AFRICAN FORUM AND NETWORK
ON DEBT AND DEVELOPMENT

Investing in People for Social & Economic Justice

ASSESSING THE EXTENT TO WHICH THE PUBLIC FINANCE MANAGEMENT BILL 2021 IS ALIGNED TO THE 2013 CONSTITUTION

AND BEST PRACTICES IN PUBLIC FINANCE MANAGEMENT

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EXECUTIVE SUMMARY

This policy brief assesses the extent to which the Public Finance Management Amendment Bill 2021 aligns with the Constitution of Zimbabwe (Amendment No. 20) 2013 Act. The objectives of this brief are to unpack the Public Finance Management Bill 2021; identify further gaps in the PFM Bill which are vital in strengthening Zimbabwe's public finance management system; critically analyse the PFM Bill 2021, highlighting the major concerns and gaps; and proffer recommendations that enhance the Bill and transparency and accountability in Zimbabwe. The findings in the brief show that, prior to considering amendments of budgetary system laws (BSL), all existing laws relating to the budget system should be examined to promote consistency of the new provisions with existing laws (Blondal et al., 2003: 6). They also show that while Zimbabwe's legal system provides for 'specialist' laws on procurement and public debt, there is a strong case for consolidating or cross-referring budget system laws. This is in line with the views from Blondal et al., (ibid: 4) who note that a constitution provides for the general responsibilities of the executive and legislatures on law-making processes on budget systems. The findings in this brief show that the Public Finance and Management Act should be wholly aligned with the Constitution's values of democracy, public administration and public finance.

There is need for either consolidate or cross-refer public finance management and public debt management.

There is also need to comply with the International Monetary Fund guidelines, OECD Guidelines and regional best practice on budgeting system laws. The recommendations in this brief are that the budgetary laws in Zimbabwe must comply with the constitutional requirements; the African Borrowing Charter, the International Monetary Fund Guidelines and the Commonwealth Secretariat's guidelines.

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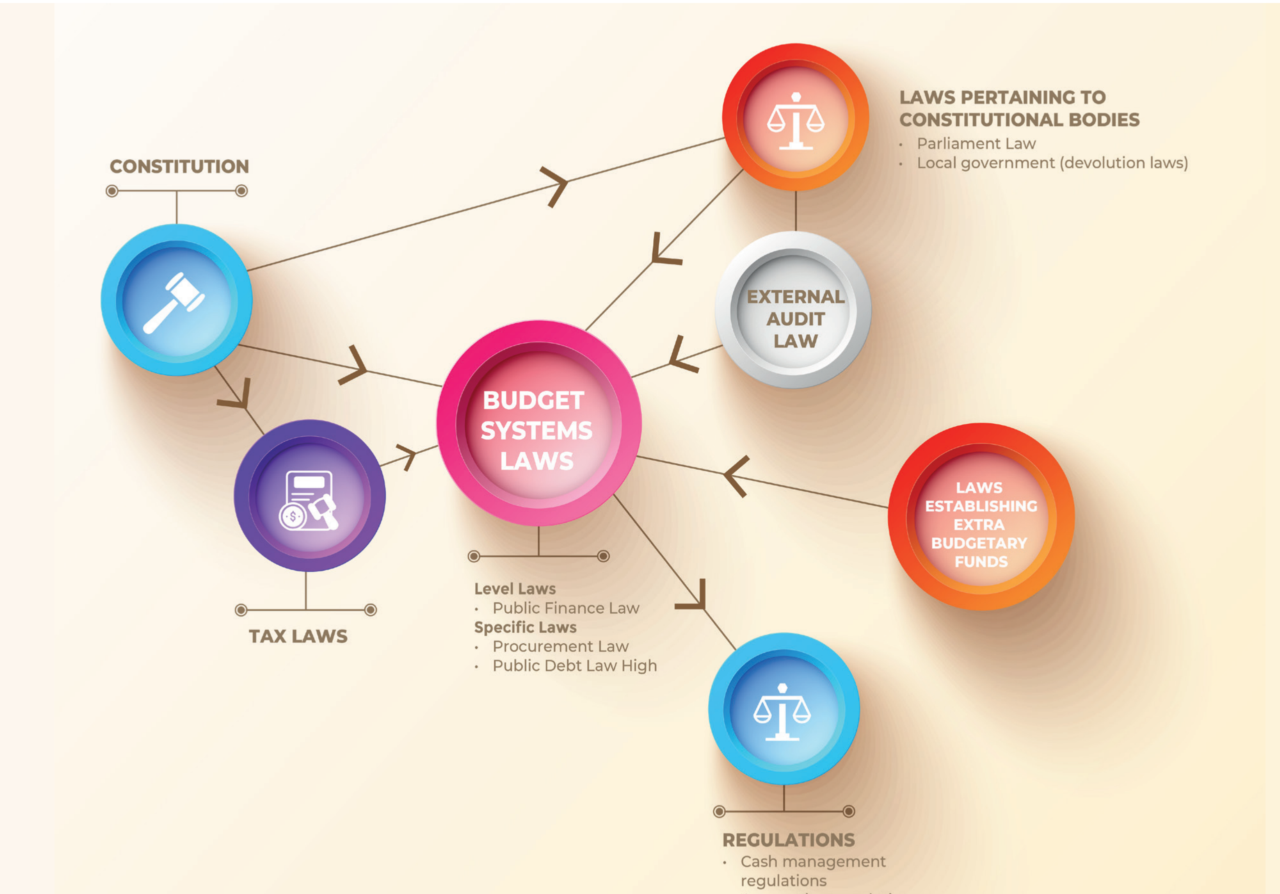
1. INTRODUCTION

This policy brief shows that a strong public finance management system is important pillar for an effective Zimbabwean State. Basically, public finance management aim to achieve four objectives which are: maintenance of fiscal discipline (avoids unsustainable borrowing); allocative efficiency (resources are allocated to agreed strategic areas); operational efficiency (value for money); and following the due process (being transparent and applying democratic checks and balances). In Zimbabwe the Public Finance Act is the basic law that regulates public finance management. Essentially, the institutional-legal framework for public law in Zimbabwe is thus:

FIGURE 1: INSTITUTIONAL LEGAL FRAMEWORK FOR PUBLIC FINANCE MANAGEMENT (PFM)



SOURCE: LIENERT I. (2013) THE LEGAL FRAMEWORK FOR PUBLIC FINANCES AND BUDGET SYSTEMS.

As shown in the framework above the budget system laws is a formal expression of rules that govern budgetary and decision making of the legislature and executive (Lienert, 2013). The Constitution is the basic blue print on specific PFM principles, responsibilities and standards in Zimbabwe.

This brief shows that PFM reform is fundamental in many respects. For instance, Blondal et al., (2003: 3) note that these include: to address specific budget-related problems; introduce new budget principles such as transparency, accountability, medium-term stability, or budget performance; and strengthen or clarify the authority of the executive and legislature. As such, there is need for a holistic assessment of a budget system law (BSL) to promote well-functioning public finance management (PFM) system. The BSL helps a state in attaining macro-fiscal stability; enhancing the allocation of budgetary resources; improving the efficiency of spending; and ensuring that cash is managed optimally. This policy brief gauges the Public Finance Amendment Bill's status of compliance with the Constitution, the African Borrowing Charter, and other country-specific best practices on PFM.

From an institutional perspective, the policy brief examines how the public finance Bill complies with our 2019 Policy Brief on aligning the Act with the Constitution as well as the 2020 policy brief on implications of Constitutional Amendment 2 Act on public finance in Zimbabwe. The analysis in this policy brief is also situated within the purview of the National Development Strategy 1 (NDS-1) which inter alia seeks to promote knowledge-driven economy for sustainable growth through human capital development and innovation, public service and justice delivery, rule of law and national unity, peace and reconciliation (NDS-1: paragraph 108).

1.1 CONCEPTUALIZATION OF THE CONTEXT ON PUBLIC FINANCE MANAGEMENT

The preferred conceptualization of public finance management in this brief is one that concerns the effective management of the collection and expenditure of funds by governments (Commonwealth Secretariat nd: vii). The end goal is to notch a relationship of mutual trust and shared consensus on development between government and citizens (ibid). Using the Constitution as the normative starting point and from the perspective of public sector accountability, the analysis of the Public Finance Amendment Bill, 2021, is done in light of the principles on good governance that are listed in section 3 (2) of the Constitution; principles of public administration in section 194f of the Constitution. Further, the principles relating to public finance as enshrined in section 298f of the Constitution are also prioritized. Transparency and accountability principles are linked to justice and responsiveness as normative principles that are enshrined in section 3 (2) (g) of the Constitution.

By extension, all forms of accountability such as vertical, horizontal and diagonal forms of accountability are used to explain whether the Public Finance Amendment Bill, 2021 conforms to national blueprints and visions such as Vision 2030; and international agendas such as Agenda 2063 and Agenda 2030. For Zimbabwe, the Constitution contains provisions on individual sovereignty,[1] supremacy of the Constitution,[2] founding principles such as the rule of law and separation of powers;[3] principles of good governance;[4] principles on public sector management[5] and principles on public finance management.[6]

1 See in detail the main preamble of the Constitution of Zimbabwe, 2013.
2 See section 2 of the Constitution and also section 3 on the reference to constitutional supremacy as a tenet of Zimbabwe's constitutional democracy.
3 See section 3 of the Constitution. The rule of law is a nemesis of the concept of rule by law or force by the executive. The separation of powers is part of the trias politica doctrine where the three arms or branches of government maintain checks and balances on each other
4 See section 3 (2) ff.
5 See section 194ff.
6 See section 298ff.

Holistic reform in Zimbabwe is needed to effectively deal with large and rising fiscal deficits, increasingly financed by monetary accommodation, which have resulted in macroeconomic instability (Imam, 2019: 2). Unbudgeted expenditures of US$2.8 billion (more than 10 percent of GDP) are approximately equal to the fiscal deficit due to politically sensitive programs which unnecessarily drive expenditure growth (ibid). This is also linked to over-spending through astronomic government wage bill; agricultural support programs, capitalizations of state-owned companies, and infrastructure programs deployed prior to the national elections, particularly with respect to road building (ibid: 4). This policy brief demonstrates that the public finance management laws in Zimbabwe do not comply with the IMF guidelines on budget system laws, the Commonwealth Secretariat guidelines on public finance reform, the OECD PFM Guidelines and some country-specific laws such as those for Kenya, Finland and others.

2. CONTEXT AND MAIN POINTS

This policy brief comes at a time when Zimbabwe is aligning PFM laws with the Constitution. Domestic, civil society organizations and international financial institutions have taken a huge interest in Zimbabwe's PFM and economic growth. It demonstrates that while the Public Finance Management Amendment Bill, 2021 incorporates some of the recommendations, this is not done holistically. Significantly, the enabling Act (the Public Finance Management Act) should be fully aligned as contemplated by the supremacy clause enshrined in section 2 of the Constitution. Specifically, the proposed reform does not however include the Parliament of Zimbabwe or its institutions such as the Parliamentary Accounts Committee as was made in the proposed recommendations in 2019 Policy Brief Further, liabilities and assets were defined in the interpretation Act, and in the envisaged section 3 of the Act and Parliamentary oversight on state expenditure was included under insertion of Part IIA with an expansive section 5A amongst other aspects of our previous recommendations there are still critical considerations. While the recommendation on duties and powers of the Minister was implemented in the envisaged section 7 of the Act which has no clarity on what is meant by 'metropolitan provinces. The suggestion is to replace 'metropolitan provinces' with 'provincial and metropolitan councils' as contemplated in section 5 of the Constitution on tiers of government. While there is no explicit cross-reference to SI 135/2019 on equitable and geographical distribution of resources and SI 144/19 on gender responsive budgeting, the spirit of the recommendation on the two SIs is aptly captured in the envisaged section 7 (c).

While recommendation on cross-referencing section 16 of the Act with section 15 of the PDMA was not done in express terms, a new section 17 (1) (b) refers to the Act and any other enactment. There is however no reference to section 31 of the PDMA and section 305 of the Constitution as recommended by 2019 Policy Brief. Regrettably too, while envisaged amendments to section 3 of the Act partially consider the recommendations from AFRODAD by including provisions relating to the management of the Constitution, they do not provide for cross-reference to other Acts such as PDMA and the Public Procurement and Disposal of Public Assets Act. This is sad considering that Zimbabwe has been ravaged by illicit financial flows (IFFs), state capture, tenderpreneurship, and kleptocracy. The lack of cross-references to critical legislation buttresses the concerns from international financing institutions that Zimbabwe lacks clear provisions that broaden the controls over appropriation (partially now done); commitments and payments that promote effective public finance management as contained in the IMF proposals (Imam 2019). Further, the recommendation on limits of state borrowing was not framed in line with the recommendations on transparency and best interests of Zimbabwe.

3. APPROACHES AND FINDINGS

The findings in this brief were based on thematic analysis of the concerns raised in our 2019 Policy Brief as well as from various sources of documentary evidence on effective PFM. The first key finding is that there is urgent need to align the enabling Act, the Public Finance Management Act, with the Constitution of Zimbabwe especially on issues relating to standards on public finance management as well as values on public administration. There is also need to cross-reference the Act to the founding principles in section 3 of the Constitution. Secondly, since Zimbabwe has a separate budgeting system laws that separately speak to PFM and public debt management, there is an urgent to either consolidate or cross-refer public finance management with public debt management. This makes economic sense given the fact that Zimbabwe's public debt is increasingly and detrimentally affecting the general citizenry's access to effective social policy, and financial certainty. Government has not been complying with the legal and constitutional requirements on public finance management and reporting. The third finding is that the Act does not comply with the International Monetary Fund guidelines, OECD Guidelines and regional best practice on budgeting system laws. Specifically, IMF (Imam, 2019) emphasizes the need for state to authorize unbudgeted expenditures through a supplementary appropriation as required by the Constitution and Public Finance Management Act; ensure the Governments' overdraft at the Reserve Bank of Zimbabwe does not exceed the limits set in the RBZ Act; public debt does not exceed the limit set out in the Debt Management Act PFMA obligation to table audited consolidated financial statements in Parliament are met; and opaque financing and repeated spending in excess of appropriations which have severely weakened budget credibility are addressed.

4. RECOMMENDATIONS

PROPOSED AMENDMENT ON THE PREAMBLE OR LONG TITLE OF THE AMENDED ACT

The preamble or purpose section must refer to the sound principles for a budget system law both classical and modern, modern principles include transparency, accountability, stability and performance. Their explicitness allows for a purposive interpretation of the PFM laws.

RECOMMENDATIONS ON THE ADOPTION OF THE BUDGETS BY PARLIAMENT

There should be a provision for quantitative fiscal rules as in the case in New Zealand where public debt has to be reduced to, and then maintained, at 'prudent' level, with multilayer fiscal balances set at a level consistent with the desired medium-term debt strategy. These include specify limitations on the legislature's powers to change the executive's draft budget especially on medium-term fiscal stability or increasing total expenditure granting the legislature the option of adopting a supplementary or rectifying budget by authorizing higher expenditure if there are revenue that are higher than expected. For instance the Minister of Finance indicated that Zimbabwe has a ZWL$9.8 billion surplus. This should involve parliament to ensure the surplus is distributed to other affected areas of social development such as social policy, student loans and housing loans.

RECOMMENDATIONS ON EFFECTIVE BUDGET EXECUTION AND CONTROL

The PFM Bill 2021 should have a detailed schedule that specifies how procedures for executing the annual budget including allotment to lower-level budget entities, apportionment, and mechanisms for external and external controls are to be specified in government or ministerial regulations. The schedule should also list or refer to key policies and strategies for national development such as ease of doing business; zero tolerance to corruption; Zimbabwe anti-corruption strategy and so forth. This allows for courts to also emboss such legislated policies in their judgments. While virement or the exceeding of expenditure where there are provisions for offsetting downward revision of another item is provided in the amendment, there is need to clearly specify the Minister of Finance's virement powers especially those relating to the percentage by which particular expenditures can be exceeded without submitting a supplementary budget to the legislature. The envisaged Act must also specify the Minister of Finance's authority over governmental banking arrangements and cash management, including the powers to minimize idle balances in government accounts and investing appropriately any short-term surpluses with the aim of minimizing borrowing costs and risks to government. While there is provision for the consolidated revenue fund, the amendment should expressly provide for consolidation of all revenues coupled with the establishment of a treasury single account (TSA) so as to emboss the common-pooling principle in forming a common fund.

RECOMMENDATIONS ON GOVERNMENT ACCOUNTS AND REPORTING TOTHE LEGISLATURE

Budget information and periodic reports that are considered 'best practice' should also be part of the legal requirement as contemplated by the IMF and OECD, albeit, allowing for judicious choices to avoid overloading the legislature. This includes ensuring that formal budget calendars are followed consistently; political interface with the budget framework is not bureaucratized; and crafting ceilings for recurrent and capital costs that do not limit integrated planning of the budget (Imam ibid: 7). Linked to control over appropriation is an urgent need to link budget releases to cash availability; ensuring sanctions and penalties are strengthened for those officials committing expenditures outside the PFMS; and introducing multi-annual commitment functionality in PFMS (in the medium-term) (ibid). Conjoined to this are controls such as those from section 45 of Kenya's Public Finance Management Law No 18 of 2012 which provides that appropriations must lapse if unspent at the end of the financial year (see also Commonwealth Secretariat nd: vii).

RECOMMENDATIONS ON THE NEED FOR ZIMBABWE'S PFB TO COMPLY WITH REFORM APPROACHES BEYOND AFRICA

PFM depends on clarity in the national budget system of laws. It is for this reason that this section provides scenarios from other countries that either have similar visions like Zimbabwe or provide for other innovative arrangements. This section is meant to prevent the concept where the cat devours its kittens, however rarely this usually happens. Specifically, from Zimbabwe's Vision 2030, it is critical to single out other countries that have national vision projected for 2030 like Saudi Arabia have public investment fund strategies (KSA, 2021). This fund should then serve as a catalyst for improvement of different developmental pillars such as the private sector, social policy and security, and political leadership. Because Zimbabwe has a national development strategy and an economic vision 2030, there is need for the PFM amendment Bill to have provisions for the establishment of a public investment fund. Besides Saudi Arabia, Blondal et al., (2003) note that Finland's public finance management laws provide for responsibilities on parliament for budget, appropriation and tax bills.

Finland also has a Cabinet Finance Committee which meets once weekly and inter alia approves regulations for State subsidies (including student loans, housing loans); approves transactions with the shares of State-owned enterprises; approves activities of ad hoc committees with a budgetary impact; and also approves budget construction and real estate projects (ibid : 142). All proposed new laws with bad impact must be reviewed by this Committee (ibid). The advantage of the Finnish model is that the Committee's duties are carried out by the Ministry of Finance and other ministries than cabinet ministers. This makes the Committee less intrusive on the doctrine of parliamentary oversight. It is also given a clear role of controlling secondary budgeting and finance management legislation or proposed legislation (ibid). Additionally, the Finnish model use the concept of accountability for results. Budget documents must include results targets and information; agencies are to enter into contract with their parent ministries; accrual accounting must be prioritized; and audit functions of institutions should include not only actual performance but running and implications of the performance management and budgeting regimes (ibid). This is done to ensure fiscal discipline.

Brazil has a budget law system that show a clear hierarchical structure with the 1988 Constitution, Law No. 4329, 1964; the Fiscal Responsibility Law (FRL) 2000, and the Budget Guidelines Law. The FRL for instance has detailed provisions for budget preparation and execution; numerical limits for some fiscal indicators such as ratio of net public debt to net revenues and ratio of personal expenditures to net revenue (Lienert&Fainboim 2007: 5). It also contains provisions to restrict expenditure commitments in the final year of government; limits the borrowing activities of sub-national governments (ibid). Further, it also provides for transparent fiscal reporting through multilayer fiscal targets, targets for primary balance and public debt for the following three fiscal years and a description of fiscal risks with assessments of contingent fiscal liabilities (ibid). Effectively, it also provides for strong sanctions for non-compliance since the FRL is accompanied by the Fiscal Crimes Law (ibid). The Brazilian experience is linked to the Finnish model where performance audit provides for economy, effective and efficient management of executive tasks; the reliability of information used in decision making; commitment to target setting; effective control, monitoring and evaluation systems; and compliance with national budget (Blondal et al., 2003).

RECOMMENDATIONS FROM INTERNATIONAL BEST PRACTICES

Other international best practice such as the Commonwealth Secretariat (nd: vii) notes that successful reform needs to take account of local conditions and should focus on both the process of reform (i.e. how to achieve the correct "enabling environment") as well as on substantive changes to the fiscal framework (i.e. what to change).

- Reform must start with sound policy formation at a macroeconomic level, including defining the purview of the state, the framework of government, key institutional arrangements, and macro-economic policy. The NDS-1 speaks to the need for strong institutions. The Bill should thus show how other frameworks such as the Zimbabwe Anti-Corruption strategy should be used to ensure incidents of private and public corruption are punished heavily.
- Reform must be backed up with political commitment through the Ministry of Finance or equivalent department's demonstration of the strongest possible political authority to oversee public financial management. The PFM Bill should thus include linkages between the MoFeD and other critical units such as the RBZ's Finance Intelligence Unit and ZIMRA in fighting organized and illicit financial flows in Zimbabwe. It should also obligate the MoFeD to ensure access to information on both general and real gross domestic product. Further, the GDP is also calculated using 40% of the proceeds from the formalized economy when in actual fact Zimbabwe's 60% economy is highly informalized.
- Reform needs to be managed through prioritizing human capital, wherever it may be found, including the existing civil service, the private sector, academic and professional bodies, donor-provided training and technical skills transfer programmes. The PFM Bill should have a schedule with provisions for inclusion of such other players to ensure technocrats are not divorced from the economic realities that affect citizens.
- The progress of reform must be effectively measured and monitored by setting performance related benchmarks and indicators vis-à-vis agreed objectives, empirical measurement of these benchmarks, and analysis thereof by oversight bodies. It is in this context that the SADC thresholds and IMF thresholds on borrowing should also be clearly indicated in the PFM Bill so that the country complies with such thresholds.
- Effective planning and allocation of resources is key and the PFM Bill should place focus on output rather than input-focused implementation, with strong accounting and reporting procedures. With the many red flags that the AG raises on unsustainable debts incurred by ministries and local authorities, the PFM Bill should explicitly provide that the office of the AG must be properly resourced and funded to fulfil its function.
- Effective oversight and monitoring are crucial to sound governance and PFM reform. The PFM Bill should include provisions on the need for a well-functioning PFM system with clear rules on transparency and reporting, as well as enforceable sanctions for failure.
- It should also provide for both Parliamentary accountability envisaged in section 119 of the Constitution and oversight that is established by internal mechanisms in the national treasury, as well as external oversight by bodies like the parliamentary accounts committees, the Zimbabwe Human Rights Commission as a public protector, a free media and civil society, and an independent auditor-general.

5. CONCLUSION

Literacy on constitutional, legislative and international law or policies on sound financial management is reaching a substantial number of citizens as demonstrated by large attendance to AFRODAD and ZIMCODD's budget consultative meetings. GoZ should open up access to financial intelligence and information by legislatively introducing inclusion provisions that speak to other legislation such as those that protect whistle blowers. To this effect, the preamble of the Act should deliberately provide for the Application of related national and international laws and standards when interpreting the Act. Self-injection provisions should be framed under the guidelines in section 46 of the Constitution which permit for the use of foreign and international law when interpreting provisions of the Bill of Rights. The regional momentum on borrowing should be framed in line with section 327 of the Constitution which allows for Parliament to incorporate the provisions of international treaties into Zimbabwean law. This helps Zimbabwe to account for the policies that will be created or aligned to facilitate sound finance management. This effectively help the government to robustly implement financial policies that expand access to national and international finance management and reporting methods.

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