Public Finance Management Act Proposed Amendments

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What is Public Financial Management?

- Basically deals with all aspects of resource management and expenditure in Government
- Collection of sufficient resources from the economy in an appropriate manner along with allocating and use of these resources efficiently and effectively constitute good financial management
- Just as managing finances is a critical function of management in any organisation, similarly PFM is an essential part of the governance process
- Positive correlation between strong PFM and public service delivery

Key Actors in PFM

- Ministry of Finance and Economic Development
- Line ministries
- Local authorities
- Public enterprises/entities parastatals
- Auditor General. In the exercise of his or her functions, the Auditor General is independent and subject only to the law

Key Actors in PFM

- Public Accounts Committee. Standing Order 16 of the National Assembly establishes a PAC "for the examination of the sums granted by Parliament to meet the public expenditure and of such other accounts laid before Parliament as the committee may think fit"
- Portfolio and Thematic Parliamentary Committees
- Zimbabwe Anti-Corruption Commission (Section 255 of the Constitution)
- Sections 234, 235, 236 and 237 apply to the ZAC and its members as of it were an independent commission established by Chapter 12

State of PFM in Zimbabwe

- The Auditor General issued the following opinions on State Enterprises and Parastatals:

  disclaimer of opinions 3;

  adverse opinions 3;

  qualified opinions 10; and

  unqualified/clean opinions 62
- As of 31 May 2017, the majority of local authorities had not submitted financial statements for audit. Of the accounts not submitted, 69 related to 2016 financial year; 39 to 2015; 11 to 2014 and one to the 2013 financial year
- Only Goromonzi Rural District Council was current in terms of audited financial statements for 2016

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- Maintenance of accounting records remains a challenge for
- Misappropriation of funds/fraudlent activities
- Acquisition of goods by ministries without financial resources to meet the expenditure. This practice violated Treasury Instructions
- Processing of payments by Ministry of Finance without adequate supporting documentation
- Use of fund accounts as collateral security for loans issued to private individuals (e.g Youth Development and Economic Empowerment Fund)
- Use of fund accounts to financial appropriation expenditures by ministries
- Violation of procurement regulations
- Huge amounts uncollected from debtors

State of PFM in Zimbabwe

- Revenue leakages
- “These issues call for urgent attention and action for redress by those responsible for governance, in order to improve transparency and accountability in the public sector as required by section 298 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013”. Auditor General
- On a fairly positive note, out of the 151 audit recommendations raised during the 2015 financial year, 48 % were implemented, 12 % were in progress and 40 % were yet to be implemented

State of PFM in Zimbabwe

ANNEXURE N

PROGRESS IN IMPLEMENTATION OF PRIOR YEAR RECOMMENDATIONS

MINISTRY	NUMBER OF AUDIT RECOMMENDATIONS/ FINDINGS			
	IN YEAR 2015	IMPLEMENTED	IN - PROGRESS	NOT IMPLEMENTED
Office of the President and Cabinet	2	2	-	-
Parliament of Zimbabwe	6	2	3	1
Public Service, Labour and Social Welfare	2	-	-	2
Defence	5	3	-	2
Finance and Economic Development	6	1	2	3
Industry and Commerce	3	2	1	-
Agricultural, Mechanisation and Irrigation Development	15	5	2	8
Mines and Mining Development	3	-	-	3
Environment, Water and Climate	5	3	-	2
Transport and Infrastructural Development	3	2	-	1
Foreign Affairs	8	3	1	4
Local Government, Public Works and National Housing	6	-	1	5
Health and Child Care	5	2	1	2
Primary and Secondary Education	8	5	1	2
Higher and Tertiary Education, Science and Technology Development	5	5	-	-
Youth, Indigenisation and Economic Empowerment	2	1	-	1
Home Affairs	4	4	-	-
Justice, Legal and Parliamentary Affairs	5	1	3	1
Information, Media and Broadcasting Services	4	-	2	2

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Small and Medium Enterprises and Cooperative Development	7	3	1	3
Energy and Power Development	5	3	-	2
Women's Affairs, Gender and Community Development	6	2	1	3
Tourism and Hospitality Industry	3	2	-	1
Information Communication Technology, Postal and Courier Services	8	3	-	5
Lands and Rural Resettlement	11	6	-	5
Public Service Commission	4	4	-	-
Sport, Arts and Culture	5	5	-	
Macro-Economic Planning and Investment Promotion	2	2	-	-
Welfare Services for War Veterans, War Collaborators, Former Political Detainees and Restrictees	3	1	-	2
TOTAL	**151**	**72**	**19**	**60**

State of Service Delivery in Zimbabwe

State of Service Delivery in Zimbabwe

PFMA

- Object of the Act is to secure transparency, accountability and sound management of the revenues, expenditure, assets and liabilities of any entity specified in section 4(1)
- Act applies to ministries, designated corporate bodies and public entities, constitutional entities and statutory funds
- In the event of any inconsistency between the Act and any other enactment, the Act prevails

Objectives of the PFMA

- To provide for the control and management of public resources and the protection and recovery thereof;
- To provide for the appointment, powers and duties of the Accountant-General and staff;
- To provide for the national budget processes;
- To provide for the preparation and presentation of financial statements;
- To provide for the regulation and control of public entities;

Objectives of the PFMA

- To provide for the raising, administration and repayment of loans by the State and for the giving of guarantees in respect of certain loans;
- To provide for general treasury matters and the examination and audit of public accounts;
- To provide for matters pertaining to financial misconduct of public officials;
- To repeal the Audit and Exchequer Act [*Chapter22:03*] and the State Loans and Guarantees Act [*Chapter22:13*]; and to provide for matters connected with or incidental to the foregoing.

Why amend the PFMA Act?

- While the PFMA has certainly provided legal safeguards for the management of public finances, there is still significant room for improvement. The coming into force of the new Constitution in 2013 means the Public Finance Management Act, like many other statutes in Zimbabwe, need to be aligned with the supreme law. The Parliament of Zimbabwe has for the past few years been implementing a reform programme aimed at strengthening parliamentary budget oversight, among others issues. There are several new practices that Parliament has adopted in its parliamentary budget oversight work. Some of these innovative practices need to be legislated for if we are to institutionalise them

Proposed Amendments

- Section 3 states the object of the Act as that of securing "transparency, accountability and sound management of the revenues, expenditure, assets and liabilities of any entity specified in section 4 (1)". Section 298 of the Constitution is more comprehensive and outlines the principles of public financial management
- ***It is proposed that the object of the Act becomes more detailed by including other principles of sound public financial management as outlined in section 298 of the Constitution. The object as it stands has two principles: transparency and accountability. There is need to include other important principles such as prudency, equity, economic use of resources, effectiveness and pro-marginalised groups and areas***

Proposed Amendments

- Section 6 of the PFMA grants Treasury the powers to manage and control public resources. Section 80 of the Act confers on the Public Service Commission the power to appoint internal auditors to assist Treasury to perform functions under Section 6. The role of the Internal Auditor is to strengthen the system of internal and accounting control. The Internal Auditor has therefore a dual reporting role to the Accounting Officer and Treasury
- ***Corporate Governance can be improved by cutting the reporting to the Accounting Officer. An amendment of Section 80 is therefore proposed***

Proposed Amendments

- Section 7 of the PFMA outlines the duties and powers of the Minister in the control and management of public resources. In the same section there is reference to the duties and powers of the National Assembly. We propose that the duties and powers of the National Assembly are provided for in a separate section. Section 299 of the Constitution which speaks about the parliamentary oversight of State revenues and expenditure must be replicated in the PFMA as a section which provides for the duties and powers of Parliament
- Section 7 (3) goes on to state that "for the purpose of effectively supervising the public resources of Zimbabwe, the Minister shall, subject to this Act and any other enactment, be responsible for the management of the Consolidated Revenue Fund and the supervision, control, direction of all matters relating to the public resources of Zimbabwe"
- ***This provision can be interpreted to mean the Minister alone is responsible for the management of the Consolidated Revenue Fund (CRF). There is no reference to Parliament when section 299 of the Constitution explicitly confers power to oversee State revenues and expenditure to the legislative branch. It is proposed that this provision be amended to allow the Minister to be responsible for the management of the CRF in consultation with Parliament.***

Proposed Amendments

- Section 11 (2) of the PFMA provides for the Minister to bring a Bill to Parliament to condone writing off any public resources advanced to funds or other entities if Treasury is of the opinion that the money is irrecoverable
- ***This is tantamount to seeking parliamentary approval after the action has already been taken. This provision should be amended to allow parliamentary approval before the debts are written off***

Proposed Amendments

- Section 14 of the PFMA provides for the accounting officer to comply with a directive issued by his/her minister to commit certain payments that in the opinion of the accounting officer are not allowable. The accounting officer will comply but immediately submit a written report thereon to the Minister, the Accountant General, the Auditor General and the Secretary to Cabinet. This is a bad provision because the accounting officer has the primary responsibility for the management and disbursement of public resources allocated to the ministry. The accounting officer should never be forced to comply with orders that are not allowable. The Accountant General should approve such directives first before any payments are made. This is because section 9 (4) {b} empowers the Accountant General to refuse payment on any voucher in support of a charge on the CRF which is not allowable.

Proposed amendments

- Section 18 of the PFMA provides for the establishment of other public funds. Of note is section 18 (8) which states that the “Minister may, on such terms and conditions as he or she may fix, make loans or advances for a period not exceeding three hundred and sixty days to any statutory fund or fund referred to in this section to enable the functions that should be carried out by means of the use of the money in that fund to be carried out”. The problem with this provision is that it confers too much power on the Minister. The provision is not consistent with the constitutional powers that have been granted Parliament to oversee State revenues and expenditure. The Minister cannot have absolute power to fix terms and conditions for the loans when the Constitution requires an Act of Parliament to set limits on borrowings by the State; the public debt; and debts and obligations whose payment or repayment is guaranteed by the State; and that those limits must not be exceeded without the authority of the National Assembly
- ***It is proposed that the Minister fix terms and conditions for advancing to statutory funds in line with provisions of the Constitution and after approval by Parliament***

Proposed Amendments

- Section 15 of the PFMA says if a minister fails to lay the annual reports, financial statements and financial misconduct reports of the entities that he/she presides over, the Speaker shall require the minister concerned to give a written explanation to the National Assembly setting out the reasons why reports were not tabled within the specified time period. It goes on to say the Auditor General may issue a special report on the delay. It is our considered view that these sanctions are not deterrent enough. The Minister must defend his written explanation before an appropriate portfolio committee which will make recommendations on the matter to the whole house

Proposed Amendments

- Section 32 speaks about directors of finance in ministries preparing annual financial statements and submitting such statements to the secretary of the ministry and the Accountant General within 30 days of the year concerned. The Auditor General or any independent auditor shall audit the financial statements and return the audited statements to the accounting officer within 60 days of receipt thereof. An annual report should also accompany the financial statements, and must contain a report on the activities, outputs and outcomes of the ministry and fairly represent the state of affairs of the ministry, reporting unit, constitutional entity or public entity for which the ministry is responsible

Proposed Amendments

- ***While this provision is good, most ministries and government entities have not complied with it, thereby making the work of the Auditor General very difficult. There are no sanctions for failure to comply. There is therefore need for provisions that spell out the penalties if we are to move to a stage where financial reporting complies with the principles of sound public financial management highlighted in earlier sections of this analysis. In addition, the PFMA must be explicit that financial reports adhere to the International Public Sector Accounting Standards (IPSAS) reporting framework. At the moment, they do not fully comply. Budget structure should also take the format set out by International Public Sector Accounting Standard number 24, for ease of integration with periodical reporting.***

Proposed Amendments

- Sections 33 to 38 is mainly about financial reporting and submission of the reports to portfolio committees of Parliament and the time frames for such submission. Again, the rate of compliance is very low. Furthermore, the requirement that both monthly and financial reports are submitted to portfolio committees might not be necessary as this inundates portfolio committees with too much information that they don’t have the capacity to make use of.
- ***It is our considered proposal that only quarterly financial and other reports and annual reports be submitted to portfolio committees. However, the Act can still provide for the submission of monthly reports upon request by the committees.***

Proposed Amendments

- ***A provision in the PFMA is also proposed which compels ministries to submit budget performance reports to portfolio committees that are in line with the Quarterly Budget Budget Performance Reporting Guidelines and the concept of results based budgeting that government has adopted. This will comply with section 83 which requires annual reports and audited financial statements "to contain a report on the activities, outputs and outcomes of the ministry". Provisions on quarterly reports are however not specific on performance/results based reporting.***

Proposed Amendments

- Section 28 of the PFMA requires the national budget to be laid before the National Assembly “not earlier than 30 days before or not later than 30 days after the start of the forthcoming financial year”. This provision should be aligned with section 305 (2) which requires the estimates of revenue and expenditure to be presented to the National Assembly on a day on which the National Assembly sits before or not later than 30 days after the start of each financial year. This constitutional provision allows the budget to be tabled much earlier before the start of the forthcoming financial year, thereby allowing Parliament enough time to scrutinise, debate and pass the budget. The PFMA must also include provision for separate estimates of expenditure for each commission established by the Constitution, the office of the Auditor General, the National Prosecuting Authority, the Council of Chiefs and any other institution prescribed in an Act of Parliament. This is a constitutional requirement.

Proposed Amendments

- Part 5 of the PFMA is about public entities. Section 41 states the accounting authority of a public entity as the board, and where there is no board the chief executive officer. Section 41 (3) empowers Treasury, “in exceptional circumstances” to approve or appoint a person other than the board or chief executive officer, as the accounting authority of a public entity. It is our considered submission that granting Treasury such powers can lead to unwarranted interference by the Executive in the operations of public entities. Such powers can be open to abuse. The Act must not give room for a public entity to operate without a board and chief executive

Proposed Amendments

- In his recent amendments to the PFMA, the Minister of Finance tried to address the non-implementation of recommendations from the Auditor General by making it a legal requirement for the recommendations to be complied with within time frames agreed with the Auditor General. However, many analysts expressed displeasure at the proviso which gives latitude to the public entity not to comply with the recommendations "upon good cause" shown to the Treasury.
- ***This is not a good provision as it is tantamount to Treasury overriding the decisions of the Auditor General. There is a danger of such a provision being abused to achieve certain objectives not necessarily in the interests of prudent public financial management. Every public entity and ministry must fully comply with the recommendations of the Auditor General, and not be allowed to seek dispensation elsewhere.***

Proposed Amendments

- Part 4 of the Constitution is about safeguarding of public funds and assets. Section 308 stipulates that it is the duty of every person who is responsible for the expenditure of public funds to safeguard the funds and ensure that they are spent only on legally authorised purposes and in legally authorised amounts. It is also the duty of every person who has custody or control of public property to safeguard the property and ensure that it is not lost, destroyed, damaged, misapplied or misused. An Act of Parliament must provide for the speedy detection of breaches of provisions to safeguard public funds and assets and the disciplining and punishment of persons responsible for any such breaches.
- ***The Public Finance Management Act must therefore be fully aligned with Section 308. Monetary penalties outlined in the current Act must be revisited to make them deterrent enough. Level 10 fine is only $700 which is not deterrent enough. Related to the issue of penalties for poor management of public funds and assets, section 88 is not conclusive, as it states that the Minister <u>may</u> make regulations prescribing a number of things. So long the regulations are not set out there may be a problem in handling disciplinary proceedings.***

Proposed Amendments

- Reaffirmation of both national and sectoral key result areas and goals (May)
- Mid Term Fiscal Policy Statement (June/July)
- Production of Budget Strategy Paper for consideration by Cabinet (August/September)
- Issuance of an expenditure target/indicative budget through Budget Call Circular to guide ministries in formulating their expenditure proposals (August/September)
- Strategic Planning Process by ministries (August/September)
- Performance agreements between ministry of finance and line ministries (August/September)
- Submission of Budget Proposals for Treasury consideration (September/October)
- Pre-Budget Seminar with MPs (October/November)
- Budget Presentation to Parliament (November/December)
- Budget Analysis by Parliament, Debate and Approval (December/January)

Proposed Amendments

- In Kenya, there are set dates for such stages as release of National Treasury Circular, approval of the Budget Policy Statement by Parliament and tabling of development plans in county assemblies. The Public Finance Management Act creates opportunities for the public to participate at the national level and at the county level. The Act mentions very specific dates that are important to remember. The first important date is February 15. This is when the government must release what is known as the Budget Policy Statement to Parliament

Proposed Amendments

- The law says very clearly that the government shall seek and take into account the views of the public in drafting the BPS. So this means that even before February, the government should create some opportunities for ordinary citizens to give their views on what government priorities should be. The budget year starts on July 1, so this statement is due 4½ months before the new budget year begins. The statement comes to Parliament on February 15, but it must be made available to citizens by the end of February. Parliament is supposed to debate and approve the BPS by the end of February

Proposed Amendments

- The Public Finance Management Act also says that every year by August 30, the Cabinet Secretary for Finance shall issue a circular to all national government bodies that lays out in more detail how the public can participate in the budget-making process. This may contain additional opportunities and specific dates on which public input will be sought. In addition, the Act says that regulations may be drafted to provide more detail on the manner of public participation under the Act. For example, regulations may specify the procedures for the public to be notified and to comment on financial matters, and regulations may provide for special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups

Proposed Amendments

The PFM Act lays out a set of “fiscal responsibility principles” that should be observed. These include:

- When we look at spending over a three to five-year period, at least 30 percent of the budget should go for development (or capital) expenditure
- Some limit should be put on the share of spending that goes for wages and benefits for public officers (but the exact limit is to be set in separate regulations)
- Again over a three to five-year period, government borrowing should only be used for development or capital expenditure
- Public debt should be maintained at a sustainable level (Parliament must set the exact level that it considers sustainable)
- Tax rates should be reasonably stable and predictable

So how about our own PFMA setting expenditure limits for employment costs and capital programs?

Proposed Amendments

- In South Africa the Medium Term Budget Policy Statement is provided for in section 6 of the Money Bills Amendment Procedure and Related Matters Act, 2009. It is submitted to Parliament at least three months prior to the introduction of the national budget
- This is in line with the OECD's best practices guidelines for fiscal transparency which recommends that the pre-budget statement should be released no later than one month prior to the budget proposal
- The statement is referred to the committees of finance and appropriations in the National Assembly and National Council of Provinces who are required by the Act to consider the statement and report to their respective houses within 30 days. The committees have power to propose amendments to the fiscal framework

Proposed Amendments

- The Money Bills Amendment Procedure and Related Matters Act (No. 9 of 2009) provides the procedure for Parliament to amend money Bills. The Act establishes and makes the Finance and Appropriations Committees central to the consideration of the annual national budget by Parliament. It also requires these two committees to interact with portfolio and select committees in the process of recommending amendments to the fiscal framework, Division of Revenue Bill, Appropriation Bill, Taxation / Revenue Bills, and adjustments budget. The Act requires Portfolio Committees to use reports of the Standing Committee on Public Accounts (SCOPA) – in addition to oversight reports (Budget Review and Recommendations Reports), and reports on the Medium Term Budget Policy Statement(MTBPS) by Portfolio Committees – as the basis for the consideration of the fiscal framework and the Division of Revenue Bill

Proposed Amendments

- The Act requires committees of the Assembly to submit annual Budgetary Review and Recommendation Reports (BRRR), after the adoption of the Appropriation Bill and prior to the adoption of the reports on the MTBPS [Section 5(4)]. The Minister of Finance and the relevant member of Cabinet are informed of the assessment.
- The BRRR provides an assessment of a department's service delivery performance, given available resources; assesses the effectiveness and efficiency of the department's use and forward allocation of available resources; and allows an opportunity for the Assembly to make recommendations on the forward use of resources

Proposed Amendments

- **Good practices from elsewhere are that gender budgeting has to be legislated for if it is to take root or embedded in the operations of all government entities. The PFMA must therefore be amended to include provisions that make it mandatory for ministries and government departments/agencies to budget from a gender perspective. Section 13 of the Constitution provides adequate justification for gender budgeting to be legislated for. The provision binds the State and all institutions and agencies of government at every level to facilitate rapid and equitable development, and that measures to achieve this "must involve the people in the formulation and implementation of development plans and programmes that affect them'. The same section goes on to say that measures to achieve rapid and equitable development "must protect and enhance the right of the people, particularly women, to equal opportunities in development". This is a very good example of the Constitution promoting participatory and gender budgeting.**

Other provisions – Legislate for PBO

Barry Anderson (2008) argues that establishing a non-partisan analytic unit that provides independent, objective budgetary information to the legislature is not easy. Certain fundamental characteristics have to be present if the unit is to be successful. They are as follows:

- Independence (in terms of providing independent analysis and setting its own work agenda)
- Non-partisanship
- Making the outputs of the unit, and the method by which those outputs are prepared transparent (especially reports that are critical of proposed policies) and understandable;
- Placing the core functions of the Unit in law so that they cannot be easily changed to suit political purposes, avoiding recommendations;

Other Provisions – Legislate for PBO

- Briefing relevant members of the legislature immediately before a report is issued, especially if the report contains negative information with regards to a proposal;
- Principally serving committees rather than individual members;
- Willing to meet with lobbyists or other proponents – as well as opponents – of policy proposals, keeping in mind that a fair and balanced process is always important;
- Fully fledged office manned by highly qualified and experienced economists, public finance specialists, accountants, lawyers
- Adequately funded

It is ***therefore strongly recommended that the PFMA include provisions for the establishment of the PBO. The Act should clearly spell out the functions and powers of the Office.***

Other Provisions – Legislate for PBO

- In South Africa, the PBO is provided for in the Money Bills Amendment Procedure and Related Matters Act, 2009
- In Uganda, the Budget Act of 2001 established the Parliament Budget Committee with a mandate to scrutinise the National Budget, and the Parliamentary Budget Office (PBO) to support analysis of the budget and related economic developments