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RESEARCH TOPIC:

**A CRITIQUE OF PUBLIC DEBT MANAGEMENT PRINCIPLES IN CENTRAL BANK
GOVERNMENT LENDING LEGISLATION: THE CASE OF GHANA AND ZIMBABWE**

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APPROVAL FORM

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The undersigned certify that they have read, signed and recommended to the Midlands State University for acceptance, a research project entitled: ***A critique of public debt management principles in central bank government lending legislation: The case of Ghana and Zimbabwe***. The project was submitted by **Mazviita Sheanotida Mlambo**, Student Registration Number **R151255V**, in partial fulfilment of the requirements of a Bachelor of Laws (Honours) Degree in the Faculty of Law at **Midlands State University**.

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DECLARATION

I, **MAZVIITA SHEANOTIDA MLAMBO (R151255V)** do hereby declare that this dissertation entitled '**A CRITIQUE OF PUBLIC DEBT MANAGEMENT PRINCIPLES IN CENTRAL BANK GOVERNMENT LENDING LEGISLATION: THE CASE OF GHANA AND ZIMBABWE**' is my own work and a result of my own investigation and research, save to the extent indicated in the references included in the body of the research, and that to the best of my knowledge, it has not been submitted either wholly or in part thereof for any other degree or examination at any other university.

.....

...../...../.....

Student's Signature

Date

DEDICATION

This dissertation is dedicated to my parents, family and friends, for their unwavering support which opened my eyes to the magnitude of my potential. I am forever indebted to all of you.

ACKNOWLEDGEMENTS

My sincere gratitude goes to the Lord Almighty, whose guiding hand strengthened me and made this work possible.

To Dr W.T Mugadza, my supervisor, your constructive guidance and unmatched wisdom made this work possible. Your invaluable insights stirred up a strong interest in this field of law. I am eternally indebted to you and may you continue to inspire young legal minds.

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Members of 'The Noble Profession', I am truly grateful for the five years we journeyed together and I am confident that you will all take the world by storm.

ABBREVIATIONS

BIS	Bank for International Settlements
BOD	Board of Directors
CB	Central Bank
CBGG	Central Bank Governance Group
CBI	Central Bank Independence
CCBG	Committee of Central Bank Governors
ECB	European Central Bank
ECOWAS	Economic Committee of West African States
IFI	International Financial Institution
IMF	International Monetary Fund
PAC	Public Accounts Committee
PDMA	Public Debt Management Act
PFMA	Public Financial Management Act
RBZ	Reserve Bank of Zimbabwe
SADC	Southern African Development Community
WBG	World Bank Group

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CHAPTER ONE

1.1 Introduction

This study seeks to examine the regulation of public debt management (PDM) and related principles in Ghana and Zimbabwe, focusing on the central bank's (CB) monetary financing to government of these two jurisdictions. This study attempts to answer the research question of whether or not the PDM framework in CB legislation meets international PDM standards. In addressing this question, the study will address four sub-research questions. The study is structured as follows: Chapter one encompasses the introduction, research background, problem statement, research objectives, methodology and limitations. Chapter two examines the international, regional and sub-regional standards of PDM. Chapter three investigates the PDM framework in the Bank of Ghana Act (BOG Act), while Chapter four investigates the PDM framework in the Reserve Bank of Zimbabwe Act (RBZ Act). Chapter five compares the two jurisdictions, highlighting their shortcomings, successes and offering recommendations.

1.2 Background of the Study

CBs can be traced to the inception of the Swedish Riksbank in 1668, whose purpose was lending funds to government and acting as a commercial clearing house.¹ Later, the Bank of England was established as a company which purchased government debt.² The CB's traditional function was to assist with government debt. CBs are also deposit holders for other banks.³ CBs became instrumental in facilitating monetary policy, regulating other banks⁴ and acting as lenders of last resort to banking institutions. The economic recession of 2008-2009 enlightened the global community to the importance of CBs to the economy⁵. Consequently, the CB's roles and objectives were recalibrated towards monetary policy and financial stability.⁶

¹ M.D Bordo 'A brief history of central banks' (2007) *Federal Reserve Bank of Cleveland* 1

² M.D Bordo (n1 above) 1

³ R Cranston *Principles of Banking Law Second Edition* (2002) 118

⁴ J.W Head 'Getting down to basics: Strengthening financial systems in developing countries' (2005) Vol 18 *The Transnational lawyer* 3

⁵ V. Corbo 'Financial stability in a crisis: What is the role of the central bank?' Vol 51 *BIS Papers* 27

⁶ V. Corbo (n5 above) 27

The modern CB is the government's monetary policy machinery⁷ as embodied in its focus on price and inflation stability.⁸ In several jurisdictions, the CB is the fiscal agent of the state⁹ through active participation in PDM and as banker for the state.¹⁰ Thus, the CB plays a critical role in the economy.

Governments utilise two methods of financing national expenditure- tax collection and borrowing to supplement tax revenue.¹¹ Borrowing from the CB is pursued to finance government deficits according to the CB's traditional functions.¹² CB monetary financing is preferred over private-sector borrowing because reliance on the latter results in crowding out of the private-sector.¹³ Government's debt portfolio is often large, and private-sector borrowing siphons funds therefrom, resulting in reduced private investment.¹⁴

The CB monetary financing facility is exposed to abuse where there is poor regulation to ensure accountability, transparency and efficient oversight.¹⁵ Debt escalates due to inadequate PDM controls, resulting in decline in foreign currency reserves.¹⁶ This leads to deviation from the CB's financial stability mandate and inefficiency of monetary policy in pursuit of fiscal policy.¹⁷

The concerns noted above have been experienced in Africa. Government liability to CBs has increased.¹⁸ The impact on monetary policy has not been greatly pronounced in most African states¹⁹ due to strengthened measures that keep direct deficit funding at bay.²⁰ However, the disparate effect of CB monetary financing had an impact on

⁷ D. Archer 'Roles and objectives of modern central banks' *BIS Papers* 17

⁸ S. Fischer 'Modern Central Banking' (1995) *National Bureau of Economic Research* 2

⁹ M. Pessoa, M. Williams 'Government cash management: relationship between treasury and the central bank' (2012) *International Monetary Fund* 5

¹⁰ M. Pessoa, M. Williams (n9 above) 5

¹¹ FG Barry, MD Devereux 'Crowding out effects of government spending' (1992) Vol.23 *The Economic and Social Review* 200

¹² S. Dow 'Central Banking in the twenty-first century' (2017) *Cambridge Journal of Economics* 1539

¹³ M.S Emram, S. Farazi 'Lazy banks? Government borrowing and private credit in developing countries' (2009) *George Washington University and World Bank* 3

¹⁴ M.S Emram, S. Farazi (n13 above) 5

¹⁵ LI Jacome, M Matamoros-Indorf, M Sharma, S Townsend 'Central Bank Credit to the Government: What Can we learn from International Practices?' IMF Working Paper WP/12/16 6

¹⁶ LI Jacome, M Matamoros-Indorf, M Sharma, S Townsend (n15 above) 4

¹⁷ S. Dow (n12 above) 1542

¹⁸ B.V Christensen, J Schanz 'Central banks and debt: emerging risks to the effectiveness of monetary policy in Africa?' (2018) *Bank for International Settlements* 16

¹⁹ B.V Christensen, J Schanz (n18 above) 1

²⁰ B.V Christensen, J Schanz (n18 above) 6

monetary policy and inflation in Zimbabwe and Sudan in 2008-2009 and 2016 respectively.²¹

1.2.1 Ghana

Ghana experienced bouts of hyperinflation due to CB monetary financing. The Bank of Ghana (BOG) has historically temporarily advanced funds to the state.²² Challenges surfaced after Ghana's fallout with the international community, leading to reliance on domestic lending. The BOG's inability to avert government's financing needs was attributed to lack of independence, absence of sanctions and inadequate parliamentary supervision.²³ Deliberate steps were taken to correct these shortcomings by command of the law, and were consequently embodied in the BOG Act amendment of 2002.

Despite the improvements in the 2002 enactment, excessive financing was not deterred. The International Monetary Fund's (IMF) concern over this matter and the dilapidation of the Ghanaian banking sector ignited a fresh initiative to amend the BOG Act. The 2016 amendment thus strengthened CBI, incorporated greater transparency and parliamentary oversight in the BOG's operations, seeing to the reduction of state liability to the BOG. However, more still needs to be done to attain greater public transparency and CBI.

1.2.2 Zimbabwe

Zimbabwe experienced hyperinflation due to CB monetary financing, under the auspices of the RBZ Act.²⁴ Debt was contracted behind closed doors; its extent being revealed in the 2018 budget statement.²⁵ This has widened the financing gap in Zimbabwe.

Legislative sanction depends on the Minister of Finance and Economic Development (Minister), despite the debt being contracted upon the same Minister's request.²⁶ The

²¹ B.V Christensen, J Schanz (n18 above) 6

²² Bank of Ghana Act 1963, Section 37

²³ M. Bawumia, H. Halland 'Oil discovery and macroeconomic management: The recent Ghanaian experience' 2017 Policy Research Working Paper 8209 *World Bank Group* 30

²⁴ Reserve Bank of Zimbabwe Act Chapter 22:15, Section 11(1)(1)(a)- (c)

²⁵ According to the 2019 National Budget Statement, government's debt to the RBZ is US2.5 billion, three times over the prescribed limit

²⁶ Section 62 (n22 above)

Legislature is minimally involved in debt contraction, which exposes the system to secrecy and infringement of the law.²⁷ This creates an accountability gap to the populace to whom a public institution such as the RBZ must be accountable.²⁸ This is so despite that the Constitution of Zimbabwe Amendment (No. 20) Act, 2013) has provisions regarding transparency and accountability in all financial matters and parliamentary oversight in state revenue and expenditure.²⁹ There is thus a need for the law to better reflect PDM principles to improve Zimbabwe's economic fortunes.

1.3 Problem Statement

International organisations have elucidated the tenets of prudent PDM by CBs, which include central bank independence (CBI), accountability, transparency, sanction for non-compliance and parliamentary oversight. The Constitution of Zimbabwe entrenches these ideals, except CBI. The RBZ Act provision on monetary financing is currently shrouded in mystery, with minimal sanctions for overstep. Continuing on the same framework will lead to perpetual mystery, absence of parliamentary oversight, lack of accountability and transparency in the operations of the RBZ, which is inimical to economic stability.

Regarding Ghana, CB monetary financing must be further interrogated. The Constitution of Ghana requires adherence to the ideals of international bodies to which it is a party; which ideals have been noted above. Incorporating higher standards of CBI, transparency and accountability will bring Ghanaian PDM in the CB to the level contemplated by international law, and is a vital step in the realisation of financial stability.

1.4 Research Objectives

The main research objective is to assess the legal principles that form acceptable CB government lending legislation by international standards by fusing accountability, transparency and independence in the institution.

In order to achieve this objective, the sub-objectives of this study are:

²⁷ *Public Protector v South African Reserve Bank* [2019] ZACC 29 wherein the court highlighted the importance of institutions that monitor public institutions such as the CB

²⁸ *Shabalala and others v Attorney General, Transvaal and another* 1996(1) SA 725

²⁹ Constitution of Zimbabwe Amendment, Section 298(1)(a)- 299

- (a) To discuss the international, regional and sub-regional standards on PDM and their relevance in debt management by CBs;
- (b) To assess the legal regime on CB monetary financing, management of such debt and the surrounding PDM provisions in Ghana;
- (c) To assess the legal regime on CB monetary financing, management of such debt and the surrounding PDM provisions in Zimbabwe, and;
- (d) To make observations, draw conclusions and make recommendations.

1.5 Research Method

This study will use the qualitative research method. It utilises non-numerical data to decipher the fundamental underpinnings of the subject, meanings and interpretations thereunder,³⁰ unlike the quantitative methodology whereby data is collected through questionnaires, interviews and observations, and statistical conclusions are made based on such data³¹.

It will employ primary sources of law such as acts of parliament and constitutions and secondary sources such as scholarly writings and opinions of international bodies. Finally, the study will utilise a comparative study of the BOG Act and RBZ Act on CB monetary financing to highlight the weaknesses in Zimbabwe's CB PDM legislation. Ghana is an apt comparator due to the similarity of its CB legislation with Zimbabwe. Its strategies can be a useful blueprint for Zimbabwe to follow, as both countries have similarly structured financial and regulatory bodies.

1.6 Delimitations of Study

The study will be confined to PDM in the CB's government lending provisions. It will focus on **internal debt** by central government from the **central bank**, excluding other government and banking institutions. Further, the legislation under interrogation will be that of Zimbabwe and Ghana, as Ghana offers a good example which Zimbabwe can adopt to achieve the stability obtaining in Ghana.

³⁰ K. Simion 'Qualitative and quantitative approaches to rule of law research' (2016) *International Network to promote the rule of law* 7

³¹ K. Simion (n30 above) 7

1.7 Significance of Study

The present study will shed light on PDM in Zimbabwe, Ghana and Africa, and its applicability in CB law. Critical elements of PDM will be highlighted to bring an understanding of the said principles and the method by which they can be incorporated into CB legislation. It seeks to advocate for the development of stable economic environments, a goal which international economic law aims to achieve by promoting enactment into law of global public goods. The findings of this study will highlight the international tenets of PDM in CB legislation and monetary financing, an area that has remained largely unexplored in Africa, for the development of the RBZ Act, the BOG Act and CB legislation in Africa.

Chapter Synopsis

Chapter One

This is the introductory chapter which introduced the study by focusing on the overview of PDM in central banking operations and legislation.

Chapter Two

This Chapter focuses on the international, regional and sub-regional framework on PDM in CB legislation.

Chapter Three

This Chapter will delve into the PDM legal regime obtaining in Ghana.

Chapter Four

This Chapter will delve into the PDM legal regime obtaining in Zimbabwe.

Chapter Five

This Chapter will compare the position subsisting in Ghana and Zimbabwe, highlighting the strengths and weaknesses and giving recommendations for each regime and for African CBs.

CHAPTER TWO

INTERNATIONAL, REGIONAL AND SUB-REGIONAL FRAMEWORK ON PUBLIC DEBT MANAGEMENT PRINCIPLES IN CENTRAL BANKING

2.1 Introduction

This chapter will focus on the international, regional and sub-regional standards on PDM, and the CB's place in PDM. At this juncture, the study seeks to address the question of the standards of PDM in the CB as understood under international, regional and sub-regional instruments. Various international bodies address PDM, ranging from the Organisation for Economic Co-operation and Development, the IMF, World Bank (WB) and the Bank for International Settlements (BIS). In pursuit of the aforementioned aim, the chapter will be structured as follows: It opens by defining PDM. A discussion of the history of PDM in central banking will follow. A discussion of the principles of PDM posited by the IMF, WB and BIS at the international level will follow. At the regional level, reliance will be placed on the work of the Committee of Central Bank Governors (CCBG) of the Southern African Development Community (SADC) and the Economic Community of West African States (ECOWAS). Finally, conclusions will be made on the benchmarks discussed, their relevance, and the relationship between PDM principles and tenets of CB governance.

2.2 Definition of PDM

The definition of PDM has withstood the test of time. PDM is a strategy-formulation process and its execution for prudent management of government debt.³² It stretches to the methods of obtaining funds and facilitating their appropriate usage at the lowest possible cost to government.³³ In other words, PDM is a framework for ensuring that government debt is incurred according to a set of defined rules that regulate its extent, use and risk consequent to its contraction. Prudent PDM is an essential element of economic stability, which averts vulnerability to financial risks.³⁴

³² International Monetary Fund and World Bank Guidelines for Public debt management, (2002) 17

³³ A. Chilunjika, R. Chikova, D. Uwiyezeyimana 'Reflections on the constitutional legal debt management frameworks in Zimbabwe' (2016) *IOSR Journal of Economics and Finance* 46

³⁴ International Monetary Fund and World Bank (n32 above) 22

Apart from the politics of PDM,³⁵ legislative issues arise when formulating a PDM strategy. The definition outlined above implies that PDM operates within a set of rules embodied in the law. A sound PDM legal regime should contain provisions that facilitate transparency of processes, accountability of officials acting in various capacities in PDM, and oversight mechanisms to ensure compliance with the set regulations.³⁶

PDM is an institutional governance issue.³⁷ The effectiveness or otherwise of the PDM strategy depends on the checks and balances on authorities with a role in PDM.³⁸ While some measures may not directly address steps and processes in PDM, the general operations of institutions should facilitate accountability, transparency of processes and supervision mechanisms to those endowed with roles affecting the public debt portfolio.

2.3 Historical Development of PDM in Central Banking

Traditionally, the CB's PDM mandate arose pursuant to its role as banker to the state³⁹ and the receiver and transmitter of state funds. However, to decongest the CB's portfolio, PDM must be a ministry of finance or independent debt management office mandate.⁴⁰ It remains important for the debt management office and the CB to coordinate to ensure consistency in monetary and fiscal policy.⁴¹

It remains prudent to maintain principles of PDM in CB legislation where it possesses government monetary financing powers. CBs and debt management offices must work closely in PDM, especially in developing financial markets.⁴² Whilst current academic

³⁵ E. Awadzi 'Designing legal frameworks for public debt management' (2015) *IMF Working Paper WP/15/147* 4

³⁶ E. Awadzi (n35 above) 4

³⁷ <https://developmentfinance.un.org/improving-public-debt-management> (accessed 30 July 2019)

³⁸ International Monetary Fund, World Bank 'Strengthening Debt Management Practices: Lessons from Country Experiences and Issues Going Forward' (2007) *International Monetary Fund and World Bank* 13

³⁹ SK.Hansda 'Sovereign debt management and the central bank' *BIS Papers No. 66* 358

⁴⁰ A. Makochekanwa, G. Chigumira, J. Nyamadzawo 'Feasibility and Rationale for Establishing a Debt Management Office in Zimbabwe' (2010) *Zimbabwe Economic Policy Analysis and Research Unit* 32 on the position in England

⁴¹ T.J Balino, V. Sundararajan 'Public debt management in developing countries: key policy, institutional and operational issues' (2008) *Workshop on Debt Finance and Emerging Issues in Financial Integration* 13

⁴² M. Blejer "Public Debt Management and Monetary Policy: Macroeconomic and Institutional Interactions," in: European Union Accession. The Challenge for Public Liability Management in Central Europe' (1999) *European Commission and World Bank*

discussion is focused on optimising CB governance,⁴³ the pillars of CB governance are similar to PDM principles. Clearly, optimisation of CB's governance impacts on the effectiveness of the PDM strategy. The incorporation of accountability, transparency, and parliamentary oversight in CB governance thus leads to the fusion of those standards into the CB's PDM framework; a vital synthesis where the CB has monetary financing powers.

2.4 International Instruments on PDM in Central Banks

There are no PDM legal instruments at the international and regional level. Best practice is envisaged in guidelines known as soft law, compiled by leading international financial institutions (IFIs) and regional bodies. International financial law, and sovereign debt management law demand flexibility due to the shifts in global financial markets, which the robust processes of hard law cannot keep pace with.⁴⁴ Whilst the guidelines are not binding, there is great incentive to abide by them as they are compiled by bodies with immense proficiency in financial law.⁴⁵ The value of the guidelines to states is thus amplified by the reputational expertise of IFIs.

2.5.1 The IMF and World Bank Guidelines for PDM

The IMF and the World Bank Group are some of the world's leading IFIs. The two institutions formulated the Guidelines for PDM (Guidelines) in 2001 and revised in 2014, which will be the primary point of reference in this section. The principles that stand out are transparency, accountability and oversight, and will be discussed in turn.

2.5.1.1 Transparency and Accountability

One of the best practices in PDM is transparency. The term is not defined in the guidelines as they rely on the Code of Good Practices in Monetary and Financial Policies.⁴⁶ Transparency's⁴⁷ premise is that PDM is rendered effective when its goals

⁴³ F. Amtenbrink 'The Three Pillars of Central Bank Governance - Towards a Model Central Bank Law or a Code of Good Governance?' (2004) *IMF LEG and IMF Institute Seminar on Current Developments in Monetary and Financial Law* 1

⁴⁴ R.M Lastra 'Responsible financing: the role of 'soft law' in promoting sustainable lending and borrowing practice' (2017) *UNCTAD Geneva* 4

⁴⁵ KW Abbott, D Snidal 'Hard and soft law in international governance' (2000) Vol54 *International Organisation* 452

⁴⁶ Revised Guidelines for Public Debt Management (n32 above) 16

and policy instruments are available for public scrutiny and the responsible authorities undertake to meet these goals.⁴⁸

Secondly, transparency enhances accountability⁴⁹ through availability of information against which office bearers' conduct can be tested, including the CB.⁵⁰ The enabling PDM legislation must be available for public access to allow for participation in PDM.⁵¹ Additionally, the extent of the debt must be regularly disclosed to the legislature and the public to enable performance evaluation of office bearers.⁵²

2.5.1.2 Enforcement mechanisms

Closely related to accountability is the presence of enforcement mechanisms. They can take various forms, such as reporting on PDM activities or penalties when there is a contravention of the law.⁵³ The presence of such measures incentivises abiding by the law as unscrupulous activities may be exposed and attract punishment.⁵⁴ Punishment must follow contravention of the law despite the reputational immunity of CBs.⁵⁵ Sanctions must address the various forms of breach of the law; be it a failure to report or publicise information, or deviating from due process in debt contraction.⁵⁶ The law should thus anticipate the possibility of contravention to discipline the contraveners and to provide remedies to affected parties.

⁴⁷ It is defined as the availability and free access to information on economic decisions by all stakeholders. Suresh, Shende, T. Bennett 'Transparency and Accountability in the Public Sector in the Arab Region' (2004) *United Nations Concept Paper 2*

⁴⁸ Revised Guidelines for Public Debt Management (n32 above) 16

⁴⁹ Accountability entails taking responsibility for performance against agreed expectations. T.W Plumptre 'Beyond the Bottom Line in Government' (1988) *South Halifax: The Institute for Research on Public Policy* 182

⁵⁰ Revised Guidelines for Public Debt Management (n32 above) 16, *Reserve Bank of India v Mistry* (SC)-2015-12-41 on the applicability of these principles to the CB.

⁵¹ The essential information relates to reports on debt structure, enabling legislation for debt contraction. Revised Guidelines for Public Debt Management (n32 above) 17.

⁵² Revised Guidelines for Public Debt Management (n32 above) 17

⁵³ E Awadzi (n35 above) 50

⁵⁴ E. Awadzi (n35 above) 49

⁵⁵ A. Khan 'Legal Protection: Liability and Immunity Arrangements of Central Banks and Financial Supervisors' (2018) *IMF Working Paper WP/18/176* 26-27

⁵⁶ E. Awadzi (n35 above) 50. Leading CBs require compensation following contravention of the law; The ECB is required to compensate losses occasioned by any party arising from its acts or acts of its employees; Article 340(3) Treaty on the Functioning of the European Union [2016] OJ C202/1, *Triantafyllopoulos and Others v ECB* (Case T-451/18). The Minister in South Africa can demand compliance from the Board of Directors, failing which the High Court issues a suitable order; South African Reserve Bank Act 90 of 1989, Section 37

2.5.1.3 Oversight Institutions

Thirdly, the presence of oversight or supervisory structures arises in PDM. While the Guidelines are silent in this respect, IMF working papers suggest that oversight is a key element in effective PDM.⁵⁷ Monetary bodies ensure that debt is properly incurred and expended for appropriate purposes. To this end, Awadzi indicates that the ideal body to exercise oversight functions is the legislature,⁵⁸ as it offers a public representative voice unlike the executive, which can be swayed by political considerations.⁵⁹ Parliamentary involvement is also a necessary check where the CB is independent.⁶⁰ Part of the oversight role would entail obtaining parliamentary approval for all transactions.⁶¹

The oversight function of the legislature should refrain from transactional debt approval.⁶² Constantly reverting to the legislature for approval may prove too cumbersome and expensive a process. However, transactional approval may be necessary for accountability of office bearers.⁶³ A subjective evaluation of the peculiar needs of the jurisdiction would be necessary in determining the extent of parliamentary involvement in PDM.

2.6 The BIS' Issues in the Governance of Central Banks

The BIS is an IFI focused on CBs. Its work is dedicated to setting standards for the efficient operation of CBs. An arm of the BIS called the Central Bank Governance Group (CBGG) compiled a report titled Issues in the Governance of Central Banks of 2009 (the Report), setting out benchmarks of ideal CB governance; accountability, transparency and CBI. The ensuing discussion will detail these issues in turn.

2.6.1 Accountability and Transparency

Chapter 7 of the Report details the concept of accountability. It characterises transparency and accountability as intrinsically related, as transparency is the tool by

⁵⁷ E. Awadzi (n35 above) 40

⁵⁸ E. Awadzi (n35 above) 40

⁵⁹ C. Goodhart, R. Lastra 'Populism and Central Bank independence' (2018) Vol.29 *Open Economic Review* 59

⁶⁰ F. Amtenbrink (n43 above) 18

⁶¹ E. Awadzi (n35 above) 40

⁶² E. Awadzi (n35 above) 41

⁶³ E. Awadzi (n35 above) 41

which accountability is enabled,⁶⁴ which has seen to CB effectiveness.⁶⁵ It views accountability as a three-pronged notion comprised of allowance of public scrutiny, offering explanations for one's actions and sanctions in the event of unsatisfactory performance.⁶⁶

Accountability serves to enable performance evaluation against set standards.⁶⁷ Clarity is essential to illuminate the expectations from the CB and its officers.⁶⁸ Accountability regarding the CB's financial responsibility obligations is measured against compliance with due process.⁶⁹ Accordingly, CB legislation should contain measures that enable scrutiny through transparency of processes and giving officials the opportunity to explain their conduct. The law must also provide for enforcement mechanisms in the event of dissatisfactory performance by CB officers.

2.6.2 Enforcement mechanisms

As aforementioned, accountability encompasses the presence of sanctions to deal with dissatisfactory performance by the CB or non-compliance with due procedure. A balance must be struck between insulating the CB from arbitrary legal action and providing means for punishing unfitting conduct of the CB.⁷⁰ This safeguards the CB's functionality by deterring frivolous litigation while providing measures to sanction misconduct of CB office bearers.

2.6.3 Central Bank Independence

Central bank independence (CBI) has emerged as a topical issue in CB governance. The CB must be operationally, functionally and financially independent from the government, allowing the CB to pursue its objectives without external influence.⁷¹ To facilitate CBI, the law must distinguish the CB from government in its operations.⁷² CBI

⁶⁴ CBGG 'Issues in the Governance of Central Banks' (2009) *Bank for International Settlements* 144

⁶⁵ CBGG (n64 above) 5

⁶⁶ CBGG (n64 above) 135

⁶⁷ T.W Plumptre (n49 above)182.

⁶⁸ CBGG (n64 above) 136

⁶⁹ CBGG (n64 above) 138

⁷⁰ CBGG (n64 above) 75

⁷¹ M. Radovic, M. Radonic, J. Djuraskovic 'Central bank independence- the case of the Central Bank of Montenegro' (2017) *Journal of Central Banking Theory and Practice* 26

⁷² P Howells 'Independent central banks: Some theoretical and empirical problems?' *Centre for Global Finance* 3-4

enables a CB to pursue public welfare and accountability more effectively,⁷³ and is sound PDM policy as debt levels can be better monitored by a CB free from political influence.⁷⁴

The major criticism against CBI is that it renders the CB incapable of supervision. The primary argumentation is that CBI makes the CB an autonomous institution; hence justifying constant involvement of elected representatives in the CB.⁷⁵ However, democratic accountability posits that where accountability and independence are at odds, the scales must tip in favour of accountability.⁷⁶ Favouring accountability has gained prominence as it keeps CB monetary financing at minimum levels with high accountability standards while simultaneously maintaining CBI.⁷⁷

2.7 Sub-Regional Instruments on PDM in Central Banks

At the regional and sub-regional level, there are no instruments on PDM. Africa's focus is the regulation of external debt, which has only recently become topical.⁷⁸ This section will discuss model frameworks and monetary union convergence criterion which speak to CB governance.

2.7.1 The Committee for Central Bank Governors' (CCBG) Model CB Law

The CCBG is an organ in the SADC responsible for promoting regional economic integration among member states. It formulated a model CB law which establishes the tenets of CB governance. What stands out is CBI, which will be discussed hereunder.

2.7.2 Central Bank Independence

The model law sets out CBI as a fundamental facet of a well-governed CB.⁷⁹ CBI is viewed as the avenue by which CBs can achieve efficiency in their operations, without

⁷³ CBBG (n64 above) 7

⁷⁴ P. Alagidede 'Central bank deficit financing in a constrained fiscal space' (2016) *International Growth Centre* 5

⁷⁵ DA Levy 'Does an independent central bank violate democracy?' (1995) Vol.18 *Journal of Post Keynesian Economics* 191.

⁷⁶ C. Goodhart, R. Lastra (n59 above) 56, *Commission of the European Communities v ECB Case C-11/00*

⁷⁷ LI Jacome, M Matamoros-Indorf, M Sharma, S Townsend (n15 above) 4-5

⁷⁸ S. Mustapha, A. Prizzon 'Africa's rising debt: How to avoid a new crisis' (2018) *ODI Briefing Note* 2

⁷⁹ Southern African Development Community Central Bank Model Law 2009, Section 5

political influence.⁸⁰ Whilst the model law is silent on PDM by the CB, its provisions have important implications on the conduct of PDM. Once independence is guaranteed, the CB will be better placed to execute its mandate in strict observance of the objectives outlined in the enabling act.⁸¹ CBI thus aids in bringing an independent voice to the table during debt contraction.

2.8 Economic Community of West African States Convergence Criteria

At the ECOWAS level, there is no instrument on PDM or CB governance. The closest mention of the CB appears in the macroeconomic convergence criteria for the ECOWAS Monetary Cooperation Programme, which lists CB monetary financing as one of the primary criteria for joining the monetary union.⁸² This is viewed as an ingredient of curbing excessive debt and consequently, aiding in financial stability.⁸³

2.9 Conclusion

This chapter sought to establish the international and regional standards of PDM in the CB. The principles of accountability, transparency, oversight and CBI emerged as cornerstones of PDM legislation in the CB at the international level. Transparency ensures access to information and facilitates accountability by liberalizing access to information against which CB officials' conduct is tested and provides a basis for sanction and law enforcement mechanisms. This chapter demonstrated that PDM in the CB is essentially a governance matter. Incorporating CB accountability and transparency directs its operations, including where PDM arises. At the regional level, what stands out is CBI. It allows independent decision-making in the CB and freedom from political influence. The combination of these principles strengthens the CB and consolidates its PDM responsibilities.

⁸⁰ Committee for Central Bank Governors 'Explanatory Guide to the SADC Central Bank Model Law' (2011) 19

⁸¹ Committee for Central Bank Governors (n79 above) 19

⁸² The monetary financing threshold is 10% of the preceding year's tax revenue. Criteria 3 ECOWAS Monetary Cooperation Programme, Decision A/DEC.17/12/99

⁸³ M.P Fwangkwai 'Monetary Integration in the ECOWAS' (2014) No. 37 *Central Bank of Nigeria* 4

CHAPTER THREE

ANALYSIS OF PUBLIC DEBT MANAGEMENT IN GHANA'S CENTRAL BANKING LEGISLATION

3.1 Introduction

The chapter seeks to establish the PDM principles obtaining in Ghana. It will analyse the Bank of Ghana Act of 2002⁸⁴ and 2016,⁸⁵ the Ghanaian Public Financial Management Act (PFMA)⁸⁶ and The Constitution of the Republic of Ghana (Amendment) Act 1996 (Constitution of Ghana);⁸⁷ focusing on the PDM principles applicable to the BOG. It will begin with an overview of Ghana and the historical development of PDM in the BOG, noting the issues that plague the PDM mechanism in CB monetary financing and highlighting the weaknesses in the previous regime. The chapter will address the international, regional and sub-regional framework that Ghana is a party to. An analysis of the national legislation outlined above will follow to decipher the principles of PDM and institutional structures that regulate the BOG. Finally, conclusions will be made, highlighting how well Ghana fares against the international standards of PDM.

3.2 Overview of the Republic of Ghana

The Republic of Ghana is a country in western Africa situated on the Atlantic Ocean, bordering Cote d'Ivoire, Burkina Faso and Togo.⁸⁸ It has a population of about 29.6 million.⁸⁹ It was the first African country to attain its independence from Britain in 1957.⁹⁰ Ghana has a diversified economic base, including mining and agriculture.⁹¹ Despite its marred political past, Ghana is one of the leading economies in West Africa and the continent and continues to look promising on the economic front.⁹²

⁸⁴ Bank of Ghana Act, 2002 [Act 612]

⁸⁵ Bank of Ghana (Amendment) Act, 2016 [Act 918]

⁸⁶ Public Financial Management Act, 2016 [Act 921]

⁸⁷ The Constitution of the Republic of Ghana (Amendment) Act, 1996 [Act 527]

⁸⁸ <http://worldpopulationreview.com/countries/ghana-population/> (accessed on 14 August 2019)

⁸⁹ <https://www.worldbank.org/en/country/ghana/overview> (accessed on 14 August 2019)

⁹⁰ K. Quashigah 'The 1992 Constitution of Ghana' *University of Ghana* 2

⁹¹ <https://www.nytimes.com/2018/03/10/world/africa/ghana-worlds-fastest-growing-economy.html> (accessed 14 August 2019)

⁹² <https://www.dw.com/en/imf-world-economic-outlook-puts-ghana-in-the-lead/a-48356052> (accessed 14 August 2019)

3.3 History of PDM In Ghana

The BOG is the CB of Ghana.⁹³ It was established as an independent monetary authority⁹⁴ to implement monetary policy. The BOG's primary objective is ensuring price stability.⁹⁵ Its other functions include the implementation of measures that promote the economy,⁹⁶ formulating and implementing monetary policy and debt management together with the Debt Management Office.⁹⁷

Ghana's external debt policy influenced the status of its domestic debt. At independence, the government embarked on economic expansion premised on socialist ideals.⁹⁸ It incurred external debt throughout its early years, which heightened from virtually nothing at independence to almost \$600 million in 1965.⁹⁹ Consequently, Ghana was internationally blacklisted for debt servicing failures.¹⁰⁰

Domestic debt ascended due to Ghana's international blacklisting. It resorted to financing through direct borrowing from the BOG.¹⁰¹ Deficit financing was done through printing of the local currency, leading to a steep inflation increase.¹⁰² Whilst the BOG is not the largest domestic government creditor, it holds a significant part of it.¹⁰³

Calculated methods were implemented in the BOG Act of 2016 to rectify this anomaly.¹⁰⁴ An Extended Credit Facility (ECF) from the IMF to Ghana, whose condition was zero financing by the CB to government and an enactment to that effect motivated the amendment.¹⁰⁵ The BOG Act was amended in 2016, albeit with the terms of the ECF slightly deviated from. Stringent checks have been implemented in the BOG Act of 2016 to ensure that government lending is done in conformity with the ideals of PDM.

⁹³ Article 183 (n89 above), Section 1(1) (n85 above)

⁹⁴ Section 4 (n86 above)

⁹⁵ Section 3 (n86 above)

⁹⁶ Section 4(1)(c) (n84 above)

⁹⁷ Section 4(1)(a) (n84 above)

⁹⁸ African Forum on Debt and Development 'Loan Contraction and debt management in Ghana' 2013 *AFRODAD* 18

⁹⁹ African Forum on Debt and Development (n98 above) 19-20

¹⁰⁰ African Forum on Debt and Development (n98 above) 20-21

¹⁰¹ N.K Sowa 'Monetary Control in Ghana: 1957-1988' 1991 Working Paper 45 *Overseas Development Institute* 22

¹⁰² African Forum on Debt and Development (n98 above) 26

¹⁰³ African Forum on Debt and Development (n98 above) 30

¹⁰⁴ M. Bawumia, H. Halland (n29 above) 30

¹⁰⁵ Seventh and eighth reviews under the Extended Credit Facility arrangement and request for waivers of non-observance of performance criteria- Press release; Staff report and statement by the executive Director for Ghana' 2019 *International Monetary Fund Country Report No. 19/97* 4

Since the enactment of the BOG Act of 2016, Ghana has recorded significant improvements in CB monetary financing.¹⁰⁶

3.4 International, Regional and Sub-Regional Framework that Ghana is a Party to

Ghana joined the IMF and WBG on 20 September 1957.¹⁰⁷ It is also a member of ECOWAS.

3.5 National Legislation

3.5.1 The Bank of Ghana Act (Act 612, 2002 And Act 918, 2016)

3.5.1.1 Central Bank Independence

The BOG is an independent institution.¹⁰⁸ The ensuing discussion will outline the facets of the BOG's independence.

The BOG has institutional independence. It sets its own policy goals and the targets it aims to meet.¹⁰⁹ Policy goals are only subject to statutory direction enunciated in the BOG Act of 2002 and the Constitution of Ghana.¹¹⁰

Personnel independence is partially provided for in the BOG Act. While minimal executive and legislative intervention is desirable during appointment, this is difficult to achieve in developing countries.¹¹¹ However, the BOG Act's provisions attempt to guarantee the independence of office bearers in the BOG. Upon appointment and assumption of office, the execution of their mandate is instructed by the provisions of section 4 of the BOG Act aforementioned.

¹⁰⁶ International Monetary Fund (n105 above) 4

¹⁰⁷ <https://www.imf.org/external/np/sec/memdir/memdate.htm> (accessed 14 August 2019)

¹⁰⁸ Article 183 (n89 above) The BOG is mandated to perform its functions without direction or influence from anyone. Section 3 (n85 above), *Baiden v The Attorney General and The Bank of Ghana* (J1/7/2014) [2015] GHASC 10

¹⁰⁹ Unpublished: R.A Atuahene 'Corporate governance and financial sector performance: Evidence from the Ghanaian banking sector' Unpublished Thesis, University of Bradford, (2016) 50

¹¹⁰ Section 4 (n84 above), Article 183(2) (n89 above)

¹¹¹ R.A Atuahene (n109 above) 51

The BOD is the apex governing body in the BOG. It is comprised of the governor and deputy governors of the BOG, a representative from the Ministry of Finance and nine other directors.¹¹² The BOD is appointed by the President of Ghana.¹¹³

The Governor and Deputy Governors are appointed in terms of article 183 of the Constitution of Ghana and section 17 of the BOG Act of 2002. The governor and deputy governors of the BOG are appointed by the President of Ghana in consultation with the Council of State.¹¹⁴ The BOG Act also provides for security of tenure and remuneration of the governor¹¹⁵ and deputy governors¹¹⁶ and requires dismissal on specified grounds and through outlined procedures only.

The most transparent appointment in the BOG structures lies in the Monetary Policy Committee. The BOG Act of 2016 buttressed this independence by liberalising the appointment of the Monetary Policy Committee and detaching it from the executive and Ministry of Finance.¹¹⁷ This independence aids the effectiveness of monetary policy by minimising executive interference in the BOG.

3.5.1.2 Transparency

The BOG Act amendment incorporates transparency mechanisms, thus addressing the concerns earlier noted. The BOG maintains the nature of a public institution whose compliance with the law is supervised by authorised bodies.¹¹⁸ The BOG's report to the Parliament of Ghana every six months¹¹⁹, consists of reports on the exercise of the BOG's mandate and any other relevant information on its functions.¹²⁰ The scope of the report is a recognition of the bank's involvement in both fiscal and monetary policy and the need for its supervision therein. Hence, the reporting requirement enables the availability of information on the BOG's monetary financing to Parliament, which enhances Parliament's oversight role.

¹¹² Section 4 (n85 above)

¹¹³ Section 4 (n85 above)

¹¹⁴ Article 89 (n87 above), Section 17(n84 above)

¹¹⁵ Article 183(4)(c)-(d) (n89 above)

¹¹⁶ Section 12 (n85 above)

¹¹⁷ Section 14 (n85 above)

¹¹⁸ *Baiden v Attorney-General and another* (n108 above)

¹¹⁹ Section 22 (n85 above)

¹²⁰ Section 22(1)(a)-(b) (n85 above)

3.5.1.3 Accountability and Sanctions

The BOG Act of 2002 provides for the penalties that follow contravention of the act. In section 67, a contravention of any provision of the act attracts, on summary conviction, a fine not exceeding 500 penalty units, or imprisonment not exceeding two years or both. The presence of sanctions ensures compliance with the act. In PDM, it provides the necessary impetus to abide by the rules, thereby ensuring that CB lending is done according to the law.

3.5.1.4 Oversight Institutions

3.5.1.4.1 Parliament

The Parliament of Ghana is established in terms of the Constitution of Ghana and is responsible for supervision and oversight of institutions, testing their compliance with the law.¹²¹ The Parliament of Ghana monitors compliance through parliamentary committees which interrogate activities of ministries.¹²² The Parliament of Ghana exercises its oversight in PDM in the BOG through two avenues; BOG's reporting to Parliament and Parliament's supervision of public debt and finance management, which will be discussed in turn. The nature of parliamentary involvement in PDM stands out; it is not reactionary after the fact of debt contraction. It operates to ensure constant monitoring of compliance through the involvement of parliament before and after debt contraction.

3.5.1.4.2 The BOG Reporting Mechanism

The reporting mechanism set out in the BOG Act of 2016 ensures that the Parliament of Ghana constantly supervises the BOG in its activities,¹²³ a direct response to the prior absence of reporting mechanisms. Requiring transparency from the BOG and the direct involvement of the Parliament of Ghana, without any third-party intervention, thus facilitate Parliament's oversight function.

¹²¹ *Ndebugre v Attorney-General* (J1/5/2013) [2016] GHSC 12, on the importance of parliamentary involvement in matters of public interest; *-Attorney General v Faroe Atlantic Co.Ltd* (2005-2006) SC GLR 271, *Amidu (No.2) v Attorney-General, Isofoton SA and Forson (No. 1)* [2013-2014] 1 SCGLR167

¹²² Article 103(3) (n87 above)

¹²³ Section 22 (n85 above)

3.5.1.4.3 Public Finance and Debt Management Oversight

The Parliament of Ghana supervises the BOG's debt issuance through its broad oversight powers in public finance management. Parliament participates in debt contraction through loan approval.¹²⁴

The parliamentary committee system facilitates supervision over debt contraction. The Committee on Finance investigates financial and economic matters.¹²⁵ Where a loan agreement requires parliamentary approval, the Committee on Finance scrutinizes the agreement and makes recommendations to Parliament for its approval or otherwise.¹²⁶ Hence, all loans are contracted under the supervision and upon approval by Parliament. It also ensures compliance with the limitations placed by the law in government debt contraction.

The Public Accounts Committee (PAC) examines the audited accounts presented to parliament, and reports its findings to Parliament at least twice every year.¹²⁷ The PAC examines the BOG's audited reports, and checks for irregular conduct.¹²⁸ Whilst this is performed after the fact, it ensures wholesome supervision of the full spectrum of the BOG's activities.

3.6 Conclusion

This chapter's main thrust was to highlight the PDM principles in the BOG Act. CBI has been entrenched as the BOG's officers are required to perform their functions without external influence. The appointment of officers of the BOG could, however, better reflect CBI by limiting executive influence. Transparency mechanisms have been incorporated through the BOG's parliamentary reports. This gives Parliament access to vast information which is vital in exercising oversight over the BOG. Accountability is premised on strict liability, as any contravention of the act attracts criminal punishment. Finally, the thoroughness of parliamentary supervision before and after debt contraction is commendable, as it ensures that any debt incurred or issued is in compliance with the

¹²⁴ Article 181(1) (n87 above), Section 56 and section 63 (n86 above)

¹²⁵ Order 169 Standing Orders of the Parliament of Ghana

¹²⁶ Order 171 (n125 above)

¹²⁷ Order 165(2)-(3) (n125 above)

¹²⁸ Section 57 (n84 above), Article 187(5) (n87 above)

law. These factors combined produce a robust PDM legal framework, which aids in regulating debt and for the operational benefit of the BOG and the public at large.

CHAPTER FOUR

ANALYSIS OF PUBLIC DEBT MANAGEMENT IN ZIMBABWE'S CENTRAL BANKING LEGISLATION

4.1 Introduction

This chapter focuses on the PDM framework in the RBZ's monetary financing legislation. It will focus on the RBZ Act, the Zimbabwean Public Debt Management Act (PDMA)¹²⁹ and the Constitution of Zimbabwe and the provisions on the RBZ therein. The history of PDM in monetary financing in the RBZ will constitute the first point of focus, with emphasis on the shortcomings that require legislative attention. The international, regional and sub-regional framework to which Zimbabwe is a party will be highlighted. The chapter will discuss the national legislation aforementioned and distil the PDM principles that govern monetary financing in the RBZ and the relevant institutional structures. The conclusion will evaluate how far Zimbabwe fares in implementing the ideals of PDM.

4.2 Overview of the Republic of Zimbabwe

The Republic of Zimbabwe is a landlocked country in southern Africa. It is bordered by Zambia, Mozambique, Botswana and South Africa.¹³⁰ It has a population of about 16 million.¹³¹ It attained its independence from Britain in 1980.¹³² Its economy is chiefly driven by agriculture and mining.¹³³ Zimbabwe has suffered economic turmoil since the early 2000s following the land reform program; which led to record breaking hyperinflation.¹³⁴

¹²⁹ Public Debt Management Act [Chapter 22:21]

¹³⁰ <https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html> (accessed 16 September 2019)

¹³¹ <https://www.who.int/countries/zwe/en/> (accessed 16 September 2019)

¹³² <https://www.sahistory.org.za/dated-event/zimbabwean-independence-day> (accessed 16 September 2019)

¹³³ <https://www.afdb.org/en/countries/southern-africa/zimbabwe/zimbabwe-economic-outlook> (accessed 16 September 2019)

¹³⁴ <https://www.bbc.com/news/world-africa-33105400> (accessed 16 September 2019)

4.3 History of PDM in Zimbabwe

The RBZ was established in 1956 as the CB for Rhodesia and Nyasaland during the federation system, replacing the Central African Currency Board.¹³⁵ It served as the CB for Rhodesia after the Federation system under the name Reserve Bank of Rhodesia¹³⁶. At independence, it was renamed to RBZ. It operates under the auspices of the Constitution of Zimbabwe¹³⁷ and the RBZ Act.

The RBZ was tasked with formulating and regulating monetary policy, acted as fiscal agent and banker of the state and supervised banking institutions, which functions it still holds.¹³⁸ It has additional functions in the Debt Management Office¹³⁹ and monetary financing to government.¹⁴⁰ The disparate impact of monetary financing emerged after Zimbabwe's fallout with the international community and external debt servicing failures, consequently recording financing excesses.¹⁴¹ The excessive financing led to spiralling inflation in 2007-2009, leading to the abandonment of the Zimbabwean dollar in 2009.¹⁴²

The RBZ act amendment sought to address the anomalies that led to excessive financing by limiting the types of debt that the RBZ could adopt from government. However, the monetary financing limit continues to be flouted, exposing Zimbabwe to another hyperinflationary risk. Accordingly, more needs to be done to curb excesses in monetary financing.

4.4 International, Regional and Sub-Regional Framework that Zimbabwe is Party to

Zimbabwe joined the IMF and the WBG¹⁴³ on 29 September 1980. It is a member of the SADC.

¹³⁵ M Presnak 'Central Bank Independence in Sub-Saharan Africa: An Analysis, 1960-1989' *Res Publica* 47

¹³⁶ M Presnak (n135 above) 47

¹³⁷ The constitution at independence had no provision on the RBZ. It is currently provided for in section 317 (n27 above)

¹³⁸ Section 317(1) (n27 above)

¹³⁹ Section 7 (n129 above)

¹⁴⁰ Section 11(1)(a) (n22 above)

¹⁴¹ A. Makochekanwa 'A Dynamic Enquiry into the Causes of Hyperinflation in Zimbabwe'(2007) *University of Pretoria Department of Economics Working Paper Series* 6

¹⁴² M Ellyne, M Daly 'Zimbabwe Monetary Policy 1998-2012: From Hyperinflation to Dollarization' *Oxford University Press* 3

¹⁴³ <https://www.worldbank.org/en/about/leadership/members> (accessed 16 September 2019)

4.4.1 National Legislation

4.4.1.1 The Reserve Bank of Zimbabwe Act

4.4.1.1.1 Central Bank Independence

The RBZ has been viewed as a CB that lacks independence, despite its importance in abating excessive monetary financing.¹⁴⁴ Whilst the RBZ Act requires the bank to carry out its functions without external instructions, the proviso indicates that the independence can be limited.¹⁴⁵ The RBZ's independence appears to be give-and-take, as will be demonstrated hereunder.

The RBZ's institutional independence is limited through the recurring ministerial approval and consultation. The Monetary Policy Committee formulates the bank's monetary policy in consultation with the Minister.¹⁴⁶ The Governor of the RBZ operates subject to direction from the Minister.¹⁴⁷ The BOD of the RBZ, the apex decision-making body in the RBZ, takes instructions from the Minister.¹⁴⁸

Personnel independence in the RBZ is minimal. The Governor and Deputy Governors are appointed by the President upon consultation with the Minister.¹⁴⁹ Their conditions of employment are determined by the Minister,¹⁵⁰ which potentially gives the executive great influence in the RBZ's operations.

The BOD of the RBZ is comprised of the governor, deputy governors and five other presidential appointees in consultation with the Minister.¹⁵¹ It approves all advances that the bank makes to the state.¹⁵² Thus, at the point when monetary financing arises, it does so at the instance of the Minister and the approval of the presidentially appointed BOD.

¹⁴⁴ J.D Nhavira, C. Pindiriri 'Sub-Saharan time-consistency: A comparison of SADC and the RBZ law' (2011) Vol.2 *Journal of Strategic Studies* 64

¹⁴⁵ Section 6(2) (n22 above)

¹⁴⁶ Section 45 (n22 above)

¹⁴⁷ Section 19 (n22 above), <http://www.mushoriwapasi.co.zw/wp-content/uploads/2019/02/A-call-for-the-independence-of-the-Reserve-Bank-Zimbabwe-article.pdf> (accessed 20 August 2019)

¹⁴⁸ Section 26(1) (n22 above)

¹⁴⁹ Section 14 (n22 above)

¹⁵⁰ Section 18 (n22 above)

¹⁵¹ Section 21 (n22 above)

¹⁵² Section 26(1)(h) (n22 above)

The Monetary Policy Committee is a recent development in the RBZ introduced by the amendment of 2010. It is a committee independent of the BOD.¹⁵³ Notwithstanding this independence, it is appointed by the President in consultation with the Minister.¹⁵⁴ Evidently, the critical offices in the RBZ are subject to executive intervention.

4.4.1.1.2 Transparency

The RBZ's transparency measures operate through publication and scrutiny of its accounts and monetary policy. Transparency in monetary policy mandates the RBZ to present its monetary policy statement before parliament twice every year, indicating its annual projections and reports.¹⁵⁵

Transparency of RBZ accounts demands regular submission of its returns to Treasury.¹⁵⁶ Further, annual returns are submitted to Treasury, which publishes the RBZ's annual accounts.¹⁵⁷ The same accounts are placed before parliament for scrutiny through the Minister.¹⁵⁸

The Minister can, however, indefinitely suspend the provisions that require publication, citing public interest grounds.¹⁵⁹ The RBZ Act does not define public interest. Public bodies are compelled to disclose information when there is a right to enforce, in the interests of transparency and accountability.¹⁶⁰ The undefined nature of public interest and the absence of parameters thereto means it can be used as a scapegoat. Consequently, the transparency devices in the RBZ Act can easily be rendered nugatory.

¹⁵³ Section 29B(1) and Section 29B(4) (n22 above)

¹⁵⁴ Section 29B(1) (n22 above)

¹⁵⁵ Section 46 (n22 above)

¹⁵⁶ Section 39(2)(a) (n22 above)

¹⁵⁷ Section 39(3) (n22 above)

¹⁵⁸ Section 39(4) (n22 above)

¹⁵⁹ Section 39(5) (n22 above). The Access to Information and Protection of Privacy Act [Chapter 10:27] does not have primacy on access to information and is subject to other legislation on access to information. N Ngwenya 'Compliance through decoration: Access to Information in Zimbabwe' in O Shyllon *Model Law on Access to Information for Africa and other regional instruments: Soft law and human rights in Africa* (2013) 151

¹⁶⁰ *Hitschmann v City of Mutare and another* HH211/16. A public body will be compelled to disclose information for litigation, not simply for information purposes. *Matebeleland Zambezi Water Trust v Zimbabwe Newspapers (1980) Limited and another* SC3/03

4.4.1.1.2 Accountability and Enforcement mechanisms

Equally problematic is enforcement and accountability in the RBZ Act. As background information, the Minister is the designate for government debt contraction.¹⁶¹ When the RBZ advances funds to the government, it is a culmination of processes to which the Minister is privy.

The accountability and enforcement facet in the RBZ act are activated by the minister. Firstly, the minister can direct that an investigation into the affairs of the RBZ be conducted.¹⁶²

Secondly, where the Minister becomes aware of contravention of the RBZ Act, he is empowered to demand the remedy of the anomaly.¹⁶³ The RBZ Act is silent on what follows if the BOD refuses to comply with the Minister's order to remedy an anomaly. This is a problematic method of remedying excesses in monetary financing, as the direction to remedy is an admission by the Minister that he engaged in an illegality.

To a great extent, the RBZ and its officers are immune from legal proceedings. Section 63A limits legal action to acts done in bad faith and with negligence. However, good faith and due diligence can only be raised for acts done within the mandate of the bank.¹⁶⁴ Any exercise of functions outside legal stipulation can and should attract legal proceedings. However, in the absence of information concerning the actions of the RBZ in monetary financing activities and the restriction of accountability mechanisms to the office of the minister, it remains a mammoth task to institute legal proceedings.

The penalty that can be meted out by the courts remains unspecified upon a finding that the RBZ or its officers overstepped in their functions. It neither apportions personal liability on RBZ officers nor imposes criminal penalties for non-compliance with the RBZ Act.¹⁶⁵ This eliminates the motivation to comply with the law. Hence, the accountability provisions bear an aura of being ceremonial as they provide for incomplete relief.

¹⁶¹ Section 11(1) (n129 above)

¹⁶² Section 38 (n22 above)

¹⁶³ Section 62 (n22 above)

¹⁶⁴ The test for negligence is an objective assessment to establish whether the person acted reasonably in the circumstances. *Kanengoni v Minister of Justice, Legal and Parliamentary Affairs and others* HH156/18

¹⁶⁵ J.D Nhavira, C. Pindiriri (n144 above) 79

4.5 Oversight Institutions

4.5.1 The Audit and Oversight Committee

One of the oversight bodies in the RBZ is the Audit and Oversight Committee, comprised of the Deputy Chairperson of the Board of Directors, a person employed in the Ministry of Finance and three non-executive directors from the RBZ BOD.¹⁶⁶ Its functions entail reviewing compliance with the act and assessing the adequacy of the bank's internal control systems.¹⁶⁷ However, it has limited powers, as it can only offer recommendations to the BOD.¹⁶⁸ The Audit and Oversight Committee is only an observer without punitive machinery to ensure future compliance with the law. Thus, its effectiveness is undermined by the absence of strong enforcement apparatus.

4.5.2 Parliament

The Parliament of Zimbabwe is established by the Constitution of Zimbabwe. It monitors compliance with the laws of Zimbabwe at every level, including all state institutions and agencies.¹⁶⁹ Parliament's mandate includes ensuring transparency, accountability and oversight over all public finances.¹⁷⁰ However, Parliament exercises oversight over the RBZ indirectly through the Ministry of Finance.

4.5.3 Public Debt Management Act

The borrowing limit is set by the National Assembly through a resolution or a provision in the Finance Bill proposed by the Minister.¹⁷¹ Any borrowing incurred by the Minister within statutory limits need not be tabled before parliament for approval. Further, only external debt is subject to parliamentary ratification.¹⁷² Internal debt, such as CB monetary financing, is not subject to similar formalities.

Parliament's involvement in PDM is confined to obtaining reports from the Ministry of Finance on the state of public debt and outstanding loans, reports on the execution of

¹⁶⁶ Section 29A(1) (n22 above)

¹⁶⁷ Section 29A(3) (n22 above)

¹⁶⁸ Section 29A(4) (n22 above)

¹⁶⁹ Section 119(1)-(2) (n22 above)

¹⁷⁰ Section 299 (n27 above)

¹⁷¹ Section 11(2) (n129 above)

¹⁷² Section 36(4) (n129 above)

the debt management strategy and a list of the outstanding borrowings by the state.¹⁷³ There is no direct interaction between the RBZ and Parliament. Therefore, parliamentary probing of the extent of compliance by the RBZ is limited.

Parliament also exercises oversight in debt management in the CB through the committee system. The PAC scrutinizes the sums granted by Parliament to meet the public expenditure, and any other accounts laid before parliament,¹⁷⁴ including monetary financing by the RBZ. Rule 26 mandates ministers and Vice Presidents to attend Parliamentary Committee meetings and sessions to answer questions on their area of responsibility. Failure to respond to the concerns raised by the PAC constitutes contempt of parliament.

4.6 Conclusion

This chapter's focus was on the PDM regime that regulates monetary financing in the RBZ. The independence provided for in the RBZ Act appears to be fictitious as it is withered away by several provisions that allow executive intervention in the RBZ's affairs. Transparency is limited by the possibility of unreserved public interest grounds that can curtail publication of information on monetary financing, rendering accountability by Parliament and litigation, whose consequences are unstated, an incredibly arduous undertaking. Scant parliamentary involvement presents a weakness in the legal regime because it occurs after financing and the damage has been done. The lack of strong sanctioning powers in the Audit and Oversight Committee does not change much, as the value of its recommendations is unclear. The heavy-handedness of the executive in the RBZ, the weakness of the oversight institutions and the lack of clarity in the accountability and penal framework undermine any efforts at keeping monetary financing at the permissible legislative threshold and further expose the economy to another meltdown.

¹⁷³ Section 36(2) (n129 above)

¹⁷⁴ Standing Rules and Orders of the Parliament of Zimbabwe Rule 16

CHAPTER FIVE

COMPARATIVE ANALYSIS OF GHANA AND ZIMBABWE AND RECOMMENDATIONS

5.1 Introduction

This is the final chapter of the study. The comparative analysis between the legislative framework in Zimbabwe and Ghana will be made, highlighting the differences, similarities and weaknesses of each regime. The recommendations and suggestions for both jurisdictions under study and Africa will follow. Thereafter, the conclusion will be made.

5.2 Comparative Analysis

5.2.1 International Legal Framework

Both of the jurisdictions under study are members of the WBG and the IMF.¹⁷⁵ Ghana is a member of ECOWAS; it being located in western Africa. Zimbabwe is a member of SADC; it being situated in southern Africa. None of the jurisdictions under study are members of the BIS.

At the international level, there are several soft law instruments on PDM, whilst the regional and sub-regional level is bereft of such instruments. There is even less legal discourse on PDM and CB governance at the ECOWAS level. The absence of such information deprives states of understanding PDM and CB governance from an African perspective.

5.2.2 National Legislation

Both CBs under study are responsible for financial stability. Another similarity is that both CBs can monetarily finance government, although the legislative threshold differs.¹⁷⁶

The RBZ lacks significantly in its independence compared to the BOG. The constant deference to the minister undermines CBI. Consequently, PDM in the RBZ is rendered

¹⁷⁵ Chapter 3.4 and Chapter 4.4

¹⁷⁶ Section 30(2) (n84 above), Section 11(1)(a) (n22 above).

ineffective because of the over-involvement of the Minister. Conversely, the embodiment of independence in the BOG Act creates a true distinction between the CB and the Minister. This ensures that the BOG is relieved from executive pressure, to which excessive monetary financing had been attributed.¹⁷⁷

Regarding transparency, the BOG is held to a higher standard compared with the RBZ. Ministerial influence in the publication of RBZ's accounts thwarts transparency. Consequently, the RBZ does not directly interact with Parliament and the public, who are important stakeholders in PDM and should facilitate accountability of the RBZ.¹⁷⁸ The BOG, conversely, has a direct relationship with Parliament through its biannual reports. This facilitates constant monitoring of monetary financing by the Parliament of Ghana.

The accountability and enforcement mechanisms in the RBZ Act and the BOG Act differ significantly. Whilst the BOG Act has clear enforcement measures and penalty stipulations on any derogation of the act, the RBZ Act is silent in this regard.

The oversight institutional framework for PDM in the RBZ leaves much to be desired. The RBZ's PDM is scantily monitored by the PAC and Parliament generally through the general setting of limits for debt contraction in the Finance Bill. Further, the RBZ's Audit and Oversight Committee does not add value to PDM in the RBZ as its powers only extend to offering recommendations to the BOD. However, the BOG's direct relationship with Parliament facilitates the oversight powers of the Parliament of Ghana. The constant involvement of Parliament and the Committee on Finance in the debt contraction process ensures compliance with the law and prudent PDM. The scrutiny of the BOG's accounts by the PAC adds another layer of parliamentary oversight into the monetary financing activities of the BOG.

5.3 Suggestions and Recommendations

A number of recommendations achievable through law reform arise pursuant to the above analysis. The most critical is the clarion call for greater independence in the RBZ. CBI facilitates operational freedom without external influence. This conforms with

¹⁷⁷ J.D Nhavira, C. Pindiriri (n144 above) 64

¹⁷⁸ Committee for Economic and Commercial Cooperation of the Organisation of Islamic Cooperation 'Improving Public Debt Management in the OIC Member Countries' (2017) *COMCEC Coordination Office* 35

international practice, optimises the CB's functions generally and assists in keeping with the permissible limits of monetary financing.

Transparency mechanisms must be enhanced in the RBZ. Following the Ghanaian example, the RBZ must report directly to Parliament. However, both CBs must implement measures that allow greater public interaction. This ensures that the CB's operations are open to scrutiny, ensures accountability, and incentivises the CB to act in the national interest when it lends to the government.

Increased discourse on PDM and CB governance is required at the regional and sub-regional level. Whilst it is commendable that the SADC has a model CB law, the regional frameworks still require attention. This adds the African voice to the pertinent issues arising from PDM, highlighting the issues that plague efficient CB governance and PDM on the continent.

An apt recommendation for the future to both CBs under investigation in this study, and African CBs which still have the monetary financing facility in their legislation, is to repeal monetary financing legislation. Recommendations from leading IFIs postulate that the CB should be solely tasked with monetary policy and not financing government deficits.¹⁷⁹ Monetary financing adversely affects financial stability and hurls economies into hyperinflationary pits. Hence, to optimise the functions of the CB, monetary financing must be abandoned.

5.4 Conclusion

This study sought to examine the CB monetary financing function of the RBZ and the BOG; enthused by a need to move towards prudent PDM in these CBs and to optimise their functionality in pursuing their primary monetary policy goals. The RBZ Act and the BOG Act formed the focus of the study, seeking to decipher how they both envisage monetary financing and the legal measures incorporated to contain it. International soft law instruments were used as a guide on the ideal regime of PDM and CB monetary financing. The major conclusion arrived at herein is that there is a pressing need for Zimbabwe to revise the CB monetary financing legislation if financial instability and hyperinflation should be averted. There is a need for law reform, wherein the amendment endows the RBZ with greater independence for its monetary financing

¹⁷⁹ L.I J'acome, M Matamoros-Indorf, M Sharma, S Townsend (n15 above) 4

operations, transparency, parliamentary oversight and public scrutiny in conformity with international standards on prudent PDM and CB governance. Further, there is need for the CB officers to be held to a high standard of accountability, given the impact that their conduct has on the economy. These factors combined can maintain monetary financing at sustainable levels without jeopardizing the primary monetary policy objectives of CBs or prejudicing the economy.

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