



THE Weekend Reader

"Your Weekly Read on Debt, Development & Social & Economic Justice"

ZIMCODD'S ADVOCACY ASKS ON ALIGNMENT OF THE PUBLIC FINANCE MANAGEMENT ACT WITH THE CONSTITUTION

The Zimbabwe Coalition on Debt and Development (ZIMCODD) welcomes the government's announcement that Cabinet, considered and approved the Public Finance Management Amendment Bill, 2021 which was presented by the Minister of Justice, Legal and Parliamentary Affairs as Chairman of the Cabinet Committee on Legislation. Cabinet was informed that the Bill is intended to amend the Public Finance Management Act, Chapter 22:19 so as to align it to the Constitution.

ZIMCODD welcomes this intention by the government to align the PFM Act with the constitution for this has been one the organization's main advocacy focus through the Public Finance Management Reform Indabas that ZIMCODD started implementing in 2018 in partnership with Parliament, government departments and citizens.

While the PFMA has certainly provided legal safeguards for the management of public finances, there is still significant room for improvement. Therefore, to further consolidate our advocacy efforts around the alignment of the PFM Act with section 298 of the constitution, we make the following submissions for government to incorporate in the proposed Public Finance Management Amendment Bill, 2021:

i. On Transparency and Accountability:

Section 3 states the objective of the Act is 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.

Our Advocacy Ask: *The objective of the Act should be more detailed by including other principles of sound public financial management as outlined in section 298 of the Constitution. The objective as it stands has two principles: transparency and accountability. There is need to include other important principles such as prudence, equity, economic use of*

resources, effectiveness and pro-marginalized groups and areas.

ii. On Consolidated Revenue Fund

Section 6 of the PFMA grants Treasury the powers to manage and control public resources through the Consolidated Revenue Fund.

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 Internal Auditor has therefore a dual reporting role to the Accounting Officer and Treasury.

Our Advocacy Ask: *Corporate Governance can be improved by removing reporting to the Accounting Officer. An amendment of Section 80 is therefore proposed to achieve this.*

iii. On the Role of parliament in overseeing public resources

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.

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”

Our Advocacy Ask: *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.*

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.

Our Advocacy Ask: *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.*

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 should never be forced to comply with orders that are not allowable.

Our Advocacy Ask: *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 Consolidated Revenue Fund which is not allowable.*

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”. This provision confers too much power on the Minister. The provision is not consistent with the constitutional powers that have been granted to Parliament to oversee State revenues and expenditure. The Minister cannot have absolute power to fix terms and conditions for 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.

Our Advocacy Ask: *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.*

iv. **On Annual reports, financial statements and financial misconduct reports**

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.

Our Advocacy Ask: 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 House. There are no sanctions for failure to comply with Section 32 on reporting. 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 paper.

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 Standards, for ease of integration with periodical reporting. 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 scrutinize, 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.

The Public Finance Management Act must be fully aligned with Section 308. Monetary penalties outlined in the current Act must be revisited to make them more of a deterrent. 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 may make regulations. So long the regulations are not set out there may be a problem in handling disciplinary proceedings.