

"SWA/Namibia" External Borrowing

1. The "SWA/Namibia" Budget Speeches indicate very sustained and radically increasing borrowing outside Namibia. The total public debt has been projected by Mudge as R440 million at the end of the 1982/83 budget year (R260 million as of 31-III-82 plus R180 million to be raised). This is about 35% of GDP and 50% of GNP (1981) at official estimates.
2. The debt is virtually all held outside Namibia. How much is held by RSA financial institutions (and which ones) and how much by international banks (and which ones) is unclear. Mudge indicated expectation of R40 million "overseas" (ie, beyond RSA) in 1982/83, and there have been at least two prior overseas loans (R10-15 m. each).
3. All borrowing is apparently guaranteed by RSA (otherwise nobody overseas would take it except perhaps for 2-3 years at 30% interest, first year's interest in advance). Presumably the key banks involved are Barclays, Standard, Dresdener as they dominate "SWA/Namibia" banking, the first two are central to RSA banking and all have merchant banking, underwriting/placing and global links.
4. RSA presumably wants an independent Namibia to assume "SWA/Namibia" debts. This would now pose an intolerable burden - especially given that RSA has severely damaged the economy.
5. If R440 million is outstanding at independence the implications are:

Year (R 000,000)	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
a. Interest/Fees	88	70½	53	35	17½
b. Repayment	88	88	88	88	88
Total	176	158½	141	123	105½

This is an average of about R141 million a year, or - say - 15% of gross export earnings. Economically intolerable.

6. There is no legal case for Namibia to accept this debt. It will be argued:
 - a) that in normal colonial independence settlements the independent government accepted borrowing by the colonial government from banks, companies, on overseas capital market.
 - b) that Lancaster House included Zimbabwe accepting liability for debts incurred during UDI (as distinct from pre-UDI external debt/accrued interest which are precedent "a").

7. "Precedent" a is not a precedent. A colonial (or mandatory or trusteeship) administration is legal in strict international law. Under normal doctrines of succession it does inherit the colonial government debt as the successor regime. (Whether it can under normal succession repudiate is unclear. In cases of abnormal - ie revolutionary war - succession, I believe there may be cases, eg Indonesia from Netherlands, (North) Vietnam from France, Angola and Mozambique perhaps?) Namibia is not successor to "SWA/Namibia" which nobody other than RSA recognises as a lawful regime.

8. "Precedent" b is a nuisance. First it is true that "Rhodesia" reverted to (lawful) colonial status before the election and independence was from the UK (the lawful colonial power) not

"UDI Rhodesia". This in a sense makes it an "a" case. But, second, UDI period debt really is not "a" type debt, as neither UK nor Zimbabwe is in strict law successor to Smith/Smith-Orewa regimes in the legal sense it automatically inherits their obligations. Therefore, "b" is a precedent. But it is not a precedent in law - the need for this debt to be covered specifically in Lancaster House implies that had it not been covered Zimbabwe would have been free to repudiate. Zimbabwe (literally the two PF delegations) chose to accept an obligation that otherwise would not have been binding. (Similarly UK in 1902 in Peace of Vereeniging - surrender of Afrikaner Republics - accepted liability for their external debt raised to fight UK - had it not done so, successor Crown Colonies and Imperial Government would not have been liable.)

9. Given the 1971 World Court Advisory Opinion no "SWA/Namibia" debt after revocation of mandate is legally binding. Part II of opinion is quite clear in that respect. Therefore, present legal position (according to highest organ of bourgeois international law - a descriptive not perforative use of the term bourgeois) is that Namibia has no obligation for any "SWA/Namibia" debts.

10. The problems are therefore:

- A. To make crystal clear that SWAPO does not and will not accept any liability for debts of "SWA/Namibia" or any sub-unit thereof (eg "homelands", city councils, "development" corporations, land bank, SWAWEK);
- B Refusing in talks with "Gang of 5"/RSA to agree to any principle compromising point A. (Point A once made clear in SWAPO public statements need not be raised by SWAPO at

talks but presumably RSA will raise it and be backed by UK/USA);

C. Mobilising friends to:

- i. collect data on who holds the "debt" and to publicise this (nobody is very eager, it seems, to say they do!);
- ii. denounce this borrowing and integrate it into campaigns against RSA/RSA parastatal external borrowing;
- iii. develop legal case - in particular any cases (suggested at Para. 7) of non-succession to debt at independence and of implications of ICJ opinion for "SWA/Namibia" debt.

11. Actions A and C will, to some degree, deter non-RSA lenders. They do not want bad debts and bad publicity. RSA itself is not a top-rated borrower - given SWAPO statement "SWA/Namibia" paper is worth little more than the RSA guarantee. Further if bought after a clear SWAPO statement such paper is likely to be presented to RSA not Namibia. Denying liability only after independence could cause problems with banks which a specific repudiation now could forestall.
12. RSA financial institutions will - presumably - be forced to go on lending. (They may not be very happy, but given that they are in RSA and covered by RSA guarantee, they have few options.) However, prior "warning" at least will make them (in practice) look to RSA not Namibia after independence.
13. Note - as RSA has now managed to create a substantial debt it will threaten to break off and will delay them on this issue. Unfortunately at R440 million odd it is a matter both of principle and of major substance. (Debts to local oil companies,

local working overdraft of SWAWEK etc, are rather different -
no major substance, can avoid making issue of principle but
R440 million to financial institutions outside Namibia is
totally different).

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29-VII-82