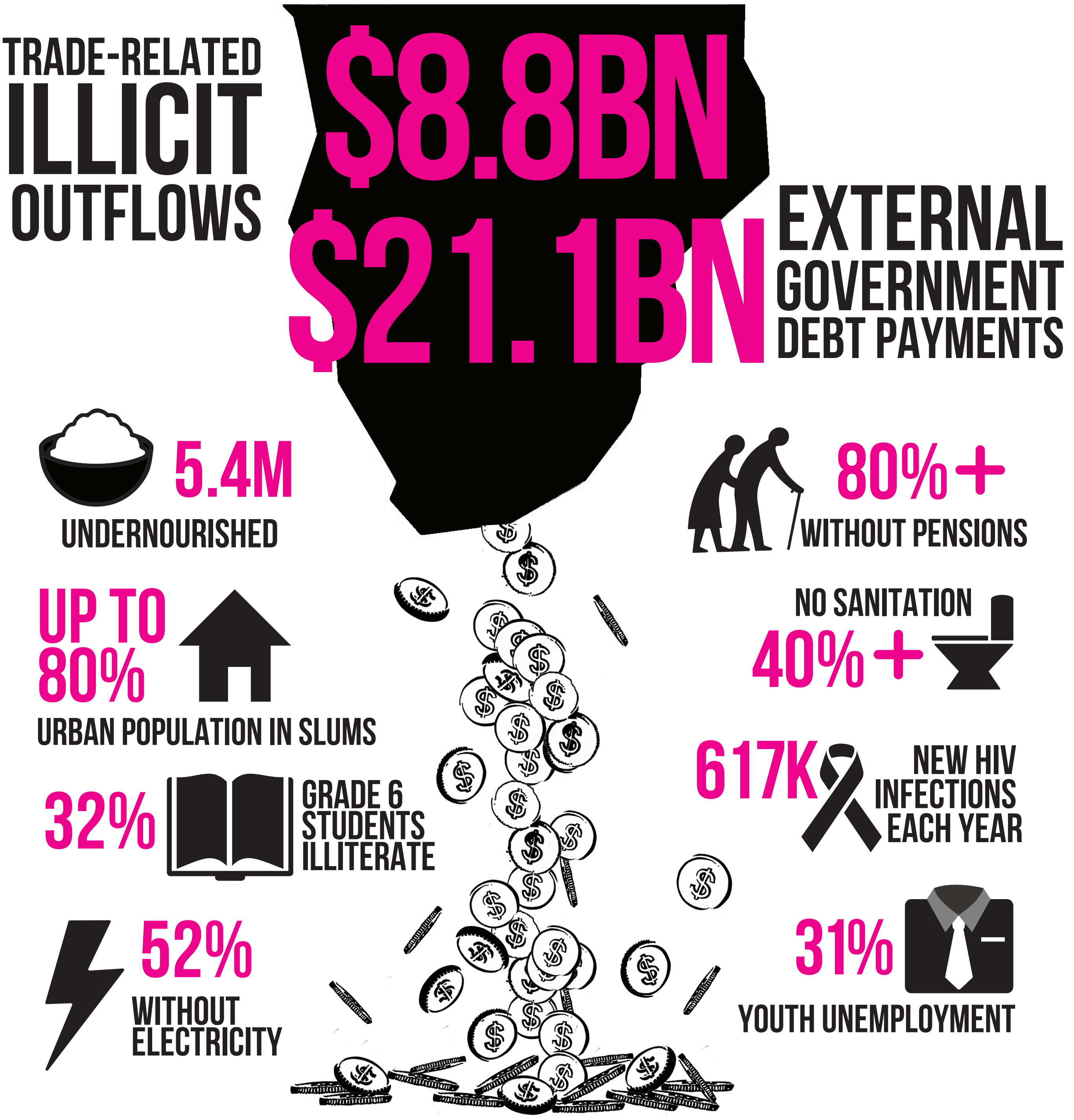
ACTSA BRIEFING PAPER

ACTSA
Action for Southern Africa

The Money Drain

How Trade Misinvoicing and Unjust Debt Undermine Economic and Social Rights in Southern Africa



1. Introduction

Twenty-five years after the end of apartheid, the whole Southern African region, i.e. the 16 states that now make up the Southern African Development Community (SADC),[1] is largely free from political subjugation by foreign powers. However, the region continues to endure certain forms of economic domination. This is because the international economic order remains blatantly biased against the interests of SADC countries (and other countries of the Global South).

It is true that Southern African governments bear the principal responsibility for failing to protect and empower their citizens. Yet, as a result of a range of unjust policies and practices, countries of the Global North,[2] along with certain multilateral institutions, must also take considerable blame for these failings.

A particularly useful way of understanding poverty is that it represents the denial of economic and social human rights. Considering global resources in the 21st century, it is unacceptable for any person to be denied these rights.[3] This report explores the state of economic and social rights in the SADC region. It also provides up-to-date data on two major actual financial outflows from the region: trade-related illicit outflows and external government debt payments.

A proportion of each of these different outflows represents money draining out of Southern Africa that could instead be spent by the region's governments to further the realisation of economic and social rights. For the people of Southern Africa, this money drain means fewer jobs, medicines, teachers, houses, and many other essentials.

SADC member states cannot afford to ignore these injustices. If governments in the region do not take robust action against trade misinvoicing (and other illicit financial flows) and unjust debt, including confronting the international dimensions of these problems, they may be accused of betraying their citizens. Moreover, the wider international community, especially the Global North and multilateral institutions, must genuinely assist SADC countries to address these problems. If they do not, then they open themselves up to accusations of neo-colonialism.

2. Economic and Social Rights

2.1 The nature of economic and social rights

Human rights are the rights that one has because one is a human being. Economic and social rights are an integral part of human rights. Like civil and political rights, economic and social rights promote human dignity and freedom. Indeed, these two dimensions of human rights are, in many ways, interrelated. Examples of economic rights are the rights to work, fair wages, and safe and healthy working conditions. Examples of social rights are the rights to education, food and health. Clearly, economic and social rights are interdependent and mutually reinforcing.

States are primarily responsible for ensuring that economic and social rights are respected, protected and fulfilled.[4] The obligation to respect requires states to not interfere with the enjoyment of economic and social rights. The obligation to protect requires states to take steps to prevent other actors from interfering with the enjoyment of economic and social rights. The obligation to fulfil requires states to adopt appropriate measures (legislative, budgetary, administrative, etc.) towards the full realisation of economic and social rights. In practice this can mean both the direct provision of goods and services as well as the creation of an enabling environment so that citizens can enjoy their rights. Non-discrimination, equality, participation, transparency and accountability are key principles that apply to the implementation of economic and social rights.

Various international human rights instruments enshrine economic and social rights. The most important of these is the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).[5] The ICESCR is a legally binding treaty, i.e. states that are party to the ICESCR have economic and social rights obligations under international human rights law. While there is a high degree of convergence between international human rights treaties and the Sustainable Development Goals (SDGs),[6] the latter are not legally binding.

All SADC members except for Botswana, Comoros and Mozambique are party to the ICESCR (Comoros has signed the ICESCR but it is not a full state party to the treaty as it has not ratified the treaty).[7] However, these three states are party to other international human rights treaties that enshrine economic and social rights, such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the African Charter on Human and Peoples' Rights.

Under the ICESCR, states must ensure minimum essential levels for each economic and social right. Beyond this, states must take steps to the maximum of their available resources to progressively realise economic and social rights. This reflects the fact that the realisation of these rights can be hindered by a lack of resources, and thus full realisation can only be achieved over a period of time. However states must, regardless of resource constraints, always demonstrate that they are making every effort to realise economic and social rights. It is also necessary for states to make tangible efforts to mobilise further resources. Moreover, states should not allow the existing protection of economic and social rights to deteriorate unless there are strong justifications for a retrogressive measure.

Ultimately, a violation of economic and social rights takes place 'when a state pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result'.[8] Although courts are not always the most suitable arena for resolving disagreements in relation to these rights, the judiciary does have a critical role in identifying violations and providing remedies.

States' economic and social rights duties do not end at their territorial borders. Virtually all Global North states are party to the ICESCR (the USA, which has signed but not ratified the treaty, is a notable exception). Article 2(1) of the ICESCR refers to 'international assistance and co-operation' as part of what should count as a state's available resources for realising economic and social rights. For obvious reasons, the richer states of the Global North have far greater economic and social rights obligations beyond their borders (known as extraterritorial obligations) than poorer states, including SADC members.

While there is a healthy debate regarding the precise nature of states' extraterritorial obligations,[9] the 2011 *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* represents a landmark international expert opinion. The *Principles* confirm that states have duties to respect, protect and fulfil economic and social rights extraterritorially, including through multilateral institutions in which states participate. Furthermore, states and multilateral institutions must be held accountable when their actions violate the human rights of people in any country. Crucially, the *Principles* are clear that 'international assistance and co-operation' includes but is not at all limited to aid. Rather, it encompasses a wide range of areas, including 'international trade, investment, finance, taxation, environmental protection, development cooperation, and security'.[10]

Unfortunately, Global North countries and the multilateral institutions that they dominate, particularly the International Monetary Fund (IMF) and the World Bank, rarely explicitly promote economic and social rights in their international policies and practices. Indeed, they often promote – and at times even insist on – a neoliberal approach that, through its pro-austerity and market fundamentalist orientation, weakens public services and impedes pro-poor growth in the Global South, including in Southern Africa.[11] In addition, the Global North has consistently frustrated efforts by the Global South to develop a more equitable international economic order, most notably through the United Nations (UN) Financing for Development process.[12]

Two key points emerge from the above analysis. First, all states must ensure that they are accountable. To this end, states need to incorporate their economic and social rights obligations, including their extraterritorial obligations, into domestic law. They should also ratify the 2008 Optional Protocol to the ICESCR[13] without reservations. This would give individuals and groups a complaint mechanism, allow states to complain about the conduct of other states, and permit grave or systematic violations to be investigated. Unfortunately, only 24 states in the world (none in Southern Africa and just a handful of those in the Global North) are currently party to the ICESCR's Optional Protocol.[14]

Second, all states must work in an inclusive manner to respect, protect and fulfil human rights. To this end, they need to work with national human rights institutions and civil society, in order to formulate policies and monitor actions to realise economic and social rights both domestically and extraterritorially. As part of this, it should be ensured that the activities of multilateral institutions, particularly international financial institutions, comply with states' economic and social rights obligations.

2.2 Unrealised economic and social rights in Southern Africa

Southern African countries are a long way from realising the economic and social rights of all of their citizens. Southern African governments can and should do far more to respect, protect and fulfil these rights. For example, clientelism, opaque public sector systems and weak anti-corruption bodies allow nepotism and bribery to flourish in much of the region.[15] This bleeds SADC countries of resources that could be used for the benefit of the people of the region.

According to one study, four of the ten worst performing countries for fulfilling economic and social rights are in Southern Africa (this research takes into account the relative positions of different countries).[16] Yet it cannot be denied that a key factor behind the lack of economic and social rights fulfilment in

Southern Africa is the lack of resources at the disposal of SADC members. In 2017, GDP per capita for the SADC region stood at only US$2,095; the average GDP per capita for Organisation for Economic Co-operation and Development (OECD) countries was US$44,261.[17]

An examination of the latest available data clearly shows that Southern Africa[18] has major challenges in relation to economic and social rights. This is not to say that there has been zero progress in the region over the past quarter of a century. Instead, the argument here is that the scale of unrealised economic and social rights remains immense – and thus the Global North and multilateral institutions continue to have significant moral and legal responsibilities towards the citizens of SADC countries.

The right to food:

- 5.4 million people (8.4% of the population) are undernourished and 30.9% of people face severe food insecurity.[19] Undernourishment has worsened since 2005 and severe food insecurity (a newer measure) has worsened since 2014.[20]
- 2 million children under the age of 5 (29.3%) are stunted; the total number of stunted children was the same in 2000 as it is today.[21]

The right to health:

- Average life expectancy is 65 years – but approximately nine of these years are spent in poor health.[22] Healthy life expectancy has increased by less than one year since 1990.[23]
- More than 25% of people over 15 years old living with HIV do not receive antiretroviral therapy in at least 11 countries.[24] There are at least 617,400 new HIV infections in the region per year;[25] Southern Africa is not on track to reach the UN's 2020 targets for reducing new HIV infections among either adults or children.[26]
- The maternal mortality ratio (MMR), a measure of the risk of death once a woman has become pregnant, is 339 per 100,000 live births.[27] By comparison, the equivalent MMR for Western Europe is 7.2.[28]

The right to water and sanitation:

- More than 40% of the population in five countries do not have access to basic drinking water services.[29]
- More than 40% of the population in 12 countries do not have access to basic sanitation services.[30]

The right to housing:

- 80.3% of the urban population live in slums in Mozambique (the highest proportion in the region for countries for which there is data).[31] The percentage of urban slum dwellers in the Democratic Republic of Congo (DRC) – the most populous SADC country with over a quarter of the region's population[32] – is 74.8%.[33]
- In both Mozambique and the DRC, a larger proportion of the urban population are now living in slums compared to 2007.

The right to electricity:

- More than half (52%) of the population do not have access to electricity.[35]
- More than 65% of the population in eight countries are unable to rely on clean fuels and technology as their primary energy source.[36]

The right to education:

- 3.5 million children of primary age (26.7%) are out-of-school in the DRC (the highest proportion in the region for countries for which there is data).[37] Over 20% of primary age children are out-of-school in Swaziland and Angola.[38]
- 67% of children in primary education do not reach the last grade in Mozambique; for Madagascar the figure is 65%.[39]
- 32% of Grade 6 students (i.e. those in the last year of primary education) cannot read for comprehension and 58% cannot develop and solve simple arithmetic problems.[40]

The right to employment:

- In the period 2010-16 the youth unemployment rate was 31%, compared to 29% in the period 1995-1999.[41]
- Underemployment and poor quality jobs are also major problems in the region – and it is estimated that there will be 1.1 million new entrants to the labour market per year between 2015 and 2030.[42]

The right to social security:

- More than 80% of older persons do not receive a pension in eight countries.[43]
- 98.7% of children are not covered by social protection benefits in the DRC (the highest proportion in the region for countries for which there is data).[44] More than 80% of children are not covered by social protection benefits in Botswana, Malawi and Lesotho.[45]

3. Trade-Related Illicit Outflows

Illicit financial flows are 'illegal movements of money or capital from one country to another'.[46] The High Level Panel on Illicit Financial Flows from Africa estimates that Africa loses over US$50 billion annually from illicit financial outflows[47] (this figure includes tax avoidance; courts have certainly found that aggressive tax avoidance contravenes the spirit of the law and that therefore it is illegal).[48] According to Global Financial Integrity (GFI), trade-related illicit flows are the largest component of illicit financial flows.

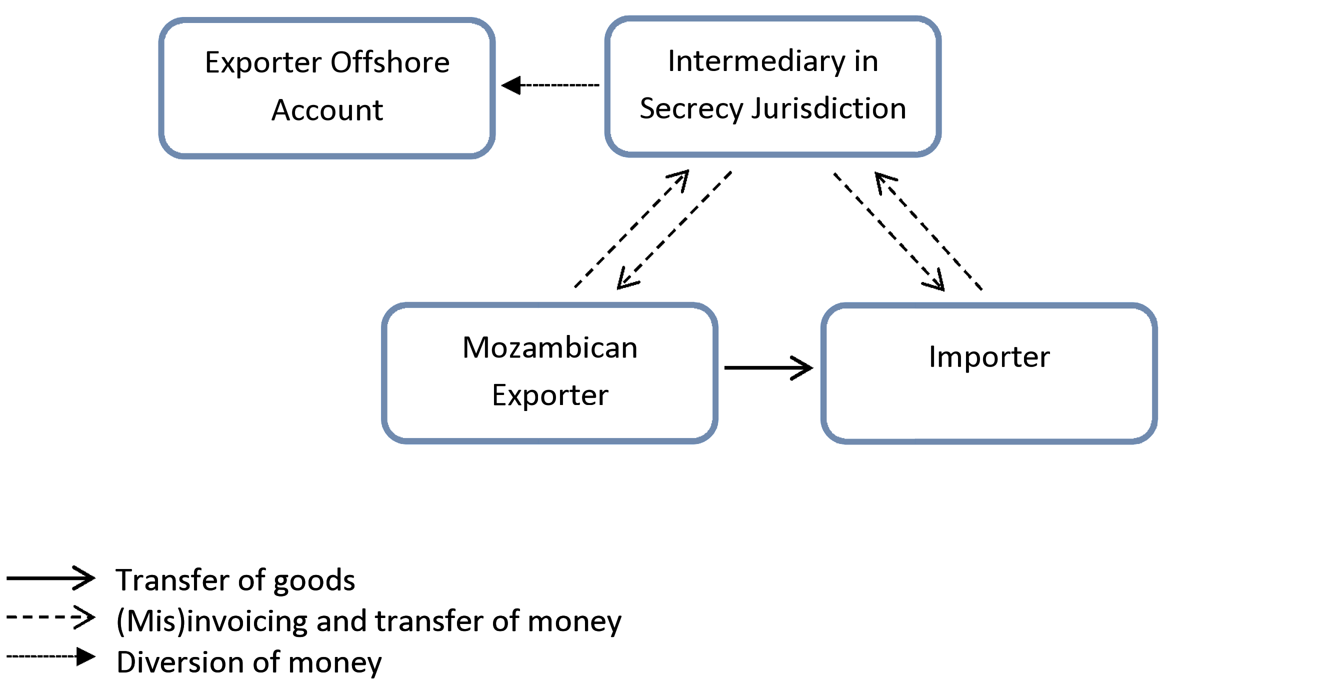
Trade-related illicit flows are generated through trade misinvoicing. Trade misinvoicing 'involves the deliberate falsification of the value, volume, and/or type of commodity in an international commercial transaction of goods or services by at least one party to the transaction'.[49] For example, in Mozambique, producers of exported shrimp frequently declare that their product is of lower quality than it is in reality, and producers of timber often under-declare the quantities that they export.[50] Thus in both cases the declared values of these products are reduced, lowering the tax payable. In addition, producers can use intermediaries in secrecy jurisdictions to capture and divert these illicit profits to offshore accounts (discussed further below). The basic mechanics of how this example works in practice are illustrated in the diagram below.

All trade-related illicit flows are illegal, though it is important to note that trade misinvoicing can take place under the cover of legal trade.[51] Falsely declaring the price, quantity or quality of a good or service on an invoice submitted to customs is a method used by criminals to: evade customs duties and taxes; launder money; circumvent quotas and capital controls; and claim tax incentives.[52] While trade-related illicit inflows are also damaging to countries,[53] this report focuses on trade-related illicit outflows, which can be estimated by comparing trade statistics and adding the over-invoicing of imports to the under-invoicing of exports.

The proceeds of trade misinvoicing tend to be diverted to offshore financial centres (tax havens) via secrecy jurisdictions, which are 'territories ... that encourage the relocation of otherwise foreign economic and financial transactions through strong privacy protection rules'.[54] This allows the people or entities that benefit from trade-related illicit flows to hide from the laws and regulations of other jurisdictions. Overall, it is estimated that 30% of Africa's wealth is held offshore.[55]

It should be noted that Seychelles and Mauritius demonstrate high levels of financial secrecy; Mauritius in particular plays an important role in exposing the rest of Southern Africa to illicit financial flows.[56] Moreover, some African countries, including SADC countries, have either already established or

Example of trade misinvoicing



plan to establish onshore tax havens 'that offer a combination of low or zero tax rates, limited regulatory standards and anonymity as an incentive for international capital and businesses'.[57]

Rates of tax collection in Southern Africa tend to be far lower than in the Global North, and SADC member states are relatively more reliant on taxes raised through corporate activity (as higher levels of poverty mean that a smaller proportion of citizens pay income tax).[58] Trade misinvoicing enables funds to be secretly and quickly shifted between countries, thereby by-passing relevant taxes. Therefore trade-related illicit outflows seriously undermine domestic resource mobilisation in Southern Africa. As noted above, a lack of domestic resources is a central reason why governments in the region struggle to realise economic and social rights, and thus eliminate poverty. Trade-related illicit outflows also undermine the rule of law and efforts to fight corruption.

Based on the latest data, ACTSA estimates that trade-related illicit outflows from Southern Africa amounted to at least US$8.8 billion in 2015 alone (see Appendix 1). This is a conservative estimate because there is no data for the DRC, only the SADC region's trade with the Global North is considered, and misinvoicing of trade in services is not covered. Trade-related illicit outflows from South Africa alone amounted to at least US$5.9 billion in 2015 (see case study below). Unlike in the case of external government debt payments (considered in the following section), all trade-related illicit outflows are illegal, and thus a percentage of the entire US$8.8 billion could be taxed – and the funds used to realise economic and social rights – if this trade were actually legal.

As the methodology used in this report for estimating trade-related illicit outflows is evolving (see methodological note in Appendix 1), it is difficult to discuss trends in relation to trade-related illicit outflows from the SADC region. However, trade-related illicit outflows from Southern Africa are certainly not a new phenomenon, and all indications are that they will continue to be significant in size unless action is taken. Indeed, two-thirds of the African countries that are most exposed to trade-related illicit flows are SADC countries.[61]

UN Human Rights Council resolutions[62] have recognised the negative impact of illicit financial flows, including trade-related illicit flows, on the enjoyment of economic and social rights. Illicit financial flows, including those that result from trade misinvoicing, also feature in one of the targets of SDG 16, though it remains to be seen how this target is defined and measured in practice.[63]

Yet progress on tackling illicit financial flows is fragmented and slow. SADC countries can certainly do more, but success is heavily dependent on the Global North taking concerted action to support African efforts and drive global reforms.[64] While Global North countries have, through the OECD[65] and

Trade-related illicit flows and South Africa[59]

For much of the 20th century, diamonds left South Africa with no export data reported. Government statistics were silent on the weight, quality or value of stones mined locally and shipped overseas. Even in the first few years after the end of apartheid, the South African Reserve Bank refused to disclose statistics on diamond exports.

More recently, GFI's analysis of trade misinvoicing in South Africa in the period 2010–2014 estimates that the potential average loss of revenue to the government (as a result of both trade-related illicit outflows and inflows) was around US$7.4 billion per year. The average annual revenue lost due to the misinvoicing of imports was US$4.8 billion. This is comprised of the following uncollected sources of revenue: corporate income tax (US$2.1 billion); value added tax (US$2.1 billion); and customs duties (US$596 million). Revenue lost due to the misinvoicing of exports was US$2.6 billion on average each year. This is a result of lower than expected corporate income taxes.

These lost resources have a clear impact on economic and social rights. In the words of GFI's report, the lost resources 'could have made an immense difference in housing, education, and health services and could have gone far in easing poverty and inequality and accompanying social strains'.

In May 2018, the then Commissioner of the South African Revenue Service (SARS), Mark Kingon, admitted that not enough had been done to tackle illicit financial flows, including trade-related illicit flows. Kingon cited staff cuts at SARS and a lack of transparency in the global financial system as reasons for the lack of progress in halting illicit financial flows.[60]

GFI examined South Africa's bilateral trade statistics using data from the UN and SARS. GFI has developed a database (GFTrade™) of current world market prices of 80,000 categories of goods in the Harmonized System as traded by 30 of the largest global economies. This enables Global South countries' customs and revenue authorities to assess instantly the risk that trade misinvoicing may be occurring in transactions at the time that goods are coming in or going out.

G20,[66] shown some interest in trade-related illicit flows, concrete action to combat trade misinvoicing is urgently needed. Ultimately, 'more effective international action against illicit capital flows would be complementary rather than competitive with attempts to improve from within the quality of public institutions in the poorest countries'.[67]

4. External Government Debt Payments

Government debt is public debt (the terms 'national debt' and 'sovereign debt' are also commonly used), while private debt is the debt owed by companies and individuals. Like private debt, government debt may be external (i.e. owed to foreign lenders) or domestic (i.e. owed to lenders within a country). Although this report focuses on external government debt payments, it should be noted that high external private debt payments are also a major concern, not least because governments may be forced to take on external private debts that have become unsustainable.[68]

The external debts of Southern African governments are owed to international financial institutions, other governments and the private sector. These debts tend to be owed in foreign currencies, which makes them vulnerable to exchange rate volatility. A debt is serviced by paying interest on the principal (the amount borrowed) and by making principal payments in order to reduce the size of the loan. Obviously, the higher a government's external debt payments, the fewer resources that government has at its disposal for realising economic and social rights. There is also strong evidence that foreign loans to African governments have fuelled capital flight from the continent.[69]

However, the external debts of governments are not necessarily bad for their citizens. When lenders as well as borrowers work to ensure that debts are contracted and spent in a just manner, loans can be positive, fair and sustainable for everyone concerned. Sadly, when it comes to loans to Southern African governments, the results are rarely positive, fair or sustainable for the citizens of SADC countries. This is the case for three reasons.

First, some of the debt is illegal. A recent example of this is the US$2 billion of secret loans to Mozambique by the UK branches of Credit Suisse and VTB Capital in 2013 and 2014 (two of these three loans only came to light in 2016).[70] Campaigners in Mozambique claim that these loans breached the country's laws as they were not agreed by the Mozambique parliament. Mozambique's Constitutional Council has ruled that one of the loans was illegal, and its judgement on the other two is pending.[71] Moreover, at least US$700 million of the loans is missing, and the US Department of Justice alleges that at least US$200 million was spent on bribes to bankers and politicians involved in the deals.[72]

Second, some of the debt is odious. The doctrine of odious debt asserts that some government debt is 'not binding or enforceable on account of the creditor's awareness of the fact that the proceeds of the loan would be used to oppress the population of the debtor state, or would be used for personal enrichment rather than public purposes'.[73] For example, South Africa's apartheid regime borrowed from international actors to help fund its repression of the black majority, leaving around US$23 billion of debt for the country's first democratic government.[74] Another example is how the DRC (then Zaire) under the rule of Mobutu Sese Seko accumulated over US$12 billion in government debt, which the military dictator used to enrich himself and his cronies.[75]

Third, some of this debt is illegitimate. A loan does not have to be illegal or odious for it to be unjust. The amount and/or the terms of a loan may put an undue financial burden on a country, thereby clearly hurting its prospects of realising economic and social rights. From a human rights perspective, therefore, even responsible lending has its limits.

Debt justice involves identifying and cancelling illegal, odious and illegitimate debts. Debt justice also means respecting climate debts. Climate change is increasing the frequency and intensity of extreme weather events[76] such as Cyclones Idai and Kenneth, which wreaked havoc in parts of Southern Africa, particularly Mozambique, earlier this year (the recovery costs in relation to Cyclone Idai alone are estimated to be US$2 billion).[77] It is largely Global North countries – not SADC countries – that are responsible for climate change. In addition, the Global North's excessive historical and current emissions are limiting atmospheric space available to the Global South, including the SADC region. Thus SADC countries are owed climate debts, which the Global North should pay through financial compensation. Instead, however, the IMF lent Mozambique US$118.2 million following the recent disasters, further worsening the country's debt crisis.[78]

Based on the latest data, ACTSA calculates that external government debt payments from Southern Africa amounted to at least US$21.1 billion in 2018 alone (see Appendix 2). The true figure is likely to be slightly higher, as there is a lack of data for Namibia and Seychelles. Of the US$21.1 billion total, US$1.9 billion was paid to multilateral institutions (international financial institutions), US$11.2 billion was paid to bilateral institutions (other governments) and US$8 billion was paid to the private sector. Around two-thirds of these outflows take the form of principal payments, with the remainder representing interest payments. Angola alone paid US$12.1 billion in principal and interest payments on its public debt in 2018.

It is beyond the scope of this report to assess how much of the US$21.1 billion of external government debt payments should be considered illegal, odious or illegitimate. However, it is extremely likely that a huge proportion of these payments fall into at least one of these categories of unjust debt.[79] Similarly, while this report does not attempt to quantify the climate debts that the Global North owes to Southern Africa, it would be reasonable to say that these debts are very substantial.[80] These injustices deprive SADC governments of resources that they could use to realise economic and social rights for their citizens.

As the graph below shows, for Southern Africa as a whole, average external government debt payments as a percentage of government revenue fell in the period 2000–2010. But since 2010 this trend has been reversed, with a significant increase from 2017 to 2018. A key factor behind this change is the slump in commodity prices in 2014, which reduced government revenues across the region, and led to several countries experiencing exchange rate depreciation (thus increasing the relative size of foreign currency-denominated debt).[81] Another important factor is that, compared to the 1990s, a much larger share of Southern Africa's external public debt is held by the private sector, which means 'relatively higher interest rates and lower maturities'.[82]

A country is regarded as being in debt distress 'when it is struggling to service its debt, as demonstrated by arrears, the restructuring of its debt or other clear signs that a debt crisis is looming'.[83] According to the IMF, as of April 2019, Mozambique and Zimbabwe are in debt distress, and Zambia is at high risk of debt distress.[84] However, the IMF's approach to assessing debt sustainability has been criticised for various reasons, including for defining debt sustainability just on ability to pay, rather than on how the payments affect the ability of a country to realise economic and social rights. Furthermore, the IMF only conducts full debt risk assessments for 'low income' and some 'lower-middle income' countries and small island states. For example, although Angola has the highest external government debt payments as a proportion of government revenue in the region (57%), there is no debt risk assessment for the country.

There has been much commentary on China's role in African debt. Research suggests that 17% of external interest payments by African governments are made to China.[85] This is clearly significant, and the figure is likely to be higher for some countries in Southern Africa, such as Angola and Zambia.[86] Moreover, Chinese loans to the SADC region do not appear to be diminishing. Yet the Paris Club, which is almost exclusively composed of Global North

Mean (unweighted average) external government debt payments as a percentage of revenue for SADC

External government debt payments from Zimbabwe[88]

Zimbabwe originally defaulted on its debt in 2000 and is in long-term debt default. In 2018, Zimbabwe paid US$187 million in external government debt payments (see Appendix 2) on an external public debt of around US$8.1 billion, most of which remained in default.[89]

A portion of Zimbabwe's debt is illegal. For example, some of the loans to the country in the 1970s were used to buy weapons in violation of UN sanctions. More recently, the Government of Zimbabwe's borrowing and debt management has regularly violated limits and procedures imposed by the Constitution of Zimbabwe (2013) and the Public Debt Management Act (2015).

Moreover, some of the debt is odious. For example, Zimbabwe inherited a US$700 million debt from the racist Rhodesian regime of Ian Smith (new loans were taken out to pay the Rhodesian debts). Similarly, in 1998, the UK government backed £15 million of loans for the Zimbabwean police to buy British-made Land Rovers. At the time, political repression was increasing in the country, and the vehicles were used in attacks on protestors.

Zimbabwean activists are calling for a comprehensive public debt audit, which should take place in a participatory and transparent manner, in order to ascertain the extent of the country's debt, the terms of different loans and how loans were (mis)used. They are also demanding greater transparency in relation to international talks on Zimbabwe's debt, and for all future foreign loans to be fully transparent (a point that their peers in Mozambique have also stressed).

In addition, Zimbabwe's debts should not prevent the country from meeting its economic and social rights (and wider human rights) obligations. Thus debt cancellation is necessary, as is compensation for the climate debts owed to the country.

However, all funds generated as a result of tackling Zimbabwe's unjust debt should go into an account managed by the UN for spending on realising the human rights of Zimbabwean citizens. This is because the Government lacks legitimacy and accountability, and merely giving the Zimbabwean authorities money would run the risk of funds being misspent. Finally, all international engagement with Zimbabwe's debt should avoid economic policy conditions. When engaging with Zimbabwe in the past, the IMF and World Bank have insisted on public spending cuts, financial market deregulation and rapid trade liberalisation.

countries, remains a major bilateral creditor to the SADC region.

Debt relief has certainly helped SADC countries in the past. For example, debt relief enabled Tanzania to abolish school fees in 2002 and helped Zambia to begin providing free anti-retroviral drugs to 100,000 people in 2005.[87] But debt relief should not be confused with debt justice; this is not only because debt relief has often come with neoliberal economic policy conditions attached. As the case of Zimbabwe (see above) demonstrates, the first steps in moving towards debt justice are comprehensive public debt audits and greater transparency in the global debt system.

UN Human Rights Council resolutions have recognised the negative effects of external government debt payments on the enjoyment of economic and social rights. These include resolution 20/10, which in 2012 adopted *Guiding Principles on Foreign Debt and Human Rights*.[90] Furthermore, one of the targets of SDG 17 relates to debt sustainability, and specifically mentions debt distress, debt relief and debt restructuring.

Yet debt justice is far from becoming a reality. Disgracefully, 11 countries – mainly in the Global North – voted against resolution 20/10.[91] Moreover, the OECD's[92] and G20's[93] engagement with debt issues facing the Global South, including Southern Africa, is significantly less aligned with human rights compared to resolution 20/10, and in any case has not moved forward. Of course, building the capacity of borrowing countries to manage their debt responsibly is important. But 'no equitable and durable solution to the debt problem can be found without the underlying causes of the crisis being addressed and creditors and debtors sharing responsibility for resolving it'.[94]

5. Recommendations

Countries of the Global North and SADC countries should:

Economic and social rights

- Ratify/accede to the ICESCR and its Optional Protocol, as well as other core international human rights treaties and their optional protocols.
- Ensure that all international human rights obligations, including those that relate to economic and social rights, are fully enshrined in national law.

- Ensure that all economic, social and wider development policies and programmes, including those that are aid-funded or involve multilateral institutions, are rights-based (including making them subject to human rights impact assessments) and are not undermined by other actions (e.g. security measures).
- Support the evolution of the international human rights architecture, including the finalisation of a robust treaty on business and human rights that has primacy over trade and investment treaties.

Trade misinvoicing

- Create and strengthen laws, regulations and policies against trade misinvoicing.
- Invest in significantly increasing the capacity of customs agencies (including through supporting the use of tools such as GFTrade™), financial intelligence units and financial crime units, particularly in SADC countries.
- Crack down on secrecy jurisdictions and tax havens, including by: creating public registries of all beneficial and direct owners of companies and trusts; developing a system of automatic exchange of financial information that works for SADC countries; and making public country-by-country reporting mandatory for all multinational corporations.
- Support the establishment of an independent and well-resourced international commission on tax to set rights-based international tax policies and coordinate international initiatives on tax, including those that aim to combat trade misinvoicing and other illicit financial flows.

Unjust debt

- Initiate and support comprehensive public debt audits, which should take place in a participatory and transparent manner, in all SADC countries on a periodic basis.
- Declare null and void any loans to SADC governments that have broken laws in the countries from where they originate or laws in SADC countries.
- Support the establishment of an independent and well-resourced international commission on debt, in order to definitively determine which loans are odious or illegitimate, and cancel such debts without conditions (safeguards to ensure that saved funds benefit citizens are important in certain contexts). The international commission on debt should also assess and make recommendations on the climate debts owed to SADC countries (and the wider Global South).
- Ensure that all bilateral, multilateral and private loans to governments are: recorded in a comprehensive and publicly accessible registry; compliant with all relevant laws; and unable to be exploited by vulture funds that seek profits out of debt crises.

Appendix 1: Estimated trade-related illicit outflows from Southern Africa (trade with advanced economies), millions of US$

Country	Estimated Trade-Related Illicit Outflows
Angola	1,228[a]
Botswana	26[a]
Comoros	10[b]
Democratic Republic of Congo	0[c]
Lesotho	320[b]
Madagascar	145[a]
Malawi	103[a]
Mauritius	166[a]
Mozambique	201[a]
Namibia	121[a]
Seychelles	18[a]
South Africa	5,913[a]
Swaziland	103[b]
Tanzania	272[a]
Zambia	103[a]
Zimbabwe	34[a]
SADC	**8,763**

[a] Comtrade-based estimates, 2015
[b] DOTS-based estimates, 2015
[c] No data

Source: Global Financial Integrity (2019) https://www.gfintegrity.org/issues/data-by-country/

Methodological note

These estimates are based on the UN's Commodity Trade Statistics Database (Comtrade) and IMF's Direction of Trade Statistics (DOTS). While no trade statistics are perfect, the Comtrade dataset is more detailed than the DOTS data. However, not all countries provide their trade data to the UN. Therefore where Comtrade data is not available we use DOTS data.

Appendix 2: External government debt payments (principal and interest) from Southern Africa, millions of US$ current for 2018

Country	Multilateral	Bilateral	Private	Total
Angola	85	9,812	2,201	12,098
Botswana	150	13	9	172
Comoros	5.1	3.8	0	8.9
Democratic Republic of Congo	297	178	0	475
Lesotho	60	16	0.1	76.1
Madagascar	84	36	9	129
Malawi	77	28	0	105
Mauritius	87	121	5.2	213.2
Mozambique	148	300	501	949
Namibia	0[a]	NO DATA	NO DATA	0
Seychelles	6.7[a]	NO DATA	NO DATA	6.7
South Africa	442	0	4,296	4,738
Swaziland	21.5	27	3	51.5
Tanzania	292	222	501	1,015
Zambia	124	259	522	905
Zimbabwe	29	158	0	187
SADC	**1,908.3**	**11,173.8**	**8,047.3**	**21,129.4**

[a] External government debt payments to the IMF only (no data for debt payments to other multilateral institutions)

Sources: IMF (2019) https://www.imf.org/en/Countries; World Bank (2019) https://databank.worldbank.org/data/source/world-development-indicators

Notes

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