

# Public Finance and Debt Crises in Southern Africa: A Push for Central Banks over Parliaments

DP Zongwe\*

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## Author

Dunia P Zongwe

## Affiliation

Walter Sisulu University,  
South Africa

## Email

dzongwe@wsu.ac.za

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## Abstract

In the soaring symphony of fiscal policy in Southern Africa, this paper orchestrates a new tune, proposing that central banks, not parliaments, should take the lead role in managing and taming sovereign debt. This proposal reacts to the adoption by the Southern African Development Community (SADC) of the *Public Financial Management Model Law* on 14 July 2022 – a law that empowers SADC parliaments, especially their public accounts committees (PACs), to oversee governments' management of public debts. Among other things, this model law on public finance management (PFM) provides for debt ceilings and the steering of public debts towards the SADC's voluntary debt target of 50% of gross domestic product (GDP).

Drawing on law and economics, this paper criticises the SADC's decision to empower parliaments to tame sovereign debts as hopelessly naïve because they lack the incentives to do so. Instead, this paper proposes that the SADC reallocates to central banks the heavy responsibility to act as stewards of sovereign debt management, because the 2009 *SADC Central Bank Model Law* and the municipal laws that domesticated it have entrenched the independence of central banks from external interference and political pressure.

In a regional economic community (REC) that houses the world's two most unequal societies, South Africa and Namibia, parliaments will seldom sacrifice their electability in order to rein in public finances and sovereign debt. The world's first ever model community law on PFM, the *SADC PFM Model Law*, affords policymakers and scholars a golden opportunity to rekindle the debate on sovereign debts in a region where economies and public finances have been ravaged by low growth or recession since the mid-2010s, the COVID-19 pandemic, the Ukraine War, high inflation, and the cost-of-living crisis.

## Keywords

Public Finance, Debt Crises, regional economic community, fiscal policy.

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## 1 Introduction

In the evolving discourse on fiscal policy in Southern Africa this article resonates with a distinct perspective, proposing that central banks rather than parliaments should assume a dominant role in controlling and moderating sovereign debt. I have cultivated this proposition to respond to the recent initiative by the Southern African Development Community (SADC) that vouchsafed unparalleled power to parliaments and their public accounts committees (PACs) in monitoring governments' fiscal manoeuvres, particularly concerning debt.

To articulate this proposition – which also serves as my article's overarching purpose – and explore its underpinnings comprehensively, I have structured my article into six distinct parts, encompassing the introduction (Section I) and culminating in the conclusion (Section VI).

Venturing into Section II, I embark on a dual mission. I first cast light on key research problem of this paper: the mounting debt predicament that besieges the SADC. This situation is exacerbated by a trinity of calamities: the global onslaught of COVID-19, the economic ripples originating from the Ukraine War that subsequently ushered in a cost-of-living crisis, and the economic languor plaguing the region's titan, South Africa, vividly symbolised by the relentless energy blackouts. Concurrently, this section delineates the conceptual foundations of the "law and economics" methodology, illustrating how this specialised academic arena equips scholars to delve into the intricacies of sovereign debt.

Following this, Section III offers a comprehensive synopsis of the *SADC Model Law on Public Financial Management* (the *PFM Model Law* or the *Model Law*).<sup>1</sup> While some elements of this legislative instrument warrant attention, Section III primarily pivots towards the *Model Law's* key mandates and emphasises those clauses that pertain directly to sovereign debt management.

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\* Dunia P Zongwe. JSD (Cornell), LLM (Cornell), Cert (Univ Montréal), LLB (Univ Namibia), BJuris (Univ Namibia). Associate Professor, Alliance School of Law, India; and Adjunct Associate Professor, Department of Legal Studies, Walter Sisulu University, South Africa. Email: dunia.zongwe@alliance.edu.in; dzongwe@wsu.ac.za. ORCID: <https://orcid.org/0000-0003-2849-5351>. I presented an earlier version of this paper at the Banking, Competition and Corporate Law Colloquium hosted in July 2023 by the Faculty of Law of the North-West University. I thank the attendees of that colloquium for their enlightening questions on this topic. I also applaud the thorough and enlightening feedback provided by two anonymous reviewers, which has helped me to enhance the quality and clarity of this article. Surviving errors, if any, are my own.

<sup>1</sup> *SADC Model Law on Public Financial Management* (2022) (hereafter the *PFM Model Law*).

As I transition to Section IV, my narrative widens to probe potential debt overseers. This exploration spans a gamut of entities, from auditor-generals, specialised fiscal councils, and parliamentary committees to more niche institutions like the account courts, commonly referred to as "*cours des comptes*". Central banks also enter this evaluative matrix, standing out as potent contenders in this fiscal watchtower lineup.

In the subsequent section, Section V, the narrative crescendos to its crux. Deliberating on the pantheon of fiscal guardians, I present a compelling case underscoring the ascendancy of central banks over their counterparts in the realm of sovereign debt management. The core thesis emerges unambiguously: for effective, unbiased and robust fiscal vigilance, the SADC nations should gravitate towards reassigning sovereign debt management duties to their central banks, chiefly because their characteristics insulate them from external and political meddling. Yet, as with any scholarly endeavour, this proposition is not without its detractors. Hence, the latter fragments of Section V dedicate themselves to addressing conceivable counterpoints, ensuring a well-rounded and critically balanced discourse.

Lastly, Section VI encapsulates the conclusion, drawing the threads of the preceding sections together, summarising the arguments presented, and offering final reflections. Through this six-part structure this contribution aspires to enrich the fiscal debates surrounding Southern Africa, harmonising the melody of economic pragmatism with the rhythm of legislative dynamism.

## **2 The SADC debt quagmire: law, economics, and the trinity of calamities**

The SADC, a collective of sixteen nations,<sup>2</sup> resonates with tales of ambition, hope, but more recently, distress. The recent years have witnessed the REC grapple with a mounting sovereign debt crisis (see Figure 1 below), an economic quicksand that has trapped even the most resilient of nations. This predicament, however, has not arisen in isolation. It is in fact a culmination of a trinity of profound challenges: the unprecedented consequences of the COVID-19 pandemic, the far-reaching economic tremors emanating from the Ukraine War, and the unsettling inertia that engulfs South Africa, the economic behemoth of the region.

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<sup>2</sup> For an introduction to the SADC and its laws, see Zongwe 2014 [https://web.archive.org/web/20190226022434/https://www.nyulawglobal.org/globalex/Southern\\_African\\_Development\\_Community1.html](https://web.archive.org/web/20190226022434/https://www.nyulawglobal.org/globalex/Southern_African_Development_Community1.html).

Figure 1 The debt crisis in SADC

country	Public debt (as % of GDP)	Risk profile
Zimbabwe	112	High risk
Angola	107	High risk
Mozambique	103	Moderate
Zambia	94	High risk
Mauritius	83	Moderate
South Africa	62	High risk
Namibia	60	N/A
Malawi	59	High risk
Seychelles	58	N/A
Lesotho	49	Moderate
Eswatini	40	Low risk

Source: Edwards (2022); Kessler (2022); IMF (2022)<sup>3</sup>

## 2.1 The trinity of calamities

The COVID-19 pandemic,<sup>4</sup> in its sweeping global assault, left no stone unturned. For the SADC it came as a double-edged sword. While its direct impact on health and human lives was palpable, the indirect economic ramifications — manifesting in the form of lockdowns, disruptions to trade, and halted tourism — accentuated the region's fiscal vulnerabilities.<sup>5</sup>

Yet, before the scars of the pandemic could heal another tremor jolted the global economy — the Ukraine War.<sup>6</sup> The geopolitical manoeuvrings and economic sanctions that followed disrupted global trade patterns further strangled the already beleaguered SADC economies.<sup>7</sup> The cascading

<sup>3</sup> Edwards "The IMF and Debt Surveillance" 104-105; Kessler "Debt Service Suspension" 65; IMF 2022 <https://www.imf.org/external/datamapper/d@FPP/USA/FRA/JPN/GBR/SWE/ESP/ITA/ZAF/IND>.

<sup>4</sup> First identified in December 2019 in Wuhan in the Hubei province of China, the COVID-19 pandemic refers to the global outbreak of a fast-spreading, deadly respiratory illness caused by a novel coronavirus called SARS-CoV-2.

<sup>5</sup> See generally Bradlow and Masamba *COVID-19 and Sovereign Debt*.

<sup>6</sup> The Russia-Ukraine War, sparked by long-standing tensions, began with a full-scale Russian invasion in February 2022. Despite the initial Russian aims, fierce Ukrainian resistance has led to a protracted conflict with devastating human and infrastructural costs. The war's global impact includes disruptions to food and energy supplies and heightened geopolitical tensions.

<sup>7</sup> See eg UNDP 2022 <https://www.undp.org/sites/g/files/zskgke326/files/migration/za/Policy-Brief---UNDP-SA---The-Impact-of-the-Ukraine-War-on-the-South-African-Economy.pdf>.

effects translated into a spiralling cost-of-living crisis, with essential commodities becoming scarcer and dearer.<sup>8</sup>

Simultaneously, the economic malaise in South Africa, symbolised tragically by its recurring energy blackouts, highlighted the systemic vulnerabilities and infrastructural inadequacies.<sup>9</sup> As a regional powerhouse the languor of South Africa invariably influences the pulse of its neighbouring economies.

Today five members of SADC (South Africa, Mauritius, Zambia, Mozambique, Angola, and Zimbabwe, in ascending order) have accumulated public debts that exceed the ceiling of 60% of gross domestic product (GDP) set in the *PFM Model Law*.<sup>10</sup> Stated differently, one-third of the SADC already find themselves in violation of the *Model Law*.

## **2.2 "Law and economics" or how to understand sovereign debt**

But to grasp the intricacies of this monumental crisis, one must venture beyond the realms of traditional economic metrics and into the crossroads of law and economics. By intertwining legal frameworks with economic principles, this discipline offers a nuanced perspective on and a method<sup>11</sup> of disentangling dilemmas such as sovereign debt efficiently.

### **2.2.1 Efficiency as the primary goal**

Central to law and economics is the ethos of efficiency.<sup>12</sup> Laws, in their myriad forms, are seen as tools that can either enhance or hinder societal value, primarily gauged by their efficiency. Thus, understanding why certain debt-related laws emerge or why economic actors favour some fiscal policies over others becomes key.

Efficiency, as conceived in law and economics, refers to the allocation of resources in a fashion that maximises overall welfare in society. Lawyers and economists use efficiency as a criterion to assess the effectiveness and

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<sup>8</sup> IMF *Regional Economic Outlook* v, 1 (stating that, in 2022 rising food and fuel prices negatively impacted on sub-Saharan economies and that region's most vulnerable people, while public debt has shot up to levels not seen in decades).

<sup>9</sup> Cloete *et al* 2023 <https://saiia.org.za/wp-content/uploads/2023/11/PB-283-FUTURES-cloete-et-al-FINAL-WEB.pdf>.

<sup>10</sup> Also see Edwards "The IMF and Debt Surveillance" 89-106, 104 (rating risks in South Africa, Zambia, Angola, and Zimbabwe as "high").

<sup>11</sup> Mackaay *Law and Economics* 5 (affirming that law and economics is "not a field of law, but a *method* for understanding law through its social effects, teased out with the help of concepts and theory borrowed from economics"); and Cooter and Ulen *Law and Economics* 4 (maintaining that economics offers a "method for efficiency").

<sup>12</sup> Cooter and Gilbert *Public Law and Economics* 4 (stating that economists often focus on one value: efficiency).

desirability of rules and policies.<sup>13</sup> Economists rely on three standards of efficiency: Pareto efficiency, cost-benefit efficiency and social welfare.<sup>14</sup>

Lawyers and economists routinely measure efficiency in terms of Pareto efficiency, which denotes a situation where it is not possible to make any individual better off without making someone else worse off. As Cooter and Gilbert put it, a situation or a change in law achieves Pareto efficiency when "someone prefers the new law and no one opposes it."<sup>15</sup> However, Pareto efficiency lacks practicality because nearly all laws have at least one supporter or at least one opponent.<sup>16</sup>

Because of the limited usefulness and practicality of Pareto efficiency, some lawyers and economists prefer another measure: cost-benefit efficiency, which compares the costs and benefits of rules or policies.<sup>17</sup> Others opt for social welfare or utility aggregated across individuals in society.<sup>18</sup> Unlike Pareto efficiency, this welfare standard obtains when changes benefit winners more than they cost losers.<sup>19</sup> For instance, a government policy that imposes a small tax on the wealthy to fund education programmes for low-income students could achieve social welfare efficiency. Although the tax may reduce the utility of wealthy individuals slightly, the aggregate benefit to society from improved educational outcomes for disadvantaged students would likely outweigh the cost, thus increasing overall welfare.

The principle of efficiency is useful, relevant and important in resolving sovereign debt crises, particularly in the Southern African region. Sovereign debt crises occur when a country can no longer meet its debt obligations, which destabilises the economy and paves the way for the government to default on its debt.<sup>20</sup> In such situations efficiency can guide policymakers in

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<sup>13</sup> See Cooter and Ulen *Law and Economics* 7-8 and 416 (explaining that efficiency serves to assess the consequences of legal decisions, policies, rules, and institutions; and arguing that the law embeds efficiency principles under other names); Mattei *Comparative Law and Economics* 21 (observing that lawyers use efficiency to find reasons why their opinions about the rules governing society should prevail over those of anybody else); Van den Bergh *Comparative Competition Law* 86-87, 92 (concluding that the competition policies of the United States of America and the European Union utilise efficiency as a yardstick).

<sup>14</sup> Cooter and Gilbert *Public Law and Economics* 4.

<sup>15</sup> Cooter and Gilbert *Public Law and Economics* 4.

<sup>16</sup> Also see Cooter and Gilbert *Public Law and Economics* 4.

<sup>17</sup> See e.g. Polinsky *Introduction to Law and Economics* 7 (defining "efficiency" as "the relationship between the aggregate benefits of a situation and the aggregate costs of the situation", and preferring this "more intuitive" definition over the technical notion of efficiency known as "Pareto efficiency" or "Pareto optimality").

<sup>18</sup> Cooter and Gilbert *Public Law and Economics* 5 (remarking that social welfare aggregates the utility functions of all individuals in society and that a policy or rule achieves "social welfare efficiency" when it maximises aggregate utility).

<sup>19</sup> Cooter and Gilbert *Public Law and Economics* 111-112.

<sup>20</sup> Note that, like some other scholars, I define a "sovereign debt crisis" by the inability of a country to meet its external debt obligations, and not necessarily by the event

making decisions that maximise overall welfare. This criterion advocates the adoption of policies that reallocate resources to their most productive use,<sup>21</sup> which may mitigate the severity of those debt crises.

Policymakers can apply efficiency to sovereign debt crises through three modes. First, efficiency can determine the optimal allocation of resources to address the crisis. This may involve evaluating the costs and benefits of different policy options, such as debt restructuring, austerity measures or financial assistance programmes. By considering the efficiency of these options, policymakers can choose the approach that minimises the adverse impact on the economy while maximising the long-term benefits.

Second, efficiency can inform how lawmakers can design laws and institutions passed and erected to manage sovereign debt. For example, efficient institutional arrangements can facilitate effective coordination and cooperation among stakeholders, such as government agencies, international financial institutions and private creditors.<sup>22</sup> Furthermore, efficiency considerations can guide the development of policies that grow and stabilise the economy, thereby putting the SADC member states in better positions to resolve sovereign debt crises.

In the Southern African REC, where sovereign debt crises have snowballed,<sup>23</sup> the efficiency criterion can play a significant role in confronting these difficulties. By applying efficiency norms to policy decisions policymakers could identify and implement measures that promote economic growth, reduce debt burdens and enhance overall welfare. This might involve reforming laws and institutions to improve the efficiency of debt management processes, enhance transparency and accountability, and attract foreign investment.

### 2.2.2 Rational behaviour

Economics presumes that individuals, including policymakers, act rationally and in their own self(ish) interest.<sup>24</sup> This presumption provides a foundation to predict how people will respond to changes in legal or fiscal rules.<sup>25</sup> Discerning these predictable responses enables economists, lawyers, and government officers to design policies that further efficiency and welfare by

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of a country's default. For like-minded scholars, see e.g. Elberry *et al* 2022 *Journal of Economic Surveys* 352-353. Others, like Reinhart and Rogoff, equate a "sovereign debt crisis" to a country's defaulting on its debt. See Reinhart and Rogoff *This Time is Different* 10-13.

<sup>21</sup> Boardman *et al* *Cost-Benefit Analysis* 2.

<sup>22</sup> Also see Faure and Partain *Environmental Law and Economics* 35.

<sup>23</sup> See generally Bradlow and Masamba *COVID-19 and Sovereign Debt*. To identify the specific SADC countries that are undergoing (acute) debt crises, see Figure 1 above.

<sup>24</sup> Van Aaken 2014 *Harv Int'l LJ* 425.

<sup>25</sup> See Basu *Republic of Beliefs* 146-147.

incentivising behaviour that benefits society as a whole, while minimising unintended consequences that could lead to suboptimal outcomes.

### 2.2.3 *Incentives and behaviour*

Laws, especially those related to public finances, mould behaviour by creating incentives or disincentives. For instance, if the SADC parliaments lack the incentive to control sovereign debts, then the effectiveness of such laws is inherently compromised. Landsburg captured the special value of incentives in economics when he said:<sup>26</sup>

most of economics can be summarized in four words: 'people respond to incentives.' The rest is commentary.

The SADC's sovereign debt crisis, accentuated by the trinity of calamities described earlier in this section, underscores the urgency of informed interventions. The interdisciplinary field of law and economics, with its rich theoretical tapestry, equips scholars and policymakers to delve deeper into this crisis, seeking solutions that are not just efficient but also equitable. The economic aspects of law and economics help policymakers identify the efficient means to tackle the debt crisis, whereas the legal aspects of the discipline assist in weighing the distributional consequences and striving for fairness and justice in allocating costs and benefits among stakeholders.

## 3 **The SADC Model Law on Public Financial Management**

In the tumult of international development the SADC made a groundbreaking move on July 14<sup>th</sup>, 2022, by adopting the *Model Law on Public Financial Management* (the *PFM Model Law* or the *Model Law*). Organised in fifteen main themes reflected in the headings of its various parts,<sup>27</sup> this paradigm-shifting legislative instrument aims to streamline and enhance the management of public finances, especially focussing on the rising tide of sovereign debt.

This section explores the salient provisions of this *Model Law*, shedding light on the intricacies of sovereign debt management and laying out the foundational concepts underpinning the research.

### 3.1 **Fundamental concepts**

Though both the PFM and the central bank model laws cover sovereign debt management, none explicitly define the term "debt". Nonetheless,

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<sup>26</sup> Landsburg *The Armchair Economist* 3.

<sup>27</sup> In addition to the preamble, the fifteen parts of the *Model Law* comprise: (1) preliminary provisions; (2) aims and objectives; (3) authorities; (4) public funds; (5) supply and appropriation; (6) parliamentary control; (7) national budget; (8) government borrowing; (9) procurement and the use of public resources; (10) public accounts; (11) financial misconduct and misuse; (12) cryptocurrencies; (13) state governments; (14) local authorities; and (15) state-owned enterprises.



several provisions of the *PFM Model Law* relate to debt and use the phrase “public debt” or “government debt”.<sup>28</sup> SADC model-makers must have deemed the idea of “debt” too obvious to warrant any definitions.

### 3.1.1 *Public finance management*

The *PFM Model Law* does not expound on the near-ubiquitous phrase “public financial management” (PFM), but the preamble describes its meaning in context. The preamble proclaims that

public financial management, which refers to the administration and supervision exercised over the finances of the State, is a continual and ongoing activity, with the Executive and Parliament complementing each other through checks and balances to ensure that financial tasks conducted by Government or its agents are efficient, are for the purpose intended in accordance with budget lines, and are predicated on transactions which reflect value for money.

It further states the aims of the *Model Law* as being

to foster accountability, transparency, independence and modernity by providing for efficient and effective processes to be followed in relation to—

- (a) the raising of public revenue;
- (b) expenditure of public money and other public resources;
- (c) accounting for receipts and expenditures of public money; and
- (d) Parliamentary oversight of public resources.<sup>29</sup>

So, while this is not a formal and concise definition, the preamble contextualises it by indicating that it designates the administration and oversight of state finances and resources by both the executive and legislative branches to achieve efficiency, accountability and transparency.

In sum, the idea of PFM has to do with the management of a country's public resources, emphasising transparency, accountability and effectiveness. It encompasses budget preparation, revenue collection and expenditure control, among other matters.

### 3.1.2 *Public debt*

Despite the absence of any express rendering of “debt”, the *PFM Model Law* does define “public debt”. Article 79(1) of the *Model Law* describes “public debt” as “all financial liabilities of the State”. Those “financial liabilities” denote borrowing by the government as well as actual and potential financial liabilities incurred by the government.<sup>30</sup>

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<sup>28</sup> See Articles 79, 80, 89-90, 91, and 93 of the *PFM Model Law*.

<sup>29</sup> Preamble of the *PFM Model Law*.

<sup>30</sup> Article 79(1) of the *PFM Model Law*.

In the light of the above, sovereign or public debt pertains to the total amount borrowed by a nation's government from domestic and foreign sources. The government utilises this to bridge the gap between the state's revenue and its expenditure.

### 3.1.3 *Public accounts committees (PACs)*

Omnipresent in the Commonwealth,<sup>31</sup> these specialised parliamentary committees oversee government revenue and expenditure to cement fiscal transparency and accountability. PACs form the object of this paper. I describe them later in this section.

## 3.2 *Key provisions of the PFM Model Law*

The *Model Law* aims to strengthen PFM in SADC countries. It applies to ministries, public authorities, state governments, local authorities and state-owned enterprises.<sup>32</sup>

The *PFM Model Law* sets out principles and objectives for PFM, which comprise transparency, accountability, oversight, responsibility, sustainability, integrity and professionalism.<sup>33</sup> It establishes authorities for financial management, including the Finance Minister, the Finance Ministry, accounting officers, the Accountant General, and the Auditor General.<sup>34</sup> The *Model Law* defines the roles and responsibilities of these office bearers.

Importantly, the *Model Law* provides for the management of public funds through the Consolidated Fund and other accounts.<sup>35</sup> SADC central banks should hold and maintain a fund known as the "Consolidated Fund", through which all public authorities receive money and may spend it.<sup>36</sup> The *Model Law* outlines the supply and appropriation procedures.<sup>37</sup>

Parliamentary oversight is enabled through the Auditor General, the National Audit Office and the Public Accounts Committee.<sup>38</sup> The *Model Law* specifies their functions. It also stipulates national budget procedures, for example, required documentation, parliamentary control, multi-year projections, and transparency.<sup>39</sup>

The *Model Law* on PFM sets out government's borrowing powers, debt management, and reporting requirements.<sup>40</sup> In similar vein, it lays down

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<sup>31</sup> Wehner 2003 *Commonwealth and Comparative Politics* 21, 30-31.

<sup>32</sup> Articles 2-6, read together with Arts 131-136, of the *PFM Model Law*.

<sup>33</sup> Articles 9-13 of the *PFM Model Law*.

<sup>34</sup> Articles 14-25 of the *PFM Model Law*.

<sup>35</sup> Articles 26-36 of the *PFM Model Law*.

<sup>36</sup> Articles 27-29 of the *PFM Model Law*.

<sup>37</sup> Articles 36-37 of the *PFM Model Law*.

<sup>38</sup> Articles 38-55 of the *PFM Model Law*.

<sup>39</sup> Articles 56-78 of the *PFM Model Law*.

<sup>40</sup> Articles 79-96 of the *PFM Model Law*.

rules for public procurement, the use of resources, conflicts of interest, and cryptocurrencies.<sup>41</sup>

Lastly, the *SADC Model Law* stipulates accounting standards and punishes certain PFM-related crimes. It prescribes accounting standards, resource accounts, whole-of-government accounts, and tax expenditure reporting.<sup>42</sup> Plus, it creates offences for financial misconduct and misuse, along with enforcement mechanisms.<sup>43</sup>

### **3.3 Empowerment of parliaments and PACs**

The *Model Law* bestows considerable power upon national parliaments, especially emphasising the role of PACs. These committees are mandated to keep a vigilant eye on governmental fiscal activities, focussing on how public debts are accrued and serviced. Their oversight role is meant to act as a check against fiscal mismanagement or the undue accumulation of debt.

#### **3.3.1 Debt ceiling**

In arguably one of its most discussed provisions, the *Model Law* establishes a debt ceiling. Article 91(1) fixes a debt ceiling by stating that "for the purposes of this Act the public debt reaches the debt ceiling if it exceeds 60% of the Gross Domestic Product". The responsible Minister or government department may propose a new percentage by amending the relevant laws from time to time, with a view to reducing that percentage, so that it eventually reaches 50% or less by the end of a period of 5 years.<sup>44</sup>

While the specifics may vary among member nations, the overarching goal remains consistent: to prevent excessive borrowing that might jeopardise fiscal health.<sup>45</sup>

A crucial provision in many fiscal policies, a debt ceiling sets an upper limit on the amount the government can borrow, either in absolute terms or as a percentage of a key indicator such as the GDP.

If public debt reaches the debt ceiling, the *Model Law* obliges the Finance Minister to "make an emergency public debt statement" and have an "emergency debate in Parliament".<sup>46</sup> Likewise, if the public debt exceeds

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<sup>41</sup> Articles 97-105 of the *PFM Model Law*. Cryptocurrencies are expressly dealt with under Arts 126-130 of the *PFM Model Law*.

<sup>42</sup> Articles 106-118 of the *PFM Model Law*.

<sup>43</sup> Articles 119-125 of the *PFM Model Law*.

<sup>44</sup> Article 91(2) of the *PFM Model Law*.

<sup>45</sup> See Art 65(3) of the *PFM Model Law* (obliging the Minister responsible for finance to attach to the annual budget a statement of fiscal sustainability that features information on how the Minister plans to maintain both fiscal balance over specified periods and sustainable levels of public debt).

<sup>46</sup> Article 92 of the *PFM Model Law*.

the debt ceiling or if it appears to the PAC that public debt will likely exceed the ceiling, then special parliamentary oversight mechanisms will apply.<sup>47</sup>

### 3.3.2 *Steering of public debts*

The *PFM Model Law* nudges member countries to steer their public debts towards a voluntary target, which, in the context of the SADC, stands at 50% of the GDP. This threshold is both symbolic and strategic, aiming to maintain debt at manageable levels while reserving sufficient fiscal space for growth-enhancing investments.

The endgame is not just to limit borrowing but to utilise the borrowed funds judiciously, thereby maximising socio-economic returns. This provision underscores the importance of sustainable debt management practices, marrying short-term needs with long-term fiscal health.

So, in summary, the *Model Law* nudges member countries to steer their public debts towards a voluntary target which stands at 50% of the GDP, while capping those debts at a ceiling limit of 60% of GDP. And, when public debt exceeds or will likely exceed that ceiling, the *Model Law* triggers special parliamentary procedures and oversight.

### 3.3.3 *Political independence and externality*

The *Model Law* albeit indirectly spotlights potential pitfalls of political interference. While the *Model Law* empowers parliaments and PACs, it simultaneously raises concerns about the very structure's susceptibility to external pressures, particularly considering electoral cycles.

On the one hand the *Model Law* seems to implicitly juxtapose this parliamentary empowerment against the established independence of central banks, pointing towards a potential shift in the stewardship of sovereign debt management. In reality, however, the SADC has through this shift effected by the *PFM Model Law* clearly contradicted its own (earlier) law, as set out in the *Central Bank Model Law*. To be sure, the *Central Bank Model Law* entrusts the central bank, as opposed to parliament or the PAC, with the management of public debts.<sup>48</sup>

## 3.4 *Public accounts committees*

Before I delve into the merits and demerits of PACs I first need to introduce those creatures. The *PFM Model Law* establishes a public accounts committee (PAC) as a parliamentary committee to scrutinise how public bodies manage their finances.<sup>49</sup> The *Model Law* has structured PAC's

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<sup>47</sup> Article 93(1)-(2) of the *PFM Model Law*.

<sup>48</sup> See Arts 6(2)(c) and 43 of the *Central Bank Model Law*.

<sup>49</sup> Article 50 of the *PFM Model Law*.

membership, proceedings and resources to produce independence and effectiveness.<sup>50</sup>

The PAC considers reports of the Auditor General and can initiate inquiries into government accounts.<sup>51</sup> It has powers to summon officials and require information.<sup>52</sup> The *PFM Model Law* also institutes a public complaints mechanism.<sup>53</sup>

### **3.5 The implications of PACs for debt crises in SADC**

While the *SADC PFM Model Law* sets a robust framework for fiscal transparency, accountability and efficiency, it is not devoid of criticism. As I show later in this article, the *Model Law's* thrust on empowering parliaments, especially in the sovereign debt context, is a misstep. I have grounded this critique in the observation that parliaments, being inherently political entities, lack the consistent incentive to prioritise long-term fiscal health over short-term electoral gains.

Moreover, in a region marked by stark economic inequalities, as in South Africa and Namibia,<sup>54</sup> the delicate balance between electability and fiscal prudence becomes even more precarious. Would a parliament, keeping an eye on the upcoming elections, willingly endorse austerity measures or limit popular spending, even if such steps are crucial for long-term fiscal sustainability? The *Model Law*, while visionary in many respects, might grapple with these ground realities.

The *SADC PFM Model Law* marks a significant stride in the collective odyssey of Southern African nations towards fiscal prudence and transparency. Its provisions, especially those related to sovereign debt, aim to infuse discipline while ensuring growth and development. Nevertheless, like all ambitious frameworks, its success hinges on its implementation, its adaptation to ground realities, and periodic evaluations.<sup>55</sup> As member nations navigate the turbulent waters of global economics, the *Model Law* could either serve as a guiding star or a mere paper tiger, depending largely on political will, institutional robustness and stakeholder engagement.

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<sup>50</sup> Article 50 of the *PFM Model Law*.

<sup>51</sup> Article 52 of the *PFM Model Law*.

<sup>52</sup> Article 54 of the *PFM Model Law*.

<sup>53</sup> Article 53 of the *PFM Model Law*.

<sup>54</sup> See World Bank 2023 [https://data.worldbank.org/indicator/SI.POV.GINI?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/SI.POV.GINI?most_recent_value_desc=true).

<sup>55</sup> On the gap between policy design and outcomes, see e.g. Hill and Hupe *Implementing Public Policy 2*; Pressman and Wildavsky *Implementation* 35-69 (dramatically illustrating how implementation failed to conform to certain policy expectations in the United States).

## 4 Who should guard the fiscal fortress of the SADC?

A region with a rich tapestry of socio-economic circumstances, the SADC stands at a crossroads in its fiscal journey. With rising sovereign debt and evolving challenges from external factors such as the COVID-19 pandemic and the cost-of-living crisis resulting from the Ukraine War, a fundamental question arises for SADC member states: Who should they entrust with the mammoth task of overseeing public debt?

Clearly the debt oversight mosaic in SADC does not appear monochromatic. The canvas is populated by a diverse range of entities, each boasting its strengths, weaknesses and unique perspectives. These entities evolve in Southern Africa but do not form part of the SADC as an institution. This section dives deep into this landscape, evaluating the credentials of potential fiscal gatekeepers or debt overseers, from the established giants like central banks and parliamentary committees to the specialised nooks of auditor-generals and the accounts courts.

### 4.1 Auditor-generals: the traditional beacon

Auditor-generals, with their longstanding history of financial scrutiny,<sup>56</sup> serve as the traditional vanguards of fiscal prudence. They bring to the table a thorough knowledge of governmental operations and established audit processes.<sup>57</sup> However, while they excel in retrospective analyses their prospective analytical capabilities, especially regarding debt management, might not be as robust.

Moreover, in many developing countries auditor-generals and supreme audit institutions (SAIs) face significant challenges that hinder their effectiveness. Political interference, often stemming from a lack of independence, can compromise their ability to conduct impartial audits and issue unbiased recommendations.<sup>58</sup> Additionally, severe capacity constraints, including inadequate resources, limited expertise and outdated technology can further undermine their capacity to thoroughly scrutinise complex financial matters such as sovereign debt management.<sup>59</sup> These constraints restrict the extent to which auditor-generals and SAIs can contribute to proactive fiscal prudence and debt sustainability in these

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<sup>56</sup> On auditors-general or supreme audit institutions (SAIs), see Nzewi and Musokeru 2014 *Africa's Public Service Delivery and Performance Review* 36; Dye and Stapenhurst *Pillars of Integrity*; Deliwe *Role of the Office of the Auditor General*.

<sup>57</sup> See generally Dye and Stapenhurst *Pillars of Integrity*.

<sup>58</sup> Deliwe *Role of the Office of the Auditor General* 1-10.

<sup>59</sup> Isaksson and Bigsten *World Development* 1870, 1872-1873, 1876, 1877-1878 (suggesting that capacity constraints in Rwanda negatively impact on important aspects of that country's SAI); Deliwe *Role of the Office of the Auditor General* 1-5.

nations. They may also explain why public bodies usually ignore reports from auditor-generals.<sup>60</sup>

#### **4.2 Specialised fiscal councils: the modern-day sentinels**

Emerging as modern alternatives, specialised fiscal councils offer a blend of expertise and focus. These councils, often staffed by economists and fiscal experts, can provide forward-looking analyses, drawing on economic models and simulations.<sup>61</sup> Their speciality lies in creating medium-term fiscal projections,<sup>62</sup> a vital tool in effective debt management. Yet their relatively recent emergence means they might lack the historical context that more established entities possess. More to the point, studies have shown that these advisory fiscal watchdogs are politically fragile and vulnerable to politics and politicians.<sup>63</sup>

#### **4.3 Parliamentary committees: the democratic watchdogs**

Parliamentary committees, especially PACs, wield significant power, given their democratic mandate. Their forte lies in their representation: they mirror the broader politics and thus, in theory, the will of the people. With the recent empowerment through the *SADC PFM Model Law*, they now have sharper teeth with which to oversee public debt management.

Still, their Achilles heel is the electoral cycle. The pressure to remain electable can sometimes overshadow long-term fiscal prudence,<sup>64</sup> especially in highly unequal societies like South Africa and Namibia.

#### **4.4 Public accounts committees**

First instituted in the United Kingdom in 1861, public accounts committees (PACs) now feature in the majority of Commonwealth national

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<sup>60</sup> See e.g. Dhansay *Investigation Into the Powers of the Auditor-General* 2, 22, 28, 67, 70 (concluding that the Auditor-General in South Africa has not succeeded in strengthening democracy through accountability chiefly because auditees often ignore audits by the Auditor-General and calling on lawmakers to endow the Auditor-General with greater implementation powers).

<sup>61</sup> Cevik 2019 *Asian-Pacific Economic Literature* 33; Beetsma and Debrun 2016 <https://www.imf.org/external/pubs/ft/wp/2016/wp1686.pdf>; Zongwe *Steeling for the Next Pandemic* 288, 297-298.

<sup>62</sup> See Beetsma and Debrun 2016 <https://www.imf.org/external/pubs/ft/wp/2016/wp1686.pdf>.

<sup>63</sup> See e.g. Beetsma *et al* 2022 *European Economic Review* 1, 2-3, 13; Calmfors and Wren-Lewis 2011 *Economic Policy* 665, 676, 682-684.

<sup>64</sup> See generally Stapenhurst *et al* *Legislative Oversight and Budgeting* and specifically Pelizzo and Stapenhurst "Public Accounts Committees" 118 (noting that (1) international organisations often view modern political systems as dominated by the executive in that the executive has the political and legislative initiative, and that (2) legislatures counterbalance the loss of political initiative by intensifying their oversight of government activities).

parliaments.<sup>65</sup> Typically a standing committee of the lower house of parliament, a PAC could be established by a country's constitution, the standing orders of parliament, or a statute.<sup>66</sup>

To manage public debt, the *SADC PFM Model Law* enables the PAC to request additional public debt statements from the Finance Minister.<sup>67</sup> If the public debt exceeds the ceiling of 60% of the GDP, the PAC publishes and maintains a public debt parliamentary oversight strategy to monitor debt accrual and make recommendations for reducing it.<sup>68</sup>

The oversight strategy can require the Finance Minister to obtain advance PAC approval for additional debt when debt exceeds the ceiling. It can also impose budgetary sanctions on ministries breaching unauthorised borrowing rules.<sup>69</sup>

Through these provisions the *Model Law* empowers PACs to stringently oversee public debt levels by compelling transparency from the government, initiating investigations, requiring remedial action plans, imposing parliamentary control mechanisms, and applying sanctions when unauthorised borrowing occurs. The extensive monitoring and enforcement role given to PACs underlines their centrality in maintaining accountable and sustainable debt management.

However, politics and capacity constraints appear to plague PACs. In developing countries such as those found in SADC, PACs tend to lack capacity and expertise.<sup>70</sup> Moreover, in Nigeria Obi and Egbunike affirm that evidence exists to indicate that politics sways how PACs decide or resolve matters.<sup>71</sup> Those decisions or resolutions sometimes do not serve the interests of citizens.<sup>72</sup>

#### **4.5 "Cours des comptes": niche guardians with a French touch**

The "*cours des comptes*", or account courts, derive from the French administrative system. These courts trace their roots back to the Middle Ages and the "*Chambre des Comptes*".<sup>73</sup> They were first established in 1320 as separate and independent chambers – chambers that formed part

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<sup>65</sup> Pelizzo and Stapenhurst "Public Accounts Committees" 118; Wehner 2003 *Commonwealth and Comparative Politics* 21, 30-31.

<sup>66</sup> Pelizzo and Stapenhurst "Public Accounts Committees" 118-119.

<sup>67</sup> Article 89 of the *PFM Model Law*.

<sup>68</sup> Article 93 of the *PFM Model Law*.

<sup>69</sup> Article 93 of the *PFM Model Law*.

<sup>70</sup> Wehner 2003 *Commonwealth and Comparative Politics* 21, 30-31.

<sup>71</sup> Obi and Egbunike 2023 *ANAN Journal of Contemporary Issues* 134, 138-139.

<sup>72</sup> Obi and Egbunike 2023 *ANAN Journal of Contemporary Issues* 138-139.

<sup>73</sup> Editors of Encyclopaedia Britannica 2024 <https://www.britannica.com/topic/Chambre-des-Comptes>; Morin 2010 *International Review of Administrative Sciences* 26.



of the king's court (the *Curia Regis*) and administered the finances of the French monarchy.<sup>74</sup>

Today in France these judicial bodies specialise in auditing public institutions, ensuring that they spend taxpayers' money judiciously. Note that in France the *cour des comptes* is the SAI<sup>75</sup> – a position occupied in common-law jurisdictions by the auditor-general. The *cour des comptes* has a fourfold mission: to judge, control, certify and evaluate. Specifically its core objectives encompass auditing, issuing rulings, and certifying the state and social security accounts, alongside evaluating public policies to see to it that the government utilises public funds judiciously.<sup>76</sup> And since January 1<sup>st</sup>, 2023 the accounts court can now try public managers.<sup>77</sup>

The *cour des comptes* model has been adopted by many countries in civil law systems, such as Madagascar, Belgium, Angola, Burkina Faso and the Democratic Republic of the Congo (DRC).

Their value resides in their meticulous auditing processes and the weight they carry as courts of law. Any anomalies can lead to direct legal repercussions. That said, while accounts courts have proved their relative efficacy in promoting accountability in expenditure,<sup>78</sup> their role in proactive debt management remains largely unexplored. And, notably, politics and politicians tend to skew these accounts courts, at least in France, because it is the Cabinet that appoints the head (i.e., the First President of the Court) and the presidents of the individual chambers of the Court.<sup>79</sup>

#### **4.6 Civil society**

Civil society, including non-governmental organisations, advocacy groups and citizen watchdogs have a part to play in monitoring and controlling how SADC governments manage sovereign debt<sup>80</sup> by raising public awareness, mobilising citizen engagement, pressuring governments for transparency and accountability, and publishing. For example, in September 2023 upwards of seventy experts and activists from civil society organisations (CSOs) around the globe gathered in Bogota, Colombia, to clamour for a

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<sup>74</sup> Editors of Encyclopaedia Britannica 2024 <https://www.britannica.com/topic/Chambre-des-Comptes>; Morin 2010 *International Review of Administrative Sciences* 26.

<sup>75</sup> See Morin 2010 *International Review of Administrative Sciences* 25.

<sup>76</sup> Cour des Comptes 2023 <https://www.ccomptes.fr/en/who-we-are-and-what-we-do/cour-des-comptes>.

<sup>77</sup> Cour des Comptes 2023 <https://www.ccomptes.fr/en/who-we-are-and-what-we-do/cour-des-comptes>.

<sup>78</sup> See e.g. Morin 2010 *International Review of Administrative Sciences* 32 (quoting research that concluded that, in Australia, parliaments have independently and exhaustively audited public-private partnerships better than auditors-general).

<sup>79</sup> See Morin 2010 *International Review of Administrative Sciences* 25-26, 39-40, 42.

<sup>80</sup> Dawson and Bhatt 2001 <https://www.imf.org/external/pubs/ft/pdp/2001/pdp02.pdf> 2.

change in the rules on debt to protect the peoples of the Global South.<sup>81</sup> Besides, CSOs do not feel pressure from the executive and the legislature as intensely as the bodies (i.e., SAIs, fiscal councils, PACs and accounts courts) I have discussed so far.

However, compared to debt watchdogs such as auditor-generals, SAIs, fiscal councils, accounts courts, PACs and central banks, CSOs face obstacles such as limited access to information, financial constraints and lack of official authority. These bodies have statutory mandates, resources and the expertise to exercise direct and formalised oversight through audits, binding recommendations and sanctions, but civil society's influence overwhelmingly relies on public pressure and persuasion. Nonetheless, CSOs complement and bolster the work of formal watchdogs by encouraging citizens to engage with government policies, demanding transparency and holding governments accountable to the public interest.<sup>82</sup>

#### **4.7 Central banks: the titans of fiscal stability**

And then I arrive at the behemoths of fiscal management: the central banks. My claim that central banks fulfill this vital role is not unfounded. Drawing strength from the 2009 *SADC Central Bank Model Law* and its domestic counterparts, central banks stand tall, shielded from outside interference and political whims. Their prime objective of stabilising prices,<sup>83</sup> combined with their independence,<sup>84</sup> positions them as potentially the most potent debt overseers. Their expertise in macroeconomics,<sup>85</sup> coupled with their long-term perspective, makes them formidable contenders in this lineup.

But the counter-argument has to do with their traditional role – monetary policy. Can central banks balance this with debt oversight without conflict of interest? It is a question that demands deeper introspection.

As I juxtapose these entities, it dawns on me that each brings unique assets to the fiscal table. Auditors-general, with their retrospective lens, ensure past accountability. In contrast, fiscal councils with their prospective analyses help chart the future. Parliamentary committees add democratic legitimacy, while the accounts courts infuse judicial rigour. Central banks, with their macroeconomic expertise and insulation from political winds, offer a blend of stability and foresight.

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<sup>81</sup> See AFRODAD 2023 <https://afrodad.org/wp-content/uploads/2023/11/outcome-document.pdf>.

<sup>82</sup> Also see Dawson and Bhatt 2001 <https://www.imf.org/external/pubs/ft/pdp/2001/pdp02.pdf> 6-8.

<sup>83</sup> Article 4(1) of the *Central Bank Model Law*.

<sup>84</sup> Article 5 of the *Central Bank Model Law*.

<sup>85</sup> Also see Arts 6(2)(g) and 38(1) of the *Central Bank Model Law* (authorising the central bank to act as an economic advisor to the government on matters within the bank's competence).

The ideal oversight mechanism might not rest with a single entity but could emerge from a collaborative synergy. A model where central banks with their economic expertise lead the charge, complemented by the democratic scrutiny of parliamentary committees, the detailed audits of the *cours des comptes*, and the specialised insights of fiscal councils could offer a holistic oversight mechanism. Approaching public debt crises symbiotically demonstrates fiscal prudence and resonates with the diverse socio-economic fabric of the SADC.

In short, as the SADC navigates its fiscal future, the question is not just about *who* should oversee the debt but *how* these entities could collaboratively trace a balanced, accountable, and sustainable fiscal trajectory.

## 5 The central bank's stewardship of sovereign debt

In a dynamic and uncertain world, fiscal strategies require not only clear direction but also insulation from fleeting political whims. Through the lens of law and economics, one could make a compelling argument that if the SADC desires to manage its sovereign debts judiciously, then its central banks rather than its parliaments should take the helm. This argument finds its foundation in the structure and essence of the 2009 *SADC Central Bank Model Law* and its subsequent domestication in countries such as Angola, Namibia and the DRC.<sup>86</sup>

### 5.1 *The law: the independence guaranteed by the SADC Central Bank Model Law*

The *Model Law* of 2009 is a landmark instrument for the region. The framework it provided ensured that central banks operate autonomously, shielded from politics or external interference.<sup>87</sup> Put another way, the 2009 *Model Law* consecrates the well-entrenched principle of central bank independence.

Central bank independence (CBI) refers to the degree of autonomy and insulation from improper external influence that a central bank has in conducting monetary policy.<sup>88</sup> This independence pertains to three areas, namely personnel, finances and monetary policy.<sup>89</sup> That is, central banks should decide independently of government or external intervention its personnel, its finances and its interest rates (i.e., monetary policies).

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<sup>86</sup> For the incorporation of the *Central Bank Model Law* in those three countries, see Zongwe "Fiefdoms of their Own" 129.

<sup>87</sup> Article 5 of the *Central Bank Model Law*.

<sup>88</sup> Eijffinger and De Haan 1996 <http://ies.princeton.edu/pdf/SP19.pdf> 2.

<sup>89</sup> Eijffinger and De Haan 1996 <http://ies.princeton.edu/pdf/SP19.pdf> 2.

While the traditional concept of central-bank independence does not extend to sovereign debt management, the 2009 *SADC Central Bank Law* goes that far. It innovates by recasting the central bank in the role of a debt manager.<sup>90</sup> Article 6(2)(c) lays down that "subject to [the central bank] Act, the [Central] Bank may manage, or assist in the management and administration of, domestic and external debt on behalf of the Government." Article 43 specifies this debt-management function of central banks:

When authorised by the Minister or by law to do so, and on terms and conditions as may be agreed upon between the Minister and the Bank, the Bank shall act as agent for the Government in the payment of interest and principal debt in respect of the issue and management of the public debt of [name of the country].

By expanding the duties, functions and powers of central banks to include debt management, the *Model Law* broadens the scope of CBI to debt management.

If a central bank is structurally and functionally insulated, then it can more effectively navigate the treacherous waters of fiscal or debt-management decision-making without the risk of political contamination. Such protection guarantees that central banks can manage sovereign debts based on economic prudence rather than political convenience.

Opponents of this view could argue that laws, even those as well-structured as the 2009 *Model Law*, are only as robust as the entities and individuals that uphold them. They might assert that, even in legally independent frameworks, personalities and interests can shape the trajectory of decisions. This possible and plausible criticism highlights the necessity of effective checks and balances even in central banks.

All the same, if anything, insights from law and economics show that, when efficiently designed, laws create incentives (or disincentives) that make it more (or less) likely that stakeholders, law enforcement agents and people in general will apply them.<sup>91</sup> Hence, as matters currently stand, PACs will balk at implementing the *SADC PFM Model Law* because it does not give them any strong incentives to do so.

## **5.2 The economics: the incentive conundrum**

Economics teaches us that incentives matter. Parliaments, driven by electoral cycles, inherently have a short-term perspective. The need to be

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<sup>90</sup> Also see Zongwe "Steeling for the Next Pandemic" 282 and 295.

<sup>91</sup> See Korobkin and Ulen 2000 *CLR* 1051, 1054 (holding that "the law can serve as a powerful tool to encourage socially desirable conduct and discourage undesirable conduct"); and Cooter and Gilbert *Public Law and Economics* 4 (affirming that "[l]aw creates incentives, and people respond to them" and that "[e]conomics specializes in predicting incentives effects").

re-elected might overshadow the long-term health of the nation's finances.<sup>92</sup> Hence, the under the strain of forthcoming elections parliaments may lean towards populist measures rather than fiscal prudence.

Central banks, on the other hand, with their insulated status, can prioritise long-term stability over short-term gains.<sup>93</sup> I thus argue that, with an increased responsibility in sovereign debt management, central banks can craft strategies that focus on the bigger picture.

Detractors may argue that central banks, in their isolation, might become too risk-averse, potentially slowing down economic growth. They might contend that parliaments, with their pulse on the nation's mood, offer a more balanced approach, blending economic considerations with the immediate needs of their constituents. However, such detractors would be forgetting that central banks, compared to PACs,<sup>94</sup> typically possess more resources and a unique expertise in the macroeconomy and its analysis. For that reason they surpass legislatures in explaining, understanding and predicting macroeconomic events, including debt crises and defaults.<sup>95</sup>

### **5.3 Case in point: the SADC region's unique challenges**

The SADC region, home to two of the world's most unequal societies—South Africa and Namibia—faces distinct challenges. With economic hardships ranging from recessions to the aftermath of global crises, the role of central banks becomes even more critical. If SADC member states endow these banks with the responsibility and the tools to manage sovereign debt effectively, then the region has a greater chance of weathering such storms.

Critics might suggest that the mere act of reallocating responsibility does not automatically lead to better outcomes. A well-equipped ship with an inexperienced captain can still sink. They may argue that central banks, even with their legal insulation, need the expertise and vision to guide the region out of its economic quagmire. To overcome this sobering reality, central banks should work together with other agencies and other organs of state, such as parliaments, as I explain immediately below.

### **5.4 The way forward: balancing autonomy with collaboration**

While central banks have a strong case for leading the charge in sovereign debt management, they must not function in isolation. A siloed approach

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<sup>92</sup> For similar arguments, see Zongwe "Steeling for the Next Pandemic" 268 and 274-277.

<sup>93</sup> See Zongwe "Steeling for the Next Pandemic" 297-298.

<sup>94</sup> On the shortages of resources and experts confronting PACs, see Wehner 2003 *Commonwealth and Comparative Politics* 21, 30-31.

<sup>95</sup> Also see Zongwe "Steeling for the Next Pandemic" 297.

could lead to decisions that, though fiscally sound, might not resonate with the region's diverse socio-economic conditions.

Crucially, then, the SADC states must maintain a balance. Central banks should be the primary stewards, but they must collaborate with other stakeholders, including parliaments. Insights from law and economics say that much. Economics concentrates on growing the pie (i.e., efficiency), while, lawmakers focus on how to slice or distribute the pie (i.e., equity).<sup>96</sup> Accordingly central banks can manage public debt efficiently and single-mindedly; the PAC and the Finance Minister can apply their minds to the allocation of funds to social sectors under budgetary constraints. Working in tandem in this fashion would yield economically astute decisions that are also grounded in the real-world challenges and aspirations of the region's people.

## **6 Conclusion: central banks and the path forward in SADC sovereign debt management**

The fiscal landscape of Southern Africa stands at a pivotal juncture, characterised by the melodic interplay of sovereign debt, political dynamics and economic realities. At the heart of this symphony is the recently adopted *Public Financial Management Model Law* by the SADC, which proposes parliaments, particularly the public accounts committees, as the principal actors in overseeing governmental debt management. With the current backdrop of mounting sovereign debts, socioeconomic inequalities and multifaceted challenges, the quest for an adept overseer becomes paramount.

While this paper has charted the merits of potential overseers, it underscores a compelling narrative: parliaments, despite their democratic mandate, are ill-equipped to truly harness sovereign debts. Drawing insights from both law and economics, this article boldly questions the wisdom of such a decision, positing it as overly optimistic and perhaps short-sighted. It emphatically accentuates the intrinsic strengths of central banks - underpinned by the 2009 *SADC Central Bank Model Law* and its subsequent domestic adaptations - that bestow upon them a shield of independence from political whims and external pressures.

In contributing to the nexus of law and economics, this research paints a richer picture of public finance management in the SADC region. By juxtaposing the strengths and weaknesses of parliaments with those of central banks, it offers a nuanced understanding that challenges traditional perceptions and opens doors for reimagining fiscal policy frameworks.

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<sup>96</sup> Polinsky *Introduction to Law and Economics* 7.

The recommendations emerging from this exploration are multifaceted. First, RECs, including the SADC, should consider reinforcing the independence and capacities of their central banks, allowing them to play a pivotal role in sovereign debt management. Second, fostering collaborative synergies between central banks, fiscal councils and parliaments could yield a holistic and multipronged approach to fiscal oversight. Lastly, regional bodies should prioritise capacity-building initiatives for parliaments and committees, ensuring they are better equipped to handle complex fiscal challenges.

Looking ahead, the findings of this paper have profound implications. As the world economy evolves, marked by uncertainties and new challenges, the need for adept fiscal management becomes ever more pressing. Future research should delve deeper into operationalising the recommendations posited herein, exploring how central banks and parliaments could collaboratively shape robust fiscal futures. Furthermore, the exploration of other regional economic communities, their fiscal challenges and the mechanisms they employ could offer comparative insights, enriching the global discourse on sovereign debt management.

In essence, as the SADC navigates its complex fiscal waters, this paper serves as both a compass and a beacon, guiding the way forward and illuminating the myriad possibilities that lie ahead.

## **Bibliography**

### **Literature**

Basu *Republic of Beliefs*

Basu K *The Republic of Beliefs: A New Approach to Law and Economics* (Princeton University Press Princeton 2018)

Beetsma *et al* 2022 *European Economic Review*

Beetsma R *et al* "The Political Economy of Fiscal Transparency and Independent Fiscal Councils" 2022 *European Economic Review* 1-15

Boardman *et al Cost-Benefit Analysis*

Boardman AE *et al Cost-Benefit Analysis: Concepts and Practice* 5<sup>th</sup> ed (Cambridge University Press Cambridge 2018)

Bradlow and Masamba *COVID-19 and Sovereign Debt*

Bradlow DD and Masamba ML (eds) *COVID-19 and Sovereign Debt: The Case of SADC* (Pretoria University Law Press Pretoria 2022)

Calmfors and Wren-Lewis 2011 *Economic Policy*

Calmfors L and Wren-Lewis S "What Should Fiscal Councils Do?" 2011 *Economic Policy* 649-695

- Cevik 2019 *Asian-Pacific Economic Literature*  
Cevik S "Anchor Me: The Benefits and Challenges of Fiscal Responsibility"  
2019 *Asian-Pacific Economic Literature* 33-47
- Cooter and Gilbert *Public Law and Economics*  
Cooter RD and Gilbert MD *Public Law and Economics* (Oxford University Press Oxford 2022)
- Cooter and Ulen *Law and Economics*  
Cooter R and Ulen T *Law and Economics* 6<sup>th</sup> ed (Pearson Boston 2012)
- Deliwe *Role of the Office of the Auditor General*  
Deliwe MCC *The Role of the Office of the Auditor General of South Africa in Enhancing Sound Public Management, with Special Reference to the Eastern Cape Province* (PhD-thesis University of Fort Hare 2016)
- Dhansay *Investigation into the Powers of the Auditor-General*  
Dhansay A *An Investigation into the Powers of the Auditor-General SA and Its Ability to Strengthen the Quality of Democracy in South Africa* (Master of Commerce dissertation University of Cape Town 2019)
- Dye and Stapenhurst *Pillars of Integrity*  
Dye KM and Stapenhurst R *Pillars of Integrity: The Importance of Supreme Audit Institutions in Curbing Corruption* (World Bank Washington DC 1998)
- Edwards "The IMF and Debt Surveillance"  
Edwards MS "The International Monetary Fund and Debt Surveillance in SADC Countries" in Bradlow DD and Masamba ML (eds) *COVID-19 and Sovereign Debt: The Case of SADC* (Pretoria University Law Press Pretoria 2022) 89-106
- Elberry *et al* 2022 *Journal of Economic Surveys*  
Elberry NA *et al* "Optimal Public Debt Composition during Debt Crises: A Review of Theoretical Literature" 2022 *Journal of Economic Surveys* 351-376
- Faure and Partain *Environmental Law and Economics*  
Faure MG and Parain RA *Environmental Law and Economics: Theory and Practice* (Cambridge University Press Cambridge 2019)
- Hill and Hupe *Implementing Public Policy*  
Hill M and Hupe P *Implementing Public Policy: An Introduction to the Study of Operational Governance* 3<sup>rd</sup> ed (Sage London 2014)
- IMF *Regional Economic Outlook*  
International Monetary Fund *Regional Economic Outlook: Sub-Saharan Africa: Living on the Edge* (IMF Washington DC 2022)



Isaksson and Bigsten *World Development*

Isaksson A-S and Bigsten A "Institution Building with Limited Resources: Establishing a Supreme Audit Institution in Rwanda" 2012 *World Development* 1870-1881

Kessler "Debt Service Suspension"

Kessler M "Debt Service Suspension in Southern African Development Community Countries" in Bradlow DD and Masamba ML (eds) *COVID-19 and Sovereign Debt: The Case of SADC* (Pretoria University Law Press Pretoria 2022) 63-88

Korobkin and Ulen 2000 *CLR*

Korobkin RB and Ulen TS "Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics" 2000 *CLR* 1051-1144

Landsburg *The Armchair Economist*

Landsburg SE *The Armchair Economist: Economics and Everyday Life* (Free Press New York 2012)

Mackaay *Law and Economics*

Mackaay E *Law and Economics for Civil Law Systems* (Edward Elgar Cheltenham 2013)

Mattei *Comparative Law and Economics*

Mattei U *Comparative Law and Economics* (University of Michigan Press Ann Arbor 1998)

Morin 2010 *International Review of Administrative Sciences*

Morin D "Welcome to the Court..." 2010 *International Review of Administrative Sciences* 25-46

Nzewi and Musokeru 2014 *Africa's Public Service Delivery and Performance Review*

Nzewi O and Musokeru P "A Critical Review of the Oversight Role of the Office of the Auditor-General in Financial Accountability" 2014 *Africa's Public Service Delivery and Performance Review* 36-55

Obi and Egbunike 2023 *ANAN Journal of Contemporary Issues*

Obi TN and Egbunike PA "Public Accounts Committee Effectiveness and the Quality of Auditor-General's Reports in Anambra State" 2023 *ANAN Journal of Contemporary Issues* 134-160

Pelizzo and Stapenhurst "Public Accounts Committees"

Pelizzo R and Stapenhurst R "Public Accounts Committees" in Stapenhurst R *et al* (eds) *Legislative Oversight and Budgeting: A World Perspective* (World Bank Washington DC 2008) 117-129

Polinsky *Introduction to Law and Economics*

Polinsky AM *An Introduction to Law and Economics* 4<sup>th</sup> ed (Wolters Kluwer New York 2011)

Pressman and Wildavsky *Implementation*

Pressman JL and Wildavsky A *Implementation: How Great Expectations in Washington are Dashed in Oakland or, Why It's Amazing that Federal Programs Work at All* 3<sup>rd</sup> ed (University of California Press Berkeley 1984)

Reinhart and Rogoff *This Time is Different*

Reinhart CM and Rogoff KS *This Time is Different: Eight Centuries of Financial Folly* (Princeton University Press Princeton 2009)

Stapenhurst *et al* *Legislative Oversight and Budgeting*

Stapenhurst R *et al* (eds) *Legislative Oversight and Budgeting: A World Perspective* (World Bank Washington DC 2008)

Van Aaken 2014 *Harv Int'l LJ*

Van Aaken A "Behavioral International Law and Economics" 2014 *Harv Int'l LJ* 421-481

Van den Bergh *Comparative Competition Law*

Van den Bergh R *Comparative Competition Law and Economics* (Edward Elgar Cheltenham 2017)

Wehner 2003 *Commonwealth and Comparative Politics*

Wehner J "Principles and Patterns of Financial Scrutiny: Public Accounts Committees in the Commonwealth" 2003 *Commonwealth and Comparative Politics* 21-36

Zongwe "Fiefdoms of their Own"

Zongwe DP "Fiefdoms of their Own: Central Banks and their Independence in Stabilising the SADC Currencies" in Hugo C (ed) *Annual Banking Law Update 2021: Recent Legal Developments of Special Interest to Banks* (Juta Cape Town 2021) 129-147

Zongwe "Steeling for the Next Pandemic"

Zongwe DP "Steeling for the Next Pandemic through Fiscal Responsibility: The Bank of Namibia as Fiscal Council" in Bradlow DD and Masamba ML (eds) *COVID-19 and Sovereign Debt: The Case of SADC* (Pretoria University Law Press Pretoria 2022) 268-302

### **International instruments**

*SADC Model Law on Central Banks* (2009)

*SADC Model Law on Public Financial Management* (2022)

### Internet sources

AFRODAD 2023 <https://afrodad.org/wp-content/uploads/2023/11/outcome-document.pdf>

AFRODAD 2023 *Global South Civil Society Organisations Demand Justice and a Change to the Rules on Debt and Financial Architecture* <https://afrodad.org/wp-content/uploads/2023/11/outcome-document.pdf> accessed 7 April 2024

Beetsma and Debrun 2016 <https://www.imf.org/external/pubs/ft/wp/2016/wp1686.pdf>

Beetsma RMWJ and Debrun X 2016 *Fiscal Councils: Rationale and Effectiveness – IMF Working Paper No 16/86* <https://www.imf.org/external/pubs/ft/wp/2016/wp1686.pdf> accessed 7 April 2024

Cloete *et al* 2023 <https://saiia.org.za/wp-content/uploads/2023/11/PB-283-FUTURES-cloete-et-al-FINAL-WEB.pdf>

Cloete *et al* 2023 *Geopolitical Energy Futures in South Africa: Strategic Policy Pathways to 2035 – South African Institute of International Affairs (SAIIA) Policy Briefing No 283* <https://saiia.org.za/wp-content/uploads/2023/11/PB-283-FUTURES-cloete-et-al-FINAL-WEB.pdf> accessed 3 April 2024

Cour des Comptes 2023 <https://www.ccomptes.fr/en/who-we-are-and-what-we-do/cour-des-comptes> accessed 3 November 2023

Cour des Comptes 2023 *Who We Are and What We Do* <https://www.ccomptes.fr/en/who-we-are-and-what-we-do/cour-des-comptes> accessed 3 November 2023

Dawson and Bhatt 2001 <https://www.imf.org/external/pubs/ft/pdp/2001/pdp02.pdf>

Dawson TC and Bhatt G 2001 *The IMF and Civil Society Organizations: Striking a Balance – IMF Discussion Paper* <https://www.imf.org/external/pubs/ft/pdp/2001/pdp02.pdf> accessed 7 April 2024

Editors of Encyclopaedia Britannica 2024 <https://www.britannica.com/topic/Chambre-des-Comptes> accessed 7 April 2024

Editors of Encyclopaedia Britannica 2024 *Chambre des Comptes* <https://www.britannica.com/topic/Chambre-des-Comptes> accessed 7 April 2024

Eijffinger and De Haan 1996 <http://ies.princeton.edu/pdf/SP19.pdf>

Eijffinger SCW and De Haan J 1996 *The Political Economy of Central-Bank Independence – Special Papers in International Economics No 19* <http://ies.princeton.edu/pdf/SP19.pdf> accessed 2 November 2023

IMF 2022 <https://www.imf.org/external/datamapper/d@FPP/USA/FRA/JPN/GBR/SWE/ESP/ITA/ZAF/IND>

International Monetary Fund 2022 *Gross Public Debt, Percent of GDP* <https://www.imf.org/external/datamapper/d@FPP/USA/FRA/JPN/GBR/SWE/ESP/ITA/ZAF/IND> accessed 8 April 2024

SADC Parliamentary Forum 2022 <https://plenary.sadcpf.org/wp-content/uploads/2022/06/6.0-Final-SADC-PF-Draft-Model-Law-on-Public-Financial-Management-3-June-2022-2.pdf>

SADC Parliamentary Forum 2022 *Draft/Explanatory Notes on the Model Law on Public Financial Management* <https://plenary.sadcpf.org/wp-content/uploads/2022/06/6.0-Final-SADC-PF-Draft-Model-Law-on-Public-Financial-Management-3-June-2022-2.pdf> accessed 27 May 2024

UNDP 2022 <https://www.undp.org/sites/g/files/zskgke326/files/migration/za/Policy-Brief---UNDP-SA---The-Impact-of-the-Ukraine-War-on-the-South-African-Economy.pdf>

United Nations Development Programme 2022 *The Impact of the Ukraine War on the South African Economy – UNDP Policy Brief No 2* <https://www.undp.org/sites/g/files/zskgke326/files/migration/za/Policy-Brief---UNDP-SA---The-Impact-of-the-Ukraine-War-on-the-South-African-Economy.pdf> accessed 3 April 2024

World Bank 2023 [https://data.worldbank.org/indicator/SI.POV.GINI?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/SI.POV.GINI?most_recent_value_desc=true)

World Bank 2023 *Gini Index* [https://data.worldbank.org/indicator/SI.POV.GINI?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/SI.POV.GINI?most_recent_value_desc=true) accessed 30 June 2023

Zongwe 2014 [https://web.archive.org/web/20190226022434/https://www.nyulawglobal.org/globalex/Southern\\_African\\_Development\\_Community1.html](https://web.archive.org/web/20190226022434/https://www.nyulawglobal.org/globalex/Southern_African_Development_Community1.html) accessed 4 November 2023

Zongwe DP 2014 *Update: An Introduction to the Law of the Southern African Development Community* [https://web.archive.org/web/20190226022434/https://www.nyulawglobal.org/globalex/Southern\\_African\\_Development\\_Community1.html](https://web.archive.org/web/20190226022434/https://www.nyulawglobal.org/globalex/Southern_African_Development_Community1.html) accessed 4 November 2023

## List of Abbreviations

CBI	central bank independence
CLR	California Law Review
CSO	civil society organisation
DRC	Democratic Republic of the Congo
GDP	gross domestic product
IMF	International Monetary Fund
Harv Int'l LJ	Harvard International Law Journal
PAC	public accounts committee

PFM	public financial management
REC	regional economic community
SADC	Southern African Development Community
SAI	supreme audit institution
UNDP	United Nations Development Programme