at all levels of governance both domestically and globally. Usually, every government is exposed to revenue shortfall which undermines their efforts and planning towards securing a sustainable socio-economic environment which is buttressed by efficient political frameworks and strong financial sectors. To guard against fiscal limitations, governments borrow. However, unchecked borrowing, borrowing utilised for non-economic activities that do not result in returns, but which are instead diverted towards private use and borrowing that results in the creditor looking at a debtor state as a pathway towards monetising the debt and earning more out of what is loaned, goes against the very idea of fiscal activism. A government borrows so that it has enough to run the state and its society. Consequently, this paper argues that debt can have the effect of supporting the African fiscal base, but it can also undermine the fiscal space by eroding it. This happens when debt creates an enabling environment for illicit financial flows to thrive or sneak into a country's legal system. To explain this, the paper discusses how much of the African debt has been aggravated by historical injustices in the form of colonial and odious debts, emergence of vulture funds, lack of thin capitalisation rules, debt to equity swaps, lack of fiscal transparency and accountability for resource backed loans all which culminates into an environment that fosters opportunities for illicit finance or untaxed gains made out of manipulating the debt and the legal framework within which it operates.

Key words: Africa, debt, illicit financial flows, swaps, and vulture funds

1. INTRODUCTION

The current collective African debt has accumulated to US$726 billion[1] and is pushing the continent towards austerity. Besides this, UNCTAD has estimated that Africa loses US$88.6 billion in Illicit Financial Flows (IFFs) annually.[2] Ndikumana and Boyce have repeatedly cautioned that the continent loses more in IFFs than it gains through investments, aid and borrowing.[3] Advocacy groups, such as the Tax Justice Network Africa, SEATINI, and AFRODAD have pointed out that the continent would be debt free if IFFs can be identified and curbed. Whether there are any linkages between the continent's growing debt and IFFs is a nascent area that must be explored. Considering this, the paper asks the following two questions. First, whether debt creates an enabling environment for IFFs to thrive. Second, whether there are any specific forms of debt related IFFs. These are the questions that this paper

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[1] This figure has been compiled on statista: https://www.statista.com/statistics/1242745/total-external-public-debt-in-africa/

[2] UNCTAD, Tackling Illicit Financial Flows for Sustainable Development in Africa [2020] EDAR Report.

[3] Ndikumana, L. and J. Boyce. "Capital Flight from Africa, 1970-2018, New Estimates with Updated Trade Misinvoicing Methodology." PERI Research Report, May 2021; Ndikumana, L. and J. Boyce. "Magnitude and Mechanisms of Capital Flight from Angola, Côte d'Ivoire and South Africa." PERI Working Paper, Dec. 2018; Boyce, J.K. and L. Ndikumana. "Capital Flight from Sub-Saharan African Countries: Updated Estimates, 1970 - 2010." PERI Research Report, October 2012; Ndikumana, L. and J.K. Boyce (2011). *Africa's Odious Debt: How Foreign Loans and Capital Flight Bled a Continent*. London: Zed Books; Ndikumana, L. and J.K. Boyce (2011). "Capital Flight from Sub-Saharan Africa: Linkages with External Borrowing and Policy Options", *International Review of Applied Economics* 25(2) 149-170; Boyce, J.K. and L. Ndikumana (2010)."Africa's Revolving Door: External Borrowing and Capital Flight in Sub-Saharan Africa," in Vishnu Padayachee (ed.), *Political Economy of Africa.*

interrogates and reveals. As such a discussion on Africa's fiscal space from an aspect of how the African fiscal space is undermined by debt related illicit financial flows is an important topic. The scope of the paper is limited to addressing these two questions with the aim of bringing to light the areas relating to law and finance that must be observed by states.

Much of this debt has been aggravated by the emergence of vulture funds, debt to equity swaps, lack of thin capitalisation rules, and reduced fiscal transparency and accountability for resource backed loans all which culminates into an environment that fosters opportunities for illicit finance or untaxed gains made from manipulating the debt and the legal framework within which it operates. This paper sheds light on how these foster debt related IFFs. The paper applies a mixed method approach using both qualitative and quantitative data sourced out of literature on taxation, development and fiscal sociology. Empirical data is taken from various sources such as African Economic Outlook, AfDB, UNCTADstat, IMF Global Debt Database, and the International Debt Statistics of the World Bank. All of the literature and data is understood from a case study perspective. Selected member states of the SADC region are the countries that are looked at in investigating the debt phenomena and debt related IFFs.

The paper starts by a description of the rising debt levels and resulting underdevelopment in selected SADC states. It presents a historic context explaining the origin of debt in SADC and the fiscal vulnerabilities the region is exposed to. The paper then takes an evaluative approach to demonstrating debt related IFFs. Thereafter, the paper concludes and provides evidence-based policy recommendations to counter and prevent the debt-IFF interface.

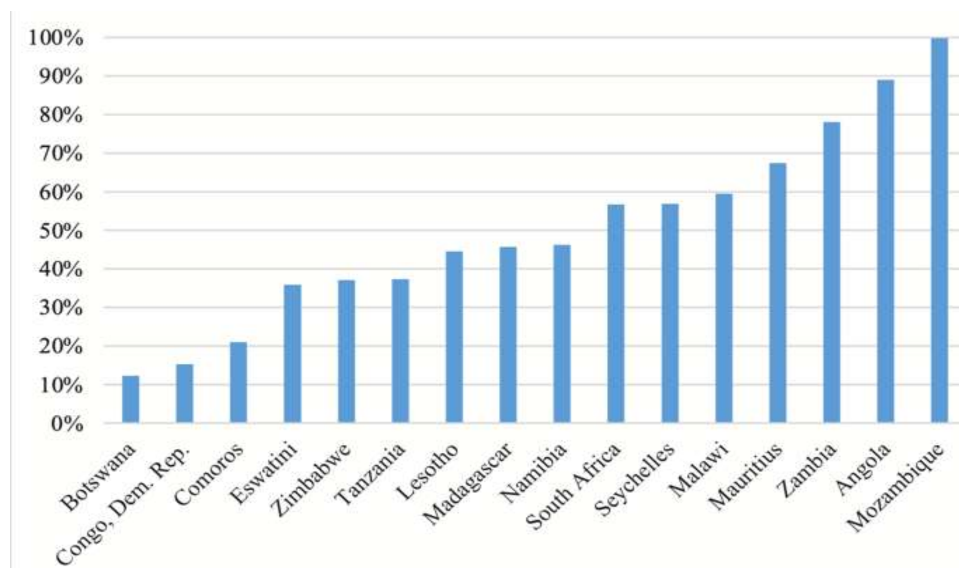
2. RISING DEBT AND UNDERDEVELOPMENT IN SADC STATES

Sonko (1994) points out that Africa's international indebtedness has become a major problem since 1978.[4] This is due to major foreign trade defects, such as high export dependence and high concentration on a few commodities that resulted in fiscal shortages. Poverty, famine, low taxable populations, and small-scale economic activities during this period pushed the domestic state to borrow to finance its expenditure. Following the Covid19 pandemic, the scramble towards debt has further pushed the continent towards the brink of heralding disaster. IFFs out of the continent that have been estimated by UNCTAD at US$88.6 billion annually have further exasperated the continent's revenue base forcing it to look towards creditors. In 1970 the total external public debts for Africa were estimated at US$6 billion rising to about US$158 billion in 1984. At a debt conference in December 1987, the former Organisation of the African Unity (OAU) estimated that African debt levels had risen to US$200 billion and projected that by the end of 2000, the African debt would stand at US$600 billion since by then the repayment periods would kick in activating the debt service obligations. Sustaining such levels of debt repayments would be impossible especially since the African income from commodity exports had slumped along with the levels of external aid and financial investment.[5] Since then, the estimates of the level of African indebtedness have continued to gravely rise. Today the total external debt of African states is assessed at US$726.55 billion by the World Bank and AfDB.[6]

[4] Karamo N. M. Sonko, *Debt, Development and Equity in Africa* (University Press of America, 1994).
[5] T. W. Parfitt and S. P. Riley, *The African Debt Crisis* (Routledge, 2011).
[6] This figure has been compiled on statista: https://www.statista.com/statistics/1242745/total-external-public-debt-in-africa/

SADC states have been experiencing a slow-down in economic growth. Based on the IMF data presented in its 2020 *Regional Economic Outloo*k, SADC countries real GDP growth contracted to -5.5% after SADC economies showed a declining wage growth and an overall contraction of their money supply.[7] Similarly, the 2020 African Development Bank's *Southern Africa Economic Outlook* also estimated the regions baseline growth downwards to -4.9% with a worst-case scenario of -6.6.%.[8] Despite this the 2021 IMF Regional Economic Outlook predicted an economic growth and recovery projected towards 3.3 per cent for SADC's economy. This projection, however, has been revised downwards to a contraction of about 3 per cent by the 2020 SADC report on the *Impact of Covid19 Pandemic on SADC Economy*. Member States have therefore, resorted to borrowing to meet their financing needs. They however set a target of their debt to GDP ratio not to exceed 60%. While some of the SADC countries have maintained a debt to GDP ratio of less than 15%, others, such as Angola, Mauritius, Mozambique and Zambia have surpassed this target.[9] In fact the 2020 SADC Regional Economic Performance Report projected SADC countries public debt to increase to 69% of their GDP in 2021.[10] A summary of the 2018 pre-Covid19 external public debt to GDP ratio in percentage of SADC countries is presented in Figure 1.

Figure 1: Debt to GDP ratio of SADC states (2018)



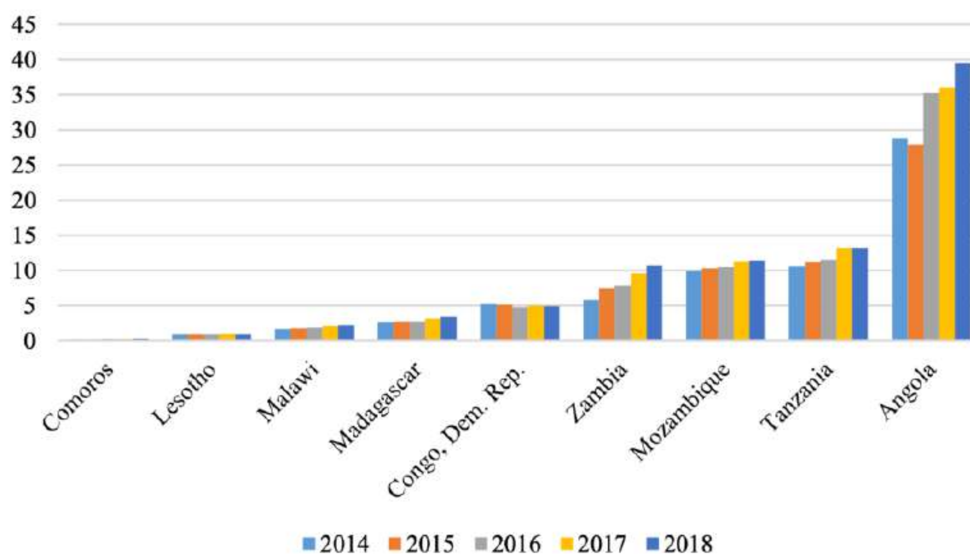
Source: IMF Global Debt Database (2018)

These 2018 debt statistics, show Angola and Mozambique to be on the path to debt distress even before the coronavirus pandemic related fiscal shocks.[11] Angola's oil driven economy has been in recession since 2016. This led to an increase in its debt-to-GDP ratio from

[7] IMF, Regional Economic Outlook: Sub Saharan Africa. A Difficult Road to Recovery (2020), p.21
[8] AfDB, Southern Africa Economic Outlook 2020 – coping with the Covid 19 pandemic (AfDB Group 2020)
[9] IMF 2018 Global Debt Database (GDD).
[10] SADC, Regional Economic Performance Report (2020).
[11] IMF, 'Angola: Third Review under the Extended Arrangement Under the Extended Fund Facility, Requests for Augmentation and Rephasing of Access, Waivers of Non-observance of Performance Criterion and Applicability of Performance Criterion, Modifications of Performance Criteria, and Completion of Financing Assurances Review-Press Release; Staff Report; and Statement by the Executive Director for Angola' [2020] IMF.

57.1% in 2015 to an estimated 123.3% in 2020.[12] Between 2014 and 2018 and prior to the Covid19 pandemic the debt accumulation between some of these SADC countries varied. In 2018, Angola represented the most indebted country whose debt was estimated at US$39 billion, followed by Tanzania, Mozambique, and Zambia whose external debt was estimated at US$10 billion. The rest of the SADC countries have had relatively lower external debts. A summary of the total external debt of some of the SADC countries between 2014 and 2018 for longitudinal comparison purposes is illustrated in Figure 2.

Figure 2: Total external debt of selected SADC states from 2014 to 2018 in US$ billions



Source: World Bank – IMF DSSI[13] database (accessed 2021)

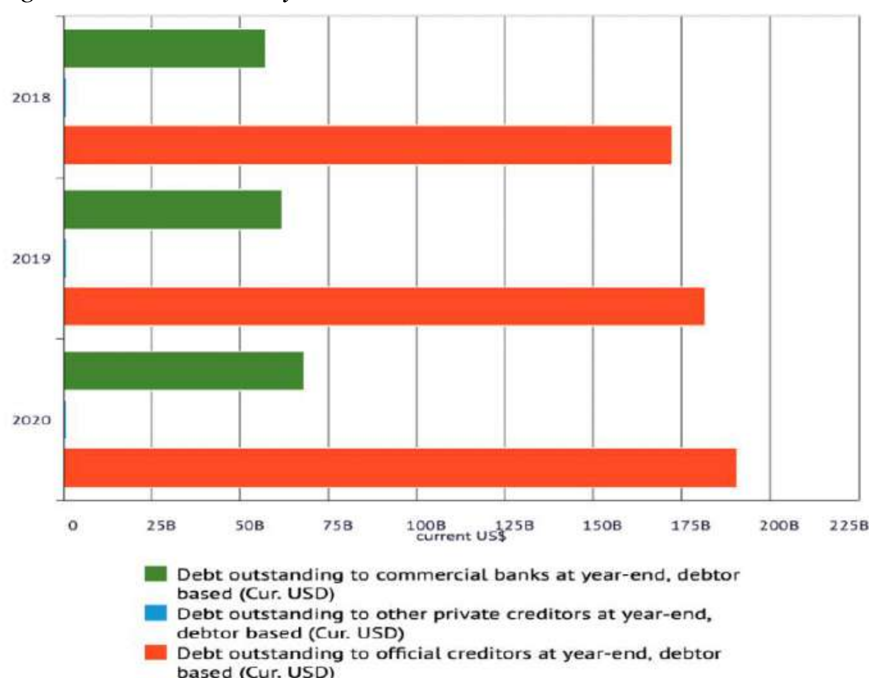
Beginning 2020, Zimbabwe is also in debt distress. Its external debt burden is excessive, and the country is incurring arrears.[14] The recent currency conversion and high inflation have significantly eroded its currency's real value leading to unsustainable fiscal deficits. In addition, Zambia's 2021 debt default has pushed its government to enter into restructuring talks with private creditors and China Development Bank.[15] Other SADC states are also estimating a rise in their debt to GDP ratio triggered by the Covid19 pandemic. For example, Lesotho's public debt is projected to increase to 62.8% of the GDP in 2021 due to the pandemic, breaching the SADC convergence criterion of 60% of GDP. Its risk of external debt distress has been revised from low to moderate.[16] Further, the fiscal deficit as a result of disruptions from the Covid19 pandemic has raised the 2021 debt-to-GDP ratio to 66% for Malawi; 50% for Eswatini; 68.4% for Namibia; and 76.1% for Mauritius.[17]

With such tendencies towards a growing debt burden, it is important to know who the major creditors of SADC countries are. While official multilateral and bilateral creditors are SADC's major creditors to whom the region owe over 60% of the total external debt, non-

[12] African Economic Outlook, From Debt Resolution to Growth: The Road Ahead for Africa [2021] AfDB.
[13] Debt Service Suspension Initiative (DSSI).
[14] IMF, 'Staff Report for the 2019 Article IV Consultation – Debt Sustainability Analysis' [2020].
[15] K Gallagher and Y Wang, 'Sovereign Debt Through The Lens of Asset Management: Implications for SADC Countries' [2020] GEGI Working Paper 042.
[16] African Economic Outlook, From Debt Resolution to Growth: The Road Ahead for Africa [2021] AfDB.
[17] African Economic Outlook, From Debt Resolution to Growth: The Road Ahead for Africa [2021] AfDB.

official creditors and bondholders also lend money to SADC countries. [18] Angola, for example, owes a larger share of its external debt to non-official bilateral creditors. Perhaps this explains why Angola is the most indebted nation in the SADC region since the government takes out non-official loans which are subject to private confidential arrangements. Therein lies the danger of creating an IFF ecosystem through which debt proceeds can be shifted across borders with minimal oversight. In contrast, low-income SADC countries such as the DRC, Malawi and Mozambique owe over 80% of their external debt to official multilateral creditors such as the International Development Association (IDA) of World Bank, IMF and the AfDB.[19] Recent statistics presented by Acker et al (2020) reveal that almost half of the official bilateral debt of Angola, Comoros, DRC, Lesotho, Madagascar, Malawi, Mozambique, Tanzania, and Zambia is owed to China.[20] Estimates on how much the SADC region owes official creditors, commercial banks and other private creditors is shown in Figure 3.

Figure 3: Debt owed by SADC states in US$ billion as at 2020



Source: AfDB database[21]

The data above shows that that collective SADC debt outstanding to official creditors is estimated at US$ 190.9 trillion, to commercial banks is estimated at US$ 68.1 trillion and to other private creditors is estimated at US$ 1 trillion. The data above shows that SADC economies benefit more from official creditors and commercial banks. African countries have also begun a trend in using Eurobonds to finance maturing debt obligations and heavy infrastructure projects paying interest rates between 5-16% on 10-year government bonds which are higher than the rates offered to European countries. The 2020 International Capital

[18] African Economic Outlook, From Debt Resolution to Growth: The Road Ahead for Africa [2021] AfDB; K Gallagher and Y Wang, 'Sovereign Debt Through The Lens of Asset Management: Implications for SADC Countries' [2020] GEGI Working Paper 042; M Biyase, 'General Government Debt and Growth in SADC Countries' [2019] *EuroEconomics*, Issue 2 (38).
[19] World Bank – IMF DSSI database (accessed 2021).
[20] Acker, K; Brautigam, D & Huang, Y 'Debt relief with Chinese characteristics' (2020) *CARI Paper Series* JHU-CARI: Washington, D.C.
[21] https://high5.opendataforafrica.org/exmpwud/afdb-socio-economic-database-1960-2019?country=1000680-sadc#

Market Association (ICMA) report estimated the domestic African bond market to be US$802.9 billion dominated by South Africa whose government issued US$329.3 billion in bonds.[22] Mozambique's bond market is an example of government and creditor abuse of debt financing intended for development activities. The Tuna Bonds Scandal emerging out of Mozambique's bond issuance showed how public debt was illegally routed towards private interests plunging the country into a debt crisis.[23]

Parfitt and Riley (2011) explain that indebtedness has produced several serious consequences in Africa.[24] It has meant shortages of essential imports, declining production, growing hardship amongst the poor who are already heavily taxed and an inability to replace infrastructure. It has given the IMF, World Bank and creditor countries far greater leverage and grip over African governments than was previously the case. It has led to a significant deterioration in the quality of life of the African population due to the diversion of funds away from economic and social redistribution towards repayment of the principal debt, interests, and penalty payments. Thus, when a government with high debt implements fiscal stimulus, consumers will be more likely to expect that tax increases will soon follow than when debt is low. The burden of taxation that is imposed on the African population prevents them from saving, which in the long term subjects the economy towards regression.

The increasing levels of debt owed by indebted SADC states have resulted in developmental and state building challenges. In its 2021 budget, Zambia allocated more money to debt servicing than to education, health, water and sanitation.[25] 88% of Zambians are living on less than US$6 a day. Throughout the pandemic, Zambia has been spending 4 times more on debt payments (as a result of going into default on its external debt in November 2020[26]) than on public health.[27] 44% of government revenue is spent on repaying external debt in Angola, consequently only 6% is spent on public health. Within the SADC region, Angola has the highest child mortality.[28] In 2017 Angola owed US$21.5 billion in debt to China which was guaranteed by the nation's oil as collateral.

Further, the number of Zimbabweans in extreme poverty (further exacerbated by Covid19 lockdown measures) has reached 7.9 million.[29] South Africa and Zimbabwe have encountered foreign exchange shortages due to low commodity prices and debt servicing problems. Lack of foreign exchange leads to an inability to obtain essential imports, which can cause local shortages of essential goods such as food. In South Africa, this chain of events led to the recent domestic unrest and instability. The choice then facing such countries is to take on further loans, to negotiate for the rescheduling of their debts, or default. Alongside this debt problem, development challenges within SADC also stem out of regions vulnerability to illicit financial flows.

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[22] https://www.icmagroup.org/About-ICMA/icma-regions/africa/african-corporate-bond-markets/
[23] F K Bokosi and R Chikova, Bonds issuance and the current debt crisis in Mozambique (AFRODAD, Policy Brief, 2019)
[24] T. W. Parfitt and S. P. Riley, *The African Debt Crisis* (Routledge, 2011)
[25] Amnesty International, Southern Africa needs assistance. An open call to the regional and international community [2021]
[26] Zambia becomes Africa's first coronavirus-era default: What happens now? CNBC, 24 November, 2020
[27] Zambia edges towards debt default, but bondholders could make millions, Jubilee Debt Campaign, 02 November, 2020; Financial Times, 'Zambia's debt crisis casts a long, global shadow' November 16 2020.
[28] S Bagree, 'The New Debt Crisis in Southern Africa: Angola, Zambia and Zimbabwe' [2018] Jubilee Debt Campaign
[29] The Guardian, 21 June 2021: Half of Zimbabweans fell into extreme poverty during covid.

3. ORIGINS OF THE DEBT DISASTER IN INDEBTED SADC STATES

Regional integration for southern African states was achieved with the establishment of the Southern Africa Development Community (SADC). SADC comprises of 16 Member States.[30] The region manifests a mixed historical heritage following the scramble for Africa which saw the region divided between the Dutch, Germans, British, and Portuguese amidst a diverse indigenous population. Each of the SADC states have their unique historical, decolonial, legal and political identity shaped by their colonial predecessors, their post-colonial and post-apartheid domestic regimes, and international institutions and stakeholders. Some of the SADC states were built on the apex of racial hierarchy[31], others followed dictatorship or a one-party rule system,[32] while others fought civil war.[33]

Such political manifestations and insecurity in the SADC region meant that the legal and financial systems of the Member States could potentially be vulnerable and exposed to fostering different forms of IFFs. This could be due to the fact that a poorly regulated legal and financial system due to civil conflict, state capture, patronage or dictatorship allow economic players with institutionalised paths to financial secrecy and to carve out and manipulate access routes into and out of the economy of untaxed profits and illicit finance. Financial secrecy is key to earning and moving debt related IFFs as will be explained later. Financial secrecy is a common feature of deregulated markets which are themselves characteristic of the Washington Consensus requirements that SADC countries were obliged to implement in exchange of FDI and aid. The Washington Consensus was a US led financial ordering that was imposed on Africa to accept privatisation as its economic system and through which the continent's growth would be externally supported.

Despite this, each country within the SADC bloc has one phenomenon in common: struggling towards the goal of shared prosperity in the economy of their nation. However, their economic markets have been modelled along the Imperial vision set out by the World Bank and IMF led structural adjustment plans. These plans are aligned in such a way to keep SADC countries subordinate to foreign political and economic superiority, particularly through the debt arrangements and repayment of inherited colonial debts. Consequently, post-colonial SADC economies continue to serve the interests of foreign capital and their tax systems have evolved in relation to pressures from outside. Even today, their normative tax regimes are shaped by the former colonising powers' social, economic, and political structuration and this has created power asymmetries and inequalities towards SADC countries mobilising sufficient tax revenues from FDI, foreign companies and the double taxation agreements that they execute.

Consequently, in designing their post-colonial economic and fiscal policies, SADC states were restricted to establish an economic order that would respond to the international markets that were imperially conceived. They had to value their local currency against the strength of the US dollar, their entry into the international market was subject to the use of the US dollar as the medium of exchange, their balance of payments was to be assessed by valuation of their currencies against the US dollar. This required SADC states to negotiate

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[30] Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe.
[31] South Africa and Zimbabwe.
[32] Malawi, Mozambique, Seychelles, Zambia, Zimbabwe
[33] Angola and DRC.

bilateral treaties with foreign states for the purpose of directing investment into their domestic markets with which to strengthen their revenue mobilisation and in turn their currencies. When this could not be achieved, SADC states took to borrowing. Since the states borrowed in foreign currency, they would service their debt in foreign currency. This resulted in the indebted states paying more after local to foreign currency conversions. Further, the repayment of inherited loans during the colonial period created fiscal constraints taking into account interest accumulation that also required payment in foreign currencies. The pressure on the domestic revenue base forced SADC countries to continue borrowing to repay previous loans. In the absence of checks and balances on the repayment of these inherited colonial loans as well as odious debts accumulated during despotic/corrupt regimes resulted in corrupt state officers routing some of the funds into their private investments.

SADC states are mineral producing states. As a result, some member states (for example: Angola, DRC and Zimbabwe) have structured the natural resources and extractives sectors of their economy to permit taking out resource-backed loans (RBLs) to support their governments financing development policies. RBLs have short maturities, high interest rates and no commitments on how the money will be used. They can trap resource rich countries into losing control of their resources when the loan cannot be repaid at maturity because the debtor country is unable to scale up its resource production quickly enough to begin making payments. For example, in a recent 2020 report by the Natural Resource Governance Institute (NRGI), the authors provide evidence linking RBLs to draining development in Africa.[34] RBLs are loans that are provided to a government or a state-owned company where repayment is either made directly in natural resources (such as oil or minerals), or from a resource-related future income stream. RBLs can also be guaranteed by offering a natural resource as collateral. RBLs are usually negotiated in private. As such RBL terms and conditions are not publicly documented.

The NRGI 2020 report identified 30 RBLs that have been signed with 11 African countries between 2004 and 2018. Out of the 11 RBLs, 3 were signed with the following SADC states: Angola (US$24 billion), DRC (US$3.5 billion) and Zimbabwe. Angola and Zimbabwe are on the path to debt distress and have poor development indicators. Transparency has been lacking in their negotiation and signing of RBLs. Hence, it is difficult to come across further data on RBLs availed to other SADC states, if any. RBLs can increase debt repayments since their interest rates can flutter across fixed and floating rates. This distinction is important because a floating interest can increase when the global lending rates increase – thereby increasing the debt due. Usually, interest rates applicable to RBLs are fixed as low as 0.25% whereas the floating interest rates can vary between 1% to 2.95%.[35] The RBL issued to Zimbabwe was capped at 2% - high for the Zimbabwean economy constrained by UK, USA and EU financial sanctions. Zimbabwe is currently heading towards debt distress on its US$11.1 billion public debt.[36] It is not known how much in RBLs are responsible for its growing external debt.

Due to the lack of publicly available information on RBLs, it is also not possible to say what other costs are charged on top of interest. The 2020 NRGI reports confirms that on top of an annual interest, there is also the requirement to pay additional untaxed costs towards servicing the loan such as a flat management fee, a commitment fee and a one-time insurance

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[34] D Mihalyi, A Adam and J Hwang, 'Resource-Backed Loans: Pitfalls and Potential' [2020] NRGI.
[35] D Mihalyi, A Adam and J Hwang, 'Resource-Backed Loans: Pitfalls and Potential' [2020] NRGI.
[36] African Economic Outlook, From Debt Resolution to Growth: The Road Ahead for Africa [2021] AfDB.

premium. All these costs add to the debt payable. These fees and premium are repatriated abroad, untaxed.

4. SADCS DEBT RELATED VULNERABILITIES

The availability of external debt on conditions imposed by foreign lenders has placed SADC countries as passive players in an economic and financial system actively created by tax base eroding institutions.[37] SADC markets were therefore seen as securities for international lending institutions[38] that allowed SADC governments to overborrow. This aim was achieved by ensuring that the SADC region was forced to adopt a monocultural, primary commodity-based pattern of development initially set up by their former colonial and apartheid masters.[39] Such economies are vulnerable to the vagaries of the world market, in which many primary products are prone to a cycle of boom and slump.

At independence the colonial governments handed power to the urban and agricultural elites that had emerged from this economic context. This lent itself to preservation of the monocultural economy since these ruling groups derived their revenue from trade and primary commodity production rather than from industrial investments. Their lack of managerial and technical expertise, together with their orientation towards trade and consumption led to a dependence on foreign capital to finance some limited economic diversification. Unfortunately, such dependence resulted in an anti-development financial sector that thrived on foreign investments conditioned towards an outflow of capital in the form of profit repatriation, management, and consultancy fees, which later became the drivers of IFFs. SADC debt accumulation in this way shaped its economy in such a way that the Member States have an inbuilt tendency towards balance of payments deficits which can only be filled by drawing on loans via a legal system conducive to profiting the foreign creditors.

Further, political cleavages within the Zambian, South African and Angolan states that have developed along ethnic/race/regional lines with political factions securing support through means of patronage have enabled a legal environment conducive to the misuse and misappropriation of debt, thus exacerbating tendencies towards indebtedness. The debt that was acquired by SADC governments to restore economic equilibrium and growth somehow got caught up within a web of illicit networks draining development out of the SADC region. The extractives sector of SADC countries has also been susceptible to this anti-development fiscal order that thrives on attracting foreign investments. The licensed mining corporations that legally extract minerals and other natural resources are based on bilateral investment treaties (BITs) or double taxation agreements (DTAs) between a SADC state and the resident country of the mining company. These BITs and DTAs create an enabling environment conditioned towards an outflow of capital in the form of full profit repatriation, management, and consultancy fees. These kinds of financial flows have often been associated with IFFs, and base erosion which in turn do nothing towards strengthening resource mobilisation from the mining sector that could be used to offset debt payments.

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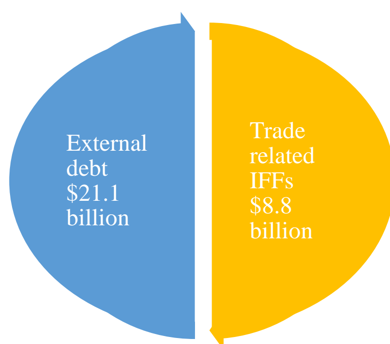
[37] Mentan, Tatah. 2010. *The State in Africa: An Analysis of Impacts of Historical Trajectories of Global Capitalist Expansion and Domination in the Continent*. African Books Collective.
[38] Mohan Giles, Ed Brown, Bob Milward et al., *Structural Adjustment: Theory, Practice and Impacts* (Routledge 2000).
[39] Moyo, Dambisa, Dead Aid: Why Aid Is Not Working and How There Is A Better Way for Africa (New York: Farrar, Straus and Giroux, 2009).

5. THE IFF MENACE IN SADC STATES

IFFs result in a devastating impact on African economies, peace and security, human development, and the achievement of human rights. The Africa Union, United Nations, World Bank, and the International Monetary Fund consider IFFs as the greatest obstacle to lifting millions of Africans out of poverty. Of the various forms of IFFs, debt related IFFs are understudied. The 2015 Mbeki report listed out several methodologies to estimate IFFs out of Africa. Of these methodologies the World Bank Residual Method was flagged out to potentially estimate debt related IFFs. This method considers approximating IFFs as the difference between the source of funds (whether as external debt or through FDI) and the use of funds (expressed as part of current account deficit and reserves).[40] In other words, the difference between what comes in and what is accounted for. Arguably, the difference is lost through IFFs. This method is helpful in ensuring accountability of loans issued to SADC and how these loans are applied towards development finance. However, the method does not explain through which forms of IFFs the loan proceeds are lost, it only shows the difference between the loan issued and how much of it is accounted for.

The presence of high levels of debt can have the effect of reciprocally creating and reinforcing the incidence of IFFs. For example, corrupt states with weak financial institutions can trap and re-route external loans to tax havens or foreign jurisdictions with low compliance controls for private interests. The Luanda Leaks are informative on how the former president of Angola and his daughter were responsible for siphoning off funds, partly comprising of external loans, through a web of schemes relying on corruption, offshore centres and using corporate tax evasion practices that saw billions of dollars diverted out of state companies to foreign jurisdictions towards their private ventures.[41] The impact of debt on development has to some extent been set out under *The Money Drain* report prepared by ACTSA. This report showed how trade mis-invoicing and unjust debt undermines economic and social rights in southern Africa.[42] According to the statistics presented the SADC region is responsible for approximately US$21.1 billion in external debt. Alongside these debt statistics, the report estimated that SADC countries have lost US$8.8 billion in trade related IFFs. This figure, however, does not factor in tax revenue lost from other types of corporate, criminal and corruption related IFFs.

Figure 4: Comparison between SADC's external debt and trade related IFFS

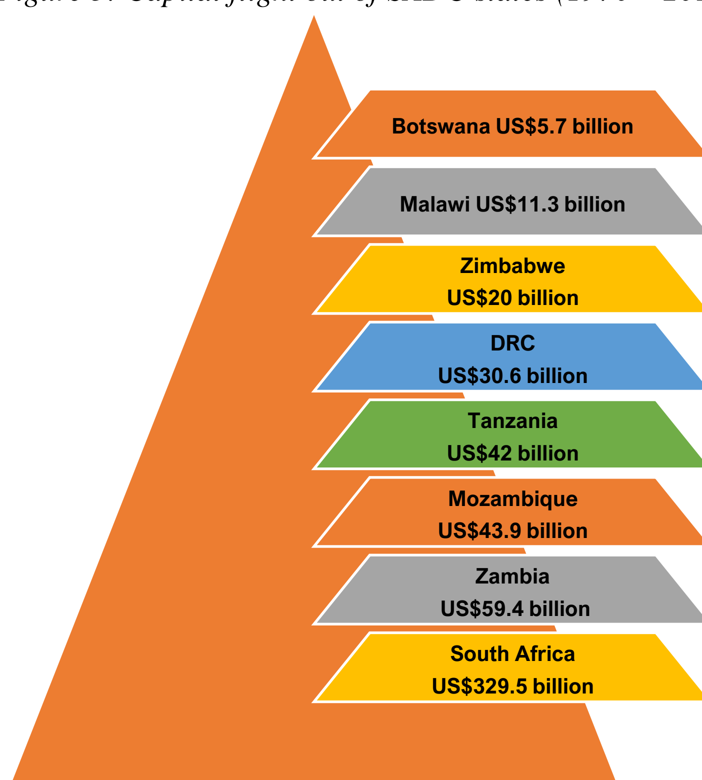


Source: ACTSA

[40] United Nations, Economic Commission for Africa, 'Illicit Financial Flows: Report of the High-Level Panel on Illicit Financial Flows from Africa' (Addis Ababa 2015).
[41] Read more here: https://www.icij.org/investigations/luanda-leaks/
[42] ACTSA, The Money Drain. How trade misinvoicing and unjust debt undermine economic and social rights in southern Africa [2019] Briefing Paper.

In a report by Global Financial Integrity (GFI), it was estimated that while the SADC region attracted US$175 billion in FDI and ODA between 2009 and 2013, it also lost US$173 billion in IFFs.[43] Taking the example of Zimbabwe, AFRODAD estimates indicate that between 2009 and 2013, the country's mining sector lost US$2.7 billion, while GFI estimates suggest that the country also lost US$670 million in 2015 because of trade mis-invoicing. The GFI has also documented that SADC states have lost more than US$314 billion in IFFs from 2004 to 2013.[44] Without specifying regional estimates, UNCTAD in its EDAR 2020 report revealed that collectively US$88.6 billion leaves the African continent in IFFs annually. The Africa Union published a study in 2020 which projected that the continent could be losing up to US$500 billion forcing African countries to borrow heavily to survive the current pandemic.[45] In May 2021, Boyce and Ndikumana revised the estimates of IFFs out of capital flight out of Africa between 1970 and 2018. According to their statistics SADC countries lost the following billions in capital flight during that period:

Figure 5: Capital flight out of SADC states (1970 – 2018 in US$ billions)

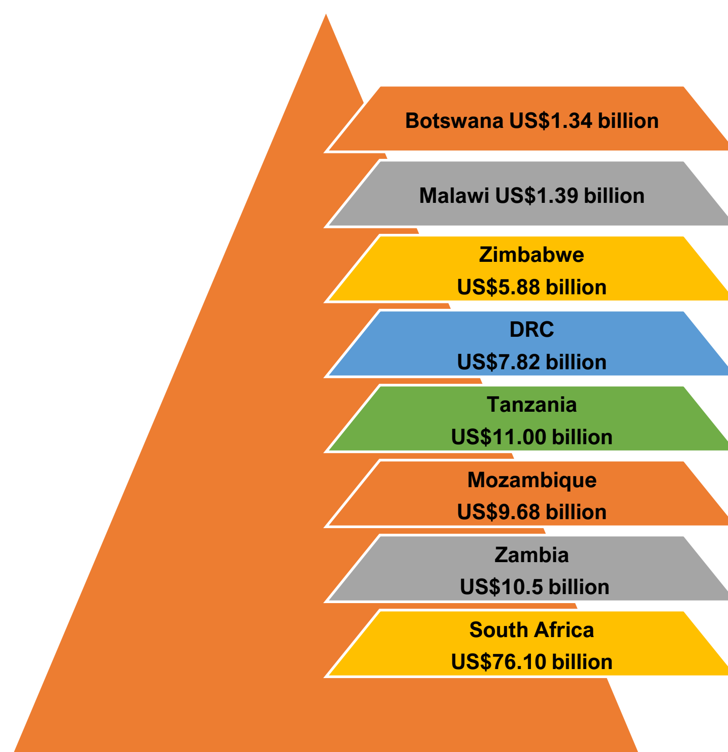


Source: Boyce and Ndikumana (2018)

From the above data, the total capital flight over three decades from these SADC countries amounted to US$542.4 billion. This amount is more than half of what the entire continent owes in external debt today estimated at US$726.55 billion. It is also 4 times the external debt owed by those 8 SADC countries. Arguably then, if revenue was not lost due to capital flight, these 8 SADC countries would not be indebted today. Figure 6 presents the total external debt accumulated in 2019 by these 8 SADC countries totalling to US$123.71 billion.

[43] http://nangozim.org/news/curb-illicit-financial-flows-good-sadc-countries
[44] GFI, 'Illicit Financial Flows to and from Developing Countries: 2005-2014' [2017].
[45] AU, COVID19 could cost Africa $500 billion, damage tourism and aviation sectors [April 2020].

Figure 6: External debt owed by SADC states (2019 in US$ billions)



Source: World Bank

SADC countries are mineral resource exporting countries.[46] As such they are more prone to exporting large amounts of IFFs due to several factors. First, large exports of minerals provide more opportunities for trade mis-invoicing. This is because of the revenue authority's weak tax enforcement and collection capacity alongside regulatory arbitrage in overseeing the governance of the extractives sector by various state officers. Private MNEs do not share transparent financial data and information on their mineral exactions for government audit. This results in manipulating invoices and financial data through which taxable profits are reduced and subjected to illicit flows offshore. Of the US$88.6 billion that is annually lost through IFFs from Africa, approximately US$40 billion is lost from the continent's gold sector.[47] Second, their extractive industries provide political leaders with a certain level of independence removing the need for accountability from the politicians involved in those industries. Third, their extractive industries require a high level of expertise, which leads to relatively low levels of competition, creating oligopolies who may collaborate with governments and competitors for contract negotiations, joint ventures and other arrangements. The low levels of competition can lead to companies working together to export illicit capital outflows. These countries also have higher rates of corruption and money laundering further compounding challenges associated with IFFs.[48]

Debt related IFFs have not extensively featured in the IFF literature on SADC. Instead, debt related IFFs are grouped under commercial aspects of IFFs. Trade related IFFs are prevalent in the SADC region. Trade mis-invoicing is the most common form of such trade

[46] L Signe, M Sow and P Madden, Illicit Financial Flows in Africa. Drivers, destinations and policy options [2020] Policy Brief, Africa Growth Initiative.
[47] UNCTAD EDAR Report (2020).
[48] L Signe et al [2020].

related IFFs. GFI describes trade mis-invoicing as the *'deliberate falsification of the value, volume, and/or type of commodity in an international commercial transaction of goods or services by at least one party to the transaction'*.[49]

Between 1980 to 2018, Signe et al (2020) found that Africa exported an aggregate of US$1.3 trillion in IFFs. Had this amount been retained on the continent, it would have significantly reduced the current total external debt of US$726.55 billion owed by the African states collectively. These authors also claim that among the top emitters of IFFs from the SADC region are countries with natural resources: mining products in South Africa, DRC, Botswana and Zambia, and oil and gas in Angola.[50] In so far as the enabling environment that fosters IFFs in SADC states is concerned, literature has pointed towards poor governance,[51] and corruption.[52] High levels of financial secrecy in neighbouring states exposes the rest of the SADC region to IFF. It remains to be seen whether the implementation of the register of beneficial ownership in SADC states will curb the instances of IFFs in the region or at least expose the owners of corporate vehicles used for capital flight.

The collective impact of IFFs in SADC states is felt within the economic and social sector when citizens access to public goods and the benefits of redistribution are limited and restricted. IFFs and debt have deprived SADC states of resources with which to finance development needs. In the SADC region, 52% of the collective population lack electricity,[53] 31% of the youth are unemployed,[54] 80% of the urban population live in slums,[55] 40% do not have access to basic drinking water and sanitation,[56] 80% are without pension,[57] 32% of students are illiterate,[58] 5.4 million people are undernourished and 30.9% of people face severe food insecurity.[59] The impact of Covid19 economic contractions is yet to increase these statistics.

6. ENTANGLEMENTS WITH DEBT RELATED IFFS IN SADC

Indebted African states have utilised external debts towards wasteful prestige projects and self-enrichment instead of redistributing the debt towards development. For example, in 2016 the government of Mozambique guaranteed debts over US$1 billion taken out by semi-public entities in Mozambique without submitting them to parliament in accordance with the Republic's constitution.[60] Outwardly, it appeared that the loans would pay for establishing tuna fishing and maritime security businesses. Instead, about US$500 million of the loans could not

[49] GFI, Trade misinvoicing [2019].
[50] L Signe et al [2020].
[51] E Osei-Assibey, K O Domfeh and M Danquah, Corruption, institutions and capital flight: evidence from sub Saharan Africa [2018] Journal of Economic Studies, 45 (1), 59-76; S A Asongu and J C Nwachukwu, Fighting capital flight in Africa: Evidence from bundling and unbundling governance [2017] African Governance and Development Institue Working Paper.
[52] Goredema, C, Combatting illicit financiak flows and related corruption in Africa: Towards a more integrated and effective approach [2011] U4
[53] AU et al., Africa Sustainable Development Report [2018], p.10.
[54] AUC and OECD, Africa's development dynamics [2018], p.98.
[55] UN Habitat, World cities report [2016], p.204.
[56] AU et al., Africa Sustainable Development Report [2018], p.12.
[57] ILO, World social protection report 2017-2019 [2017] p.127
[58] S Bashir et al., Facing forward [2018] World Bank, p.67-68
[59] FAO and ECA, Africa regional overview of food security and nutrition [2018] p.3-7
[60] A Williams and J Isaksen, 'Corruption and state backed debts in Mozambique: What can external actors do?' [2016] U4 Anti- Corruption Resource Centre, Chr. Michelsen Institute.

be accounted for, and US$200 million had been spent on bank fees and commissions.[61] The government of Malawi has been accused of wasting the US$91 million IMF loan provided under the Fund's Rapid Credit Facility to help address the Covid19 pandemic. Parts of this loan have been spent on paying non-existent employees, purchasing personal protective equipment at inflated prices, and paying per diems for foreign trips.[62] *'Frightening findings'*[63] have also been observed in the mismanagement of loans borrowed by South Africa to cushion its economy from the Covid19 economic shocks. While SADC governments have been responsible for the misuse and mismanagement of debt, creditors also bear responsibility in adjoining debt as part of the IFF ecosystem thriving in SADC. How they do this is discussed next.

6.1. Vulture Funds Encourage Debt Related IFFs

There are various ways of characterising external debt. First, external debt can be classified based on the status of the donor, generally divided into official and private debts. Official debts are those obtained from national governments or their agencies or from international agencies like the World Bank and IMF. Private debts consist of those obtained from private creditors and include Eurodollar loans, supplier's credit for exports and loans from private commercial banks. It is this private creditor – debtor relationship that can foster the debt/IFF interface. Within their framework of entering into loan arrangements with nations states, these private creditors operate debt as a form of business. They do this by entering into separate arrangements that allows them to sell their debt to a third party. Usually, this third party buys their debt for the purpose of speculating in and profiteering from the poor country who may default in its debt service. This third party is usually a vulture fund.

A vulture fund is a company, usually an investment fund set up by commercial creditors that seeks to make profit by buying up *'bad'* debt at a cheap price, then attempts to recover the full amount, often by suing through the courts.[64] The IMF has defined vulture funds as companies which buy the debt of poor nations cheaply when it is about to be written off and then sue for the full value of the debt plus interest – which is sometimes ten times more than what they paid for it. The full profits they make on debt that they purchased cheaply along with interests earned on the principal amount is usually routed through a web of transnational companies registered in either secrecy, or low/no tax offshore jurisdictions making it difficult for revenue authorities to tax the profit and interests earned. Such tax evasion practices are characteristic of vulture funds.

The key features of a vulture fund are: first, that it is not the primary lender of money, Second, it acquires the title deed of the debt through the purchase of the money owed on a secondary market and third, it goes to court to sue the sovereign debtor for the full value of the debt, plus interest, generally making a profit. Vulture funds target poor country governments. Many of these vulture funds are based in tax havens hence tend to be quite secretive. As such

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[61] See the court documents here (hyperlinks): *1. Mozambique v Credit Suisse & Ors. (CL-2019-000127) 2. Mozambique v Safa (CL-2019-000482) 3. Banco International de Moçambique SA v Credit Suisse (CL-2020-000243) 4. VTB Capital PLC v Mozambique (CL-2019-000817 and BL-2020-000984) 5. Beauregarde Holdings LLP & Anor. v Credit Suisse (CL-2020-000822)*

[62] M W Kateta, 'Malawi audit confirms extensive mismanagement of Covid19 funds' *Devex*, 29th April 2021.

[63] As reported in BBC News, 'Coronavirus in South Africa: Misuse of Covid19 funds 'frightening' [2 September 2020] https://www.bbc.co.uk/news/world-africa-54000930

[64] Devi Sookun, *Stop Vulture fund Lawsuits* (Commonwealth Secretariat, 2010).

there is limited or no information on who owns them. When an impoverished country has an outstanding debt owed to a private creditor that has not been written down or restructured there is a chance that a financial organisation will seek to buy that debt at reduced prices and seek repayment of the original amount and more. The debtor government is threatened with legal action and when they lose, the court rules that the debtor government pay the original debt, interest and fees accrued since the debt has been in arrears as well as the legal costs. Firms call this capitalising, but in reality, this vulture activity should be seen as a form of IFFs as they have the effect of paralysing the economies of indebted nations.

Angola, Mozambique, Tanzania, and Zambia have been subjected to such vulture action. While vulture activity can be described as immoral, it is not, strictly speaking, illegal. The profits made on suing for distressed debts therefore cannot be deemed as illicit earnings. But when these profits are repatriated to tax havens shielding the interest from taxation, then such earnings fall within the definition of IFFs. Since they are earned because of suing over a loan agreement, it exposes the entanglement between debt and IFFs through vulture funds.

See stages below for an understanding of how a vulture fund operates.

Stage 1:	Stage 2:	Stage 3:	Stage 4:
Poor African country defaults on debt	Vulture fund buys defaulted debt from creditor country paying a very low amount	Vulture fund sues poor country for full amount of debt and the accumulated interest, and any additional penalties	Vulture fund maximises profit off defaulted debt

Vulture funds can purchase debt of state-owned enterprises. They then pursue any companies which do business with their target country in courts around the world and try to force them to pay the debt. This holds poor countries to ransom and prevents them trading their way out of poverty and forces them into further debt. The World Bank in 2019 revealed that African countries spent more money servicing their debts than they did on health. Vulture activity is one such factor forcing states to make good on their debts. In one recent case against Zambia, a vulture fund, having bought a debt for US$3 million, sued Zambia for US$55 million and was awarded US$15.5 million, making a profit of US$12.5 million. None of these extra earnings on the recovered debt were subjected to withholding tax by the Zambian government on the interest earned. Perhaps because the award was shifted and routed through multiple jurisdictions in the form of repaying investors the amounts, they contributed towards the vulture fund purchasing the debt. Since beneficial ownership registers were then not publicly available, these investors could probably have been the same shareholders of the vulture fund who registered several subsidiaries to facilitate profit shifting.

Vulture funds that purchase debt are nested in tax havens or are shell companies, thus it is impossible to quantify how much debt around the world they hold. Since it is subject to a private contract, the discount rate at which the debt is purchased is also not publicly known. When the company sues for full recovery, it makes a profit, such as the case of Zambia. Since the domestic revenue authority is not aware of the purchase price of the debt (contract negotiated through clusters of companies spread out in various jurisdictions), the full recovery of the debt at a later stage if it results in a profit, remains outside the tax bracket as it will be deemed recovery of an expense. A classic modus operandi for IFF. The activities of vulture funds clearly undermine African debt repayment approaches and relief interventions.

6.2. Debt-To-Equity Swaps Can Be Responsible for Debt-Related IFFs

Vulture funds can facilitate IFFs by engaging in debt-to-equity swaps - instead of the debt being repaid, the creditor is given shares in the company. For example, Z Ltd is registered in a tax haven and is involved in Illegal Unreported and Unregulated (IUU) fishing in Africa. Z Ltd loans money to B Ltd; a sugar production company. Later Z Ltd enters into a debt-to-equity swap. Now it has shares in B Ltd. As a shareholder in B Ltd, Z Ltd can advise B Ltd to limit its tax liability by paying dubious offshore claims for intellectual property fees, management fees or consultancy costs. Another example that demonstrates how debt-to-equity swaps can result in IFFs is where Z Ltd loans money to B Ltd and then formally asks for a swap. Z Ltd then argues before the domestic revenue authority that the money received constitutes a capital gain rather than an investment income, which results in a lower rate of tax. This is a classis example tax dodging through swaps,

Debt to equity swaps can also be used to launder illicit proceeds by converting the debt owed by a state-owned enterprise under a joint venture company (JVC) with a foreign MNC into equity for the creditor who can use the opportunity to invest more in equity shares using laundered proceeds for example or utilising the JVC to move money in the form of repayments for legal claims such as intellectual property, management fees, or consultancies fees offshore. The debt-to-equity program provides opportunities for criminals to launder their money by exchanging it for debt under the program. This can be facilitated through round tripping. Round tripping is the process where funds are returned after being transferred to an entity shell company, financial instruments, location, or a person that have lower regulatory standards or obligations – giving the impression that the funds have derived from a clean source and thus completing a round trip. Swaps can therefore facilitate crime related IFFs through money laundering schemes into the program.

Since the debt-to-equity swap is linked to the GDP of the country, it can aid economic recovery or stunt it. When an MNC is party to the swap program, its purpose of purchasing the debt for equity is to channel its investment capital into productive use in the private sector. Being the subject of double taxation treaties, these MNCs are able to shift the profits earned on their investments across multiple jurisdictions depriving the indebted state the opportunity to tax the gains so made. The debt-to-equity swap can also buffer the government against repayment of the loan thereby saving its revenue base.

6.3. The Absence of Thin Capitalisation Rules Can Allow Debt-Related IFFs To Thrive

Thin capitalisation rules exist to prevent international debt shifting. It prevents a private creditor who is issuing debt to a state to make excessive interest deductions in order to avoid paying tax in its own jurisdiction – yet earning more in interest from the debtor state. Relatedly, it is important to set out a debt-to-equity ratio – high debt to equity ratios would mean that a private creditor would be able to claim higher tax deductions if interest on debt is taxed by the debtor state by moving debt repayments offshore to its subsidiary incorporated in a low or no tax jurisdiction. This would create an enabling environment for IFFs.

The two most common types of thin capitalisation rules that are used in practice are safe harbour rules and earnings stripping rules. Safe harbour rules restrict the amount of debt for which interest is tax deductible by defining a debt-to-equity ratio. Interest paid on debt exceeding this set ratio is not tax deductible. In this way countries can protect their taxable revenue base. High debt to equity ratios would mean that an MNC who invests in a domestic

state would be able to claim higher tax deductions by moving debt repayments offshore to its subsidiary incorporated in a no/low tax jurisdiction. Such debt shifting will have implications towards the domestic state's potential to then mobilise revenue. Most countries only include internal debt in this ratio. Earnings stripping rules limit the ratio of debt interest to pre-tax earnings and are recent.

Thin capitalisation rules are applicable to internal not external debt in SADC countries, except for Angola where thin capitalisation rules are not applicable.[65] This means that external debt can be susceptible to thin capitalisation by private creditors. This may perhaps indicate why the SADC region was prone to capital flight between 1980-2018 (section 5, figure 6). The absence of rules to keep in check against inflating debt against available equity can have the potential to foster IFFs. Debt shifting can also be done by re-routing the debt through tax havens or low tax jurisdictions. For example, in 2007 Zambia Sugar borrowed US$70 million, which on paper was routed through Ireland to avoid Zambian tax on the interest charges costing Zambia US$3 million in withholding taxes.[66]

In Namibia, the situation is different. The application of thin capitalisation rules setting out the safe harbour ratio are applied at the discretion of the Minister of Finance.[67] Discretion is usually prone to abuse by corrupt officials who may be motivated to allow higher debt to equity ratios. The effect of which reduces the tax due to the government. In Malawi safe harbour rules are applicable where the debt-to-equity ratio exceeds 3:1.[68] Like Malawi, Zimbabwe too applies similar safe harbour rules.[69] But the rules do not apply in relation to debt contracted through a government credit facility by a public entity as defined under the country's Public Entities Corporate Governance Act. In Zambia, the government has imposed a new thin capitalisation limit on interest deductions for interest amounts exceeding 30% of earnings before interest, taxes, depreciation, and amortisation (EBITDA). However, there are no safe harbour rules.[70]

In South Africa thin capitalisation is treated as a potential breach of the general arm's length standard. Its legislation does not separately address transfer pricing and thin capitalisation.[71] Thin capitalisation rules also apply in Mozambique. Where the indebtedness of a domestic taxpayer to a non-resident entity is twice the value of the equity shareholding, and a special relationship exists between the two parties, interest paid on debt exceeding 2:1 debt to equity ratio is not deductible in calculating taxable income.[72] Other SADC countries with thin capitalisation rules are; Botswana, where a deduction is not allowed for net interest exceeding 30% of EBITDA. This rule does not apply to banking or insurance companies (thereby creating opportunities for debt shifting);[73] DRC, where thin capitalisation rules only apply to mining companies which must observe a debt-equity ratio of less than 3:1;[74] and Tanzania, where the debt-equity ratio should not exceed 7:3 the highest ratio in SADC.[75] While safe habour rules to some extent protect against international debt shifting to occur, when these

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[65] V de Almeida, S Almeida and J L Heitor, Corporate Tax 2018, 14th edn [2018] ICLG, p.25
[66] D Boffey, British sugar giant caught in global tax scandal, *The Observer* 9 Feb 2013.
[67] KPMG, Namibia: Thinking beyond border for Namibia [2021].
[68] TPA Global, Malawi [2018] HJE Wenckebachweg, NL
[69] The Tax Hub, Zimbabwe [2019].
[70] J A Jalasi and M Undi, Zambia. Corporate Tax Laws and Regulations [2021] ICLG.
[71] PwC, South Africa. Corporate – Group Taxation [2021]
[72] Deloitte, Guide to fiscal information. Key economies in Africa: Mozambique [2019].
[73] Deloitte, Guide to fiscal information. Key economies in Africa: Botswana [2019].
[74] Deloitte, Guide to fiscal information. Key economies in Africa: DRC [2019].
[75] Deloitte, Guide to fiscal information. Key economies in Africa: Tanzania [2019].

rules are subjected to ministerial discretion, such as the case in Namibia, then it provides room to manoeuvre finances illicitly across borders

Importantly, almost all thin capitalisation rules intend to curb international debt shifting and are relevant for MNCs only. This is obvious for safe harbour type thin capitalisation rules directly limiting the tax-deductible level of internal debt, since internal debt, being a tax favoured substitute for equity, should play a meaningful role only in MNCs. Therefore, non-regulated internal debt shifting can be used as a money machine generating tax-arbitrage profits as long as there is positive taxable income. Consequently, most countries have implemented thin capitalization rules to curb tax driven debt financing that leads to interest deductions being excessive from point of view of tax authorities, and to protect their corporate tax bases.

7. CONCLUSION AND RECOMMENDATIONS

SADC countries are running into debt more rapidly than they are building up savings. To mitigate against the fiscal drain that follows in servicing the debt, SADC governments reduce spending on welfare, economic and social goods. The fact that at least 5 of SADC countries' public debt is over 60% of their GDP creates an unstable financial condition which forces those with liquid capital to seek safe havens. It also puts the government in a position to restructure their debt servicing obligations through swap programs. The debt-to-equity swaps made available sometimes act as a fortress for foreign MNCs to seek out markets with weak regulatory structures through which to move their profits untaxed. Ndikumana and Boyce have referenced sufficient literature to support the claim that most of IMF lending to Africa has been fully absorbed by capital flight, subsidizing it under the euphemism of currency stabilisation.[76] What is being stabilised is mainly the rate at which this flight capital is exchanged for hard currency.

The path leading to uneconomical indebtedness for SADC countries as well as the rest of Africa was opened with the Washington Consensus and structural adjustment programs (SAPs) that created pressure for African states to free capital movements (euphemised as economic reforms). This led toward financial decontrols that cleared the way for the development of offshore havens. Financially sophisticated operators send their money offshore and then borrow it back with which to enter debt-to-equity swaps with indebted governments. They then pretend to pay back enough interest, insurance, and management fees to themselves to absorb their equity and render themselves free of taxes thereby fostering a system for debt related IFFs. This paper has discussed the debt-IFF interface in the context of SADC states. It has attributed SADC states indebtedness to their lack of economic agency within international economic markets and global financial institutions in which these states lack influence in suggesting borrowing terms. The potential of the AU, ECA and OSAA to lead transformative change on the continent and SADC states approach to borrowing is therefore fundamental to salvaging the economy and social welfare from stunting, particularly considering Covid-19

[76] Ndikumana, L. and J. Boyce. "Capital Flight from Africa, 1970-2018, New Estimates with Updated Trade Misinvoicing Methodology." PERI Research Report, May 2021; Ndikumana, L. and J. Boyce. "Magnitude and Mechanisms of Capital Flight from Angola, Côte d'Ivoire and South Africa." PERI Working Paper, Dec. 2018; Boyce, J.K. and L. Ndikumana. "Capital Flight from Sub-Saharan African Countries: Updated Estimates, 1970 - 2010." PERI Research Report, October 2012; Ndikumana, L. and J.K. Boyce (2011). *Africa's Odious Debt: How Foreign Loans and Capital Flight Bled a Continent.* London: Zed Books; Ndikumana, L. and J.K. Boyce (2011). "Capital Flight from Sub-Saharan Africa: Linkages with External Borrowing and Policy Options", *International Review of Applied Economics* 25(2) 149-170; Boyce, J.K. and L. Ndikumana (2010)."Africa's Revolving Door: External Borrowing and Capital Flight in Sub-Saharan Africa," in Vishnu Padayachee (ed.), *Political Economy of Africa.*

related fiscal corrosions. So how can this be done? How can SADC states counter debt related IFFs? Overall, the most significant aspect in preventing debt related IFFs is to manage the debt itself. Following this, the policy recommendations made next will support the African fiscal space and limit its erosion:

1. For Resource Backed Loans – the secrecy involved in their negotiation and signing must be restricted. Unfavourable terms especially where interest rates and management fees are concerned should be renegotiated downwards. Withholding tax should be applied on management fees and interest. Stricter laws that subject RBLs to transparency and accountability must be implemented and enforced and there must be parliamentary approval in the negotiation and final execution of RBLs.
2. For curbing the vulture fund menace – it would be ideal for the World Bank to buy back outstanding private and commercial debts from SADC countries so that at risk debts are taken out of the public domain. Laws on sovereign immunity against vulture activities must be implemented and profiteering from vulture acts must be declared illegal.
3. For debt-to-equity swaps – SADC countries and other African states should implement safe harbour rules and there should be restrictions placed on private creditors against selling or re-assigning sovereign debts without explicit approval of the indebted state.
4. In improving thin capitalisation rules – the removal of ministerial discretion should be prioritised and safe habour rules liming the debt-to-equity ratio to 2:1 should be adopted.

ACKNOWLEDGMENTS

This work was supported by the Foundation Open Society Institute (FOSI) and OSIEA (grant number OR2021-83193). The working paper was written by Lyla Latif.