



Alignment of Legislation Impacting Public Finance Management (PFM) in Zimbabwe

1. EXECUTIVE SUMMARY

This policy brief proposes a set of recommendations on the alignment of the legislation impacting Public Finance Management in Zimbabwe. Andrews et al. (2014) define public finance management as the way governments manage public resources (both revenue and expenditure) and the immediate and medium to long term impact of such resources on the economy or society. According to the Public Expenditure and Financial Accountability (PEFA) Secretariat, public finance management ensures that revenue is collected efficiently and used appropriately and sustainably. Thus, over the years, the concept of public finance management has evolved from primarily focusing on financial compliance and control to maintaining a sustainable fiscal position, effective allocation of resources and the efficient provision of public goods and services. Cangiano et al. (2013) posit that this concept has broadened to include all aspects of managing public resources, resource mobilization and debt management, with a progressive extension to the medium to long term implications and risks for public finances of today's policy decisions. A strong public financial management system is therefore essential for effective and sustainable economic management and public service delivery.¹ Poor public financial management systems represent a major constraint on their ability to turn high-level policy ambitions into real-life outcomes.²

To this end, effective public financial management systems should entail strategies that promote the prudent management of resources as well as

expenditures. Enacting public finance management legislation is one such key strategy. Zimbabwe has a fairly encompassing legal, regulatory and institutional public finance management framework. The adoption of the Constitution of Zimbabwe Amendment (No. 20) Act in 2013 created an enabling foundation upon which a strong public finance management system should be premised.³ However, six years after its adoption, legislation impacting on public finance management, primarily the Public Finance Management Act [Chapter 22:19] which is the principal Act regulating public finance management in Zimbabwe has not been aligned to the Constitution. More so, it is also not cross referenced with other legislation that have direct and indirect implications on sustainable fiscal policies and public finance management such as the Public Procurement and Disposal of Public Assets Act [Chapter 22:23], the Public Debt Management Act [Chapter 22:21], Statutory Instrument 135 of 2019 (Public Finance Management (General) Regulations) and Statutory Instrument 144 of 2019 [Public Finance Management (Treasury Instructions), 2019].

This non-alignment has contributed to a series of fiscal leakages as evidenced by the annual reports published by the Auditor General and limited effective oversight by the Parliament and citizens alike in key spheres of public finance management such as public procurement and public debt management. The Auditor General's reports have been consistent in exposing issues of bad corporate governance practices, corruption and fruitless and wasteful expenditures, especially in public procurement

¹ <https://www.oecd.org/dac/effectiveness/pfm.htm>

² <https://www.odi.org/public-finance-management>

³ Section 298 of the Constitution outlines the principles of public financial management.1.

among other things. For example, the 2018 Auditor General's Report on State Enterprises and Parastatals⁴ exposed how parastatals such as the Zimbabwe Electricity Transmission and Distribution Company (ZETDC), a subsidiary of the Zimbabwe Electricity Supply Authority (ZESA) Holdings made an advance payment of USD 4 962 722 to Pito Investments in 2010 for transformers and to date these haven't been delivered. The same report also reveals how the Grain Marketing Board (GMB) in 2016 also made an advance payment of USD 1 014 163 for 2 476 metric tonnes of maize to an undisclosed supplier and to date this maize has not been delivered. Other than the non-delivery of goods procured, public finances have also leaked through blatant corruption where state tenders are awarded to non-deserving suppliers with political connections. The National Social Security Authority (NSSA) Forensic Audit Report for instance revealed how NSSA awarded a contract worth US\$304 million to Housing Corporation Zimbabwe (HCZ) for the construction of 8,000 houses at a cost of US\$38,000 each. This contract was awarded despite the company having been in existence for only 1 week and as of 2018 when the Forensic Audit Report was compiled the company had not delivered a single housing unit. Undoubtedly, the victims of this hemorrhage in the public purse are the poor ordinary citizens who are dependent on key public services such as housing and their pension funds.

The lack of alignment between the supreme law of the land (the Constitution) and the public finance management legislation has also resulted in the lack of proper frameworks allowing for Parliamentary oversight in public borrowing and limited citizen participation in budgetary processes. Thus, creating avenues for the State to contract loans in violation of constitutional provisions and the Public Debt Management Act.⁵ Zimbabwe is currently sitting on a huge public debt due to unregulated and excessive borrowing. The 2019 Mid-Year Budget Review and Supplementary Budget revealed that Zimbabwe's total debt stock is estimated at ZWL\$66.8 billion (about US\$9.5 billion) as at end June 2019.⁶ Public debt in Zimbabwe has been increasing over the years through increased borrowing and accumulation of debts from

initiatives such as the RBZ Mechanization Programme for instance. This high unsustainable debt continues to undermine the capacity of the State to create the necessary conditions for the realization and fulfilment of social and economic rights as stipulated in the Constitution, thus undermining the citizen's right to development.

This policy brief therefore aims to assess the conformity of legislation impacting public finance management in Zimbabwe to the guiding principles of public financial management as provided for in the Constitution. It also aims to identify gaps between the Public Finance Management Act and other legislation that have a direct or indirect impact on public financial management in Zimbabwe. The policy brief will conclude by providing policy recommendations on the alignment of the legislation impacting public finance management in Zimbabwe.

GAPS IN THE LEGISLATION IMPACTING PUBLIC FINANCE MANAGEMENT AND PROVISIONS REQUIRING ALIGNMENT TO THE CONSTITUTION

2.1 Preamble

Public finance management systems are premised on the notion that the effective management of public resources, money or property is the basis for sustainable national social and economic development. Accordingly, section 298(1)(b) of the Constitution states that the public finance system must be directed towards national development and as such, the burden of taxation must be shared fairly, revenue raised nationally must be shared equitably between the central government and provincial and local tiers of government and expenditure must be directed towards the development of Zimbabwe, and special provision must be made for marginalized groups and areas. The Preamble of the Public Finance Management Act (herein after referred to as the PFM Act), does not cater for the constitutional provisions stated above. It states that the purpose of the Act is to provide for the control and management of public resources and the protection and recovery thereof; to

⁴ <https://www.auditorgeneral.gov.zw/downloads/category/2-parastatals>

⁵ Section 300 of the Constitution sets limits of State borrowings, public debt and State guarantees. It also requires the Minister of Finance to report to Parliament at least twice a year on the performance of loans raised by the State and loans guaranteed by the State.

⁶ <https://www.theindependent.co.zw/2019/08/02/minister-confirms-new-grand-fiscal-heist/>. This public debt figure of ZWL\$66.8 billion is disputed because the domestic debt of ZWL 8.8 billion was computed using the convention the rate of 1:1 which could be misleading. Some estimates put public debt in Zimbabwe within the range of +/-USD 20 billion.

provide for the appointment, powers and duties of the Accountant-General and of his or her staff; to provide for the national budget; to provide for the preparation of financial statements; to provide for the regulation and control of public entities; to provide for general treasury matters; to provide for 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 [Chapter 22:03] and the State Loans and Guarantees Act [Chapter 22:13]; and to provide for matters connected with or incidental to the foregoing. It is therefore recommended that the Preamble be amended to include provisions relating to the regulation of financial management in the national government and provincial governments and ensuring that all revenue, expenditure, assets and liabilities of the national and provincial governments are managed efficiently and effectively towards the development of the nation. This will ensure that the spirit of the Constitution is embodied in the PFM Act.

2.2 Principles that must guide public financial management

The Constitution is the supreme law of the land and it sets out principles that must guide all aspects of public finance management in Zimbabwe. Specifically, section 298(1) of the Constitution sets out six principles with regard to prudent public financial management as follows:

- a) *There must be transparency and accountability in financial matters;*
- b) *The public finance system must be directed towards national development, and in particular-*
 - i. *the burden of taxation must be shared fairly;*
 - ii. *revenue raised nationally must be shared equitably between the central government and provincial and local tiers of government;*
 - iii. *expenditure must be directed towards the development of Zimbabwe, and special provision must be made for marginalised groups and areas;*
- c) *The burdens and benefits of the use of resources must*

be shared equitably between present and future generations;

d) Public funds must be expended transparently, prudently, economically and effectively;

e) Financial management must be responsible, and fiscal reporting must be clear; and

f) Public borrowing and all transactions involving the national debt must be carried out transparently and in the best interests of Zimbabwe.

However, these principles are not captured in the PFM Act. Section 3 of the PFM Act states that the 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) of the PFM Act. Thus, the Act is silent on all the other principles of public financial management as stated in section 298(1) of the Constitution. To this extent section 3 of PFM Act must be aligned to the Constitution to incorporate the principles of public finance management.

2.3 Scope of application of the PFM Act

In striving to achieve national development, the Constitution makes provision for shifting the management of resources from the national to provincial and local tiers of government.⁷ Section 298(1)(b)(ii) of the Constitution also requires that revenue raised nationally be shared equitably between the central government and provisional and local tiers of government. The Constitution further stipulates in section 299(1) that the Parliament of Zimbabwe (PoZ) has the mandate to monitor and oversee expenditure by the State and all Commissions and institutions and agencies of the government at every level, including statutory bodies, government-controlled entities, provincial and metropolitan councils and local authorities to ensure that all revenue is accounted for, all expenditure has been properly incurred and any limits or conditions on appropriations have been observed. In essence, section 299(1) of the Constitution recognizes that giving provincial and local tiers of government powers to manage their own resources and revenue, requires Parliamentary

⁷ Chapter 14 of the Constitution

oversight. However, in its current form, the PFM Act stipulates that the Act is only applicable to Ministries; designated corporate bodies and public entities; constitutional entities; and statutory funds; and the Office of the President and Cabinet.⁸ It does not make provision for **provincial and metropolitan councils and local authorities**. Hence, it is not consistent with the Constitution and must be amended to extend its scope to include provincial and metropolitan councils and local authorities.

2.4 Parliamentary Oversight in Public Finance Management

Parliament plays a crucial legislative and oversight role in public finance management. Mills et al (2016) argue that legislative oversight in public finance management is a function which has the potential to improve both the allocation of resources and transparency and accountability in the use of those resources, and hence to strengthen democracy. Section 299(1) of the Constitution empowers the Parliament of Zimbabwe (PoZ) to monitor and oversee expenditure by the State and all Commissions and institutions and agencies of government at every level, including statutory bodies, government-controlled entities, provincial and metropolitan councils and local authorities. Such oversight aims at ensuring that all revenue is accounted for; all expenditure has been properly incurred; and any limits and conditions on appropriations have been observed. Thus, the role of Parliament in this regard, is to monitor and curb the misuse of public funds and corruption.

It is noteworthy that the PFM Act recognizes the role of Parliament in public finance management. Section 28(5) of the PFM Act provides that the Minister responsible for Finance may through the appropriate portfolio committee of Parliament, seek the views of Parliament in the preparation and formulation of the annual budget. For this purpose, the PFM Act empowers the appropriate portfolio committee to conduct public hearings to elicit the opinions of as many stakeholders in the national budget as possible. However, the PFM Act has no provisions for setting up institutional and administrative frameworks that are

used by the PoZ in the monitoring and oversight of state revenue and expenditure and is to this extent not aligned to the Constitution and is not consistent with practice.

In practice, the PoZ exercises its oversight function through various Parliamentary Portfolio Committees in line with section 139 of the Constitution, which states that the proceedings of the Senate and National Assembly are regulated by Standing Orders. These Standing Orders may provide for *inter-alia*, the appointment and functions of committees and the delegation of functions to them.⁹ As a result, one of the committees established by the PoZ to play an oversight role over public expenditure is the Public Accounts Committee (herein after referred to as PAC). The committee is constituted in terms of the Standing Order No.16 of the Standing Rules and Orders of the National Assembly which reads: *there must a Committee on Public Accounts, 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*. Thus, the PAC occupies a unique position and enjoys a special mandate of pre and post audit functions. The Committee makes thorough scrutiny over substantive, procedural and legal processes relating to public expenditure in Zimbabwe. Yet, the PFM Act does not have any explicit provisions that establish institutional and administrative frameworks that are used by PoZ in monitoring and oversight of State Revenues and Expenditure such as the PAC. Thus, the inconsistency between practice and the PFM Act.

2.5 Limits of State borrowings, public debt and State guarantees

Public debt management is a key component of good public financial management. Section 298(1)(f) of the Constitution underscores this by stating that public borrowing and all transactions involving the national debt must be carried out transparently and in the best interests of Zimbabwe.

Section 300 of the Constitution deals with the limits of State borrowings, public debt and State guarantees. It states *inter-alia* that an Act of Parliament must set

⁸ Section 4 of the PFM Act.

⁹ Section 139(2)(b) of the Constitution

limits on borrowings by the State, the public debt, debts and obligations whose payment or repayments is guaranteed by the State and those limits must not be exceeded without the authority of the National Assembly.¹⁰ Accordingly, the principal Act with regards to public debt management in Zimbabwe is the Public Debt Management Act. However, the PFM Act is not cross referenced with the Public Debt Management Act despite public debt management being a key component of an efficient and effective public financial management system.

2.6 Allocation of revenues between provincial and local tiers of government

In line with the principle of equitable and geographical distribution of resources, the Constitution provides for devolution.¹¹ Section 264(2)(e) of the Constitution states that one of the objectives of devolution of governmental powers and responsibilities to the provincial and metropolitan councils and local authorities is to ensure the equitable sharing of local and national resources. In this regard, section 301(1) of the Constitution stipulates that an Act of Parliament must provide for the equitable allocation of capital grants between provincial and metropolitan councils and local authorities; any other allocations to provinces and local authorities, and provision of any conditions on which those allocations may be made. The Act of Parliament that must provide for this, is the PFM Act. However, the current PFM Act does not have any provision dealing with this.

Additionally, section 301(3) of the Constitution stipulates that **not less than five percent of the national revenue** raised in any financial year must be allocated to provincial and local tiers of government as their share in that year. Again, the PFM Act has no similar provision and is thus not consistent with the constitution. Therefore, there is a gap in the PFM Act and a new section must be inserted to make provision for the allocation of revenue to the provincial and local tiers of the government including the process and formula of sharing not less than five percent of the

national revenue raised in any financial year with the provincial and local tiers of government in line with section 301 of the Constitution.

2.7 Duties and Powers of Minister

It is also important to note that despite section 6 of the Statutory Instrument 135 of 2019 (Public Finance Management (General) Regulations, 2019) extending the duties of the Minister of Finance as laid down in section 7(1)(b) of the PFM Act, it is still not consistent with the Constitution. It limits the role of the Minister to advising the Government on the allocation of public resources as between Ministries, reporting units, public entities, constitutional entities and any programs of Government. There is no provision allowing the Minister to advise the Government on the equitable and geographical distribution of resources between provincial and local tiers of government. In this regard, section 7 of the PFM Act must be aligned to the constitution to make provision for the Minister of Finance to advise the Government on the equitable and geographical distribution of resources between provincial and local tiers of government. Further, the Constitution is founded on the principles of gender balance and gender equality, thus the Minister's duties must also be extended to incorporate advising the Government on gender responsive budgeting. Notably, section 23(3) of the Statutory Instrument 144 of 2019 (Public Finance Management (Treasury Instructions), 2019) makes provision of this aspect. Thus, the PFM Act must also be cross referenced with this Statutory Instrument.

1.8 Consolidated Revenue Fund

Section 302 of the Constitution makes provision for the Consolidated Revenue Fund (herein after referred to as the CRF). It states that there shall be a CRF into which all fees, taxes and borrowings and all other revenue of the Government regardless of their source shall be paid into. The only exception being where an Act of Parliament requires or allows such funds to be paid into some other fund established for a specific purpose or permits the authority that received the funds to retain them or a portion of the funds in order

¹⁰ Section 300(1) of the Constitution.

¹¹ Chapter 14 of the Constitution.

to meet the authority's expenses.¹² It is noteworthy that the sections of the PFM Act with regards to the CRF are in alignment with the Constitution. Notably, section 16 of the PFM Act states that revenues, with the exception of the provision of Section 18(g) shall be paid into the CRF. This is in line with section 302 of the Constitution. Section 15 of the Public Debt Management Act also refers to the CRF. It provides that the proceeds of all State loans shall be brought to account in the CRF or, if the Minister so directs, in the National Development Fund established as a fund in terms of section 18 of the PFM Act. In this regard, there is need to cross reference section 16 of the PFM Act with section 15 of the Public Debt Management Act.

1.9 Charges upon Consolidated Revenue Fund

Section 304(1) of the Constitution stipulates that all debt charges for which the State is liable must be charged upon the CRF. There is no similar provision in the PFM Act. It is however provided for in the Public Debt Management Act. Section 31 of the Public Debt Management Act provides that the repayment of money borrowed by the Minister in terms of Part III of the Act; the interest payable on money so borrowed; and any cost associated with such borrowing and approved by the Treasury shall be direct charges against the CRF. Although the Public Debt Management Act is the suitable Act to regulate this issue it is prudent for the PFM Act to be cross referenced with the Public Debt Management Act in this regard.

1.10 Appropriations from Consolidated Revenue Fund

Section 305 of the Constitution makes provision for the Minister of Finance to present to the National Assembly a statement of the estimated revenues and expenditure of the Government in the next financial year;¹³ the time frames within which such presentations must be made;¹⁴ the requirement that grant aided institutions defined in section 305(3) of the Constitution make separate estimates of revenue and expenditure,¹⁵ the Appropriation Bill¹⁶ and additional or

supplementary estimates.¹⁷ It should be noted that the provisions laid down in section 28 of the PFM Act are partly consistent with section 305 of the Constitution. Section 305(1) places an obligation upon the Minister of Finance to present to the National Assembly a statement of the estimated revenues and expenditure of the Government in the next financial year. Such estimates of revenue and expenditure must be presented to the National Assembly on a day on which the National Assembly sits before or not later than thirty days after the start of each financial year. However, if Parliament is dissolved and it is impossible to present the estimates before the National Assembly dissolves, then the Minister of Finance must lay the estimates before the National Assembly within thirty days after the Assembly first meets following the dissolution.¹⁸ The provisions contained in sections 28(1) and 28(2) of the PFM Act relating to submission to Parliament of annual estimates of revenue and expenditure, including the time frames within which the presentations must be done is consistent with the provisions of the constitution. Section 28(3) of the PFM Act makes provision for the Appropriation Bill in line with section 305(4) of the Constitution and section 28(4) of the PFM Act makes provision for additional or supplementary estimates in line with section 305(5) of the Constitution.

However, the inconsistency between the PFM Act and the Constitution with regards to the appropriations from the CRF emanates from the fact that while section 305(3) of the Constitution requires grant aided institutions such as the Commissions 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 to **give separate estimates of revenue and expenditure**, the PFM Act is silent in this regard. Further, section 325(2) of the Constitution states that Commissions and other institutions established by the Constitution must be afforded reasonable opportunity to make representations to a parliamentary portfolio committee pertaining to the funds to be allocated to them in each financial year. Again, there is a lacuna between the constitution and the PFM Act in this regard.

¹² Section 302(a-b) of the Constitution.

¹³ Section 305(1) of the Constitution.

¹⁴ Section 305(2) of the Constitution.

¹⁵ Section 305(3) of the Constitution.

¹⁶ Section 305(4) of the Constitution.

¹⁷ Section 305(5) of the Constitution.

¹⁸ Section 305(2) of the Constitution.

It is therefore recommended that new sections be inserted in the PFM Act under Part III to make provision for:

- the submission of separate estimates of revenue and expenditure for grant aided institutions outlined in section 305(3) of the Constitution and
- affording Commissions and other institutions established by the Constitution reasonable opportunity to make their submissions to a parliamentary committee as to the funds allocated to them in each financial year.

1.11 *Authorisation of expenditure in advance of appropriation*

Section 306(1) of the Constitution makes provision for the President, in line with an Act of Parliament, to authorise the withdrawal of money from the CRF to meet expenditure which was unforeseen or whose extent was unforeseen and for which no provision has been made under any other law. However, the Constitution stipulates that the Act allowing the President to make such withdrawals must not allow the withdrawal of money in excess of one and one-half percent of the total amount appropriated in the last main Appropriation Act¹⁹ and any money withdrawn under the Act must be included in additional or supplementary estimates of expenditure laid without delay before the National Assembly, and if the Assembly approves the estimates, the money must be charged upon the CRF by an additional or supplementary Appropriation Act.²⁰ The PFM Act is partially consistent with the Constitution in as far as the authorisation of expenditure in advance of appropriation (section 24(1) of the PFM Act) and the limit of the amount of money that can be withdrawn (section 24(2) of the PFM Act).

However, the PFM Act is inconsistent with the Constitution with regards to the time frame within which such excess expenditure must be presented to the National Assembly. Whilst the Constitution

stipulates that such money withdrawn must be included in additional or supplementary estimates of expenditure laid **without delay** before the National²¹ Assembly the PFM Act states that an issue so authorised shall be submitted for appropriation by Act of Parliament **on one of the 14 days on which the National Assembly sits next after such issue has been authorised.**²² This is inconsistent with the Constitution. Section 24(3) of the PFM Act must be aligned to the Constitution accordingly.

In terms of section 306(2) if an Appropriation Act for a financial year has not come into operation by the beginning of that financial year, an Act of Parliament may allow the President to authorise the withdrawal of money from the CRF to meet the expenditure necessary to carry on the services of the Government for the **first four months of the financial year.** However, such an Act must not allow the withdrawal of money in excess of one-third of the amounts included in the estimates of expenditure for the previous financial year and any money withdrawn under the Act must be included in an Appropriation Act for the financial year concerned, under separate votes for the different heads of expenditure.²³ A similar provision is contained in section 26 of the PFM Act.

However, the PFM Act is partially inconsistent with the constitutional provision as it relates to the time frame within which the Presidential warrant for expenditure prior to the promulgation of the Appropriation Act is in force. Whilst the Constitution stipulates that the Presidential warrant for expenditure prior to the promulgation of the Appropriation Act is to meet expenditure necessary to carry out the services of the Government for the first four months of the financial year,²⁴ the PFM Act states that the warrant is **for the period commencing with the beginning of that financial year and expiring 4 months thereafter or on the date of commencement of the main Appropriation Act, whichever is the earlier.** Therefore, section 26(1) of the PFM Act must be aligned to the Constitution.

¹⁹ Section 306(1)(a) of the Constitution.

²⁰ Section 306(1)(b) of the Constitution.

²¹ Section 306 (1)(b) of the Constitution.

²² Section 24(3) of the PFM Act.

²³ Section 306(2)(a-b) of the Constitution.

²⁴ Section 306(2) of the Constitution.

1.12 Safeguarding of Public Funds and Property

Section 308(1) of the Constitution provides the definition of the terms “**public funds and public property**”. Public funds are defined to include any money owned or held by the State or any institution or agency of government, including provincial and local tiers of government, statutory bodies and government-controlled entities. Public property is defined as any property owned or held by the State or any institution or agency of government, including provincial and local tiers of government, statutory bodies and government-controlled entities. The PFM Act only provides for the definition of **public money and public resources**. Public money as defined in the PFM Act means revenues and all other money received and held, whether temporarily or otherwise, by an officer in his or her official capacity. Public resources are defined as public money and State property. In this regard, there is a lacuna between the PFM Act and the Constitution. However, it should be highlighted that Statutory Instrument 135 of 2019 does provide the definition for the terms public money and public property as stipulated in the Constitution. Therefore, the PFM Act must be to cross referenced with the Statutory Instrument.

1.13 Duties of custodians of public funds and property

The Constitution makes provision for the principle of stewardship in relation to public funds. According to section 308(2) of the Constitution, 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 authorized purposes and in legally authorized amounts. Similarly, section 308(3) also places a duty of care and control on everyone who has custody or control of public property. Such a person is required to safeguard the property and ensure that it is not lost, destroyed, damaged, misplaced or misused. Whilst the PFM Act provides a definition of public officer in section 2 and makes provision for the safeguarding of public assets in sections 44 and 45, there a gap between the

Constitution and the PFM Act. The gap emanates from the fact that the PFM Act is silent on the duties or obligations of the public officer with regards public funds or public property. No duty of stewardship and control of public property is placed on the public officer to ensure effective and efficient management of public resources. Further, the provisions of sections 44 and 45 of the PFM Act are only applicable to public entities as defined in section 2 of the PFM Act. There are no provisions relating to the safeguarding of assets in the provincial and local tiers of Government. Therefore, to this extent the provisions of the PFM Act are not consistent with the Constitution.

Section 308(4) of the Constitution requires that an Act of Parliament makes provision for the speedy detection of breaches relating to the misuse of public funds/ property, lose, damage and misplacement of public property. It also requires the Act of Parliament to provide for the disciplining and punishment of persons responsible for such breaches and, where appropriate the recovery of misappropriated funds or property. Although section 12 of the PFM Act makes provision for the detection and remedial action to be taken in the event of loss or destruction of or damage to state property, it is silent on the detection of and remedial action to be taken where there is misuse of public funds. To this extent the PFM Act is partially inconsistent with section 308(4) of the Constitution. It is recommended that a new section be inserted to provide for surcharges against persons responsible for the misuse of public funds.

2.14 Auditor General

Section 309 of the Constitution outlines the functions of the Auditor General. The involvement of the Auditor General in public finance management is crucial as it ensures a continuous process of monitoring of public resources. Section 390(2)(a) states that, one of the functions of the Auditor General is to audit the accounts, financial systems and financial management of **all departments, institutions and agencies of government, all provincial and metropolitan councils and all local authorities**. Whilst the provisions of section 81(1) of the PFM Act

outlines the function of the Auditor General, the provision is partially inconsistent with the Constitution with regards to the departments/institutions that should be audited. Section 81(1) of the PFM Act states that “*the Auditor-General shall audit or cause to be audited the financial statements of all accounting officers, receivers of revenue, statutory funds, designated or specified public entities and constitutional entities.*”. The PFM Act does not confer upon the Auditor General the duty to audit the accounts, financial systems and financial management of **provincial and metropolitan councils and all local authorities**. Therefore, there is need to align section 81(1) of the PFM Act to the section 309 (2)(a) of the Constitution to make provision of the auditing of all provincial and metropolitan councils and all local authorities.

In addition, there is need to extend the scope of the Auditor General's functions. Section 309(1)(c) of the Constitution stipulates that the Auditor General has the responsibility to order the taking of measures to rectify any defects in the management and safeguarding of public funds and public property and in terms of section 309(2) of the Constitution, public officers have a duty to comply with such orders given to them by the Auditor General. The PFM Act in section 82(3)(a) makes similar provisions. However, considering the critical oversight role the office of the Auditor General has, it is recommended that the PFM Act further empowers the office of the Auditor General by giving it legislative power to enforce recommendations. It is envisaged that giving the Auditor General such powers will curb fruitless and wasteful expenditure resulting in strong public finance management mechanisms.

1.14 Procurement

Good public procurement systems are central to the effective and efficient use and management of public resources. Thus, procurement is a core function of public financial management and service delivery. Section 315 of the Constitution provides for the enactment of an Act of Parliament that must prescribe

procedures for the procurement of goods and services by the State and all institutions and agencies of government at every level, so that procurement is effected in a manner that is transparent, fair, honest, cost effective and competitive. Accordingly, the principal Act dealing with public procurement in Zimbabwe is the Public Procurement and Disposal of Public Assets Act [Chapter 22:23]. This Act regulates the procurement cycle from procurement planning, approaches to the market, evaluation and award of tenders, contract management and disposal of assets. It also paved way for the establishment of the Procurement Regulatory Authority of Zimbabwe which has an oversight role over public entities. While the PFM Act provides for public procurement in Zimbabwe, under section 44 on the General Responsibilities of the Accounting Officers, the Act does not cross reference the primary legislation regulating public procurement that is, the Public Procurement and Disposal of Public Assets Act. There is therefore a need for the PFM Act to be cross referenced with the Public Procurement and Disposal of Public Assets Act.

1.15 Financial Statements

Section 298(1)(e) of the Constitution stipulates that financial management must be responsible and **fiscal reporting clear**. Part IV of the PFM Act deals with the preparation and reporting of financial statements. However, it does not provide the reporting framework thereof. The reporting framework is provided in PART XXIV of the Statutory Instrument 144 of 2019. To this end, the PFM Act must be cross referenced with the Statutory Instrument.

1.16 Publishing of reports on financial statements

Section 38 of the PFM Act makes provision for the publication of a statement of actual revenue and expenditure with regard to the Consolidated Revenue Fund in the Gazette. This provision limits the right to information as stipulated in section 62 of the Constitution. It is recommended that the financial statements be published in other media to ensure

wider access to information and enhanced public scrutiny and oversight of the Government's expenditure.

1.17 Stakeholder consultations

The Constitution ushers a distinctive opportunity for citizen participation in the public finance management processes. Section 13 of the Constitution stipulates that the State and all institutions and agencies of the government at every level must endeavour to facilitate rapid and equitable development.²⁵ To this end, section 13(2) of the Constitution places an obligation upon the State to involve the people in the formulation and implementation of development plans and programmes that affect them. It is therefore recommended that the PFM Act be amended to include provisions for stakeholder consultations in budget formulation.

2. SUMMARY OF POLICY RECOMMENDATIONS

In light of the analysis above, AFRODAD makes the following recommendations in line with aligning the PFM Act with the Constitution and other legislation that have a direct and indirect impact on public finance management in Zimbabwe.

- The preamble of the PFM Act must embody the principles of public financial management towards national development as embodied in the Constitution. Such principles include ensuring that revenue, expenditure, assets and liabilities of the national and provincial governments are managed efficiently and effectively towards the development of the nation and provisions relating to the regulation of financial management in the national, provincial and local tiers of government.
- The object of the PFM Act must be amended to incorporate the principles of public financial management which must guide all aspects of public finance in Zimbabwe as stipulated in section 298(1) of the Constitution.

- The scope of the PFM Act as stated in section 4 must be extended to include provincial and metropolitan councils and local authorities in line with section 298(1)(b)(ii) and section 299(1) of the Constitution. Further, a new section in the PFM Act must be inserted to specify obligations of the provincial and metropolitan councils and local authorities in relation to financial management and fiscal reporting.
- The role of the parliament in public finance management must be strengthened through institutional, technical and analytical capacity to enable them to play their role of budget oversight. This would entail, the PFM Act **expressly** outlining the role of parliament in this regard. A new section in the PFM Act must therefore be enacted to make provision for:
 - i. Parliamentary oversight over State revenues and expenditure
 - ii. The establishment of institutional and administrative frameworks that are used by Parliament in monitoring and oversight of State revenues and public expenditure.
- A new section must be inserted in the PFM Act under Part III to make provision for the allocation of revenue to the provincial and local tiers of the government in line with section 301 of the Constitution- including the process and formula of sharing not less than five percent of the national revenue raised in any financial year with the provincial and local tiers of government as stipulated in section 301(3) of the Constitution.
- The duties and powers of the Minister of Finance as provided for in section 7 of the PFM Act must be extended to advising the Government on the equitable and geographical distribution of resources between provincial and local tiers of government as well as gender sensitive budgeting in line with the Constitution.

²⁵ Section 13(1) of the Constitution.

- A new section must be inserted in the PFM Act under Part III to make provision for the
 - i. the submission of separate estimates of revenue and expenditure for grant aided institutions outlined in section 305(3) of the Constitution and;
 - ii. affording Commissions and other institutions established by the Constitution reasonable opportunity to make their submissions to a parliamentary committee as to the funds allocated to them in each financial year in line with section 325(2) of the Constitution.
- Section 24(3) of the PFM Act must be aligned to section 306(1)(b) of the Constitution with regards to the time frame within which special warrants for issues to meet unforeseen expenditure must be presented to the National Assembly.
- Section 26(1) of the PFM Act must be aligned with section 306(2) of the Constitution in relation to the time frame within which the Presidential warrant for expenditure prior to the promulgation of the Appropriation Act is in force.
- A new section must be added to the PFM Act to make provision for public officers' obligations with regards to safeguarding public funds and property in line with section 308 of the Constitution. This should also make provision for the safeguarding of assets at the provincial and local tiers of the government.
- Section 81(1) of the PFM Act must be aligned with section 309 (2)(a) of the Constitution to make provision of the auditing of the accounts, financial systems and financial management of all provincial and metropolitan councils and all local authorities.
- The Auditor General must be given legislative power to enforce recommendations.
- The PFM Act must be amended to make

provision for stakeholder consultations during budget formulations at both local and national levels in line with section 13(2) of the Constitution.

- The PFM must be cross referenced with the various legislation impacting it such as the Public Debt Management Act, Statutory Instruments 135 of 2019 and 144 of 2019.

3. CONCLUSION

The management of public finances is a key determinant of the quality and soundness of governance a country has. Legislation impacting public finance therefore become therefore critical in this regard. As such the Public Finance Management Act is a key piece of legislation that needs to be well crafted to withstand opportunities for corruption and more importantly to ensure that there is equitable distributions of resources across geographical areas as well as transparency and accountability in the management of these public finances. This policy paper demonstrates that while Zimbabwe has a public finance management system with a fairly encompassing policy, legislative and institutional framework, the primary legislation regulating public finance management is not aligned with the various legislation that impacting public finance management, including the Constitution which is the supreme law of the land. However, it should also be noted that while a comprehensive and sound public finance management legal and regulatory framework is no doubt a foundation of accountability in the management of public resources, by itself, it will not curb the misuse of public resources. There is need to make it expensive for the individuals who abuse public resources by putting in place mechanisms that increase the probability of detection and sanction, as well creating a conducive and enabling environment that encourages citizen participation and parliamentary oversight in public finance management. All these factors combined will increase transparency, accountability, cost effective and fiscal prudence as key actors in the public finance management chain are well coordinated and empowered to exercise oversight over the management of public finances.



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