



AFRICAN FORUM AND NETWORK
ON DEBT AND DEVELOPEMNT

Policy Brief

THE ZIMBABWE PFM AMENDMENT BILL BASED ON THE SADC MODEL LAW ON PUBLIC FINANCIAL MANAGEMENT



*Interrogating key aspects of the Southern African Development
Community Public Financial Model Law (SADC PFM Law) on Public
Finance Management and incorporation into the Zimbabwe Public
Finance Management Act.*





In this policy brief...

Executive Summary

1. Introduction & background
2. The Public Finance Management Amendment Bill HB 4 of 2021
3. Policy recommendation based on the SADC Model Law on Public Financial Management
4. The role and focus of the Public Accounts Committee
5. Inclusion of performance-based budgeting with clear key performance Indicators (KPIs)
6. The PFM amendment should remove the disconnect between International commitments and budgeting
7. Whistleblowing
8. Enhance and Strengthen Public Procurement Legal Regime
9. Mechanisms to curb and limit the number of public contracts entered into by the executive
10. Other Policy Recommendations
11. Conclusion

Executive Summary

This policy brief interrogates key aspects of the Southern African Development Community Public Financial Model Law on Public Finance Management and recommends best practises from the model law for incorporation into Zimbabwe's Public Finance Management Act. The recommendations are based on the understanding that national frameworks for public finance management must be guided by regional standards, comparative practices and international benchmarks. The Zimbabwean public financial management system goes some way in adopting generally known principles and standards. The good practises that inform Zimbabwe's public finance management system are aimed at achieving economic fundamentals of good governance, macroeconomic stability, effective use of available resources and the noble goal of poverty reduction.

Four major pieces of legislation, namely the Constitution, the Public Finance Management Act (Chapter 22:19), the Public Debt Management Act (No 4 of 2015), and the Public Procurement and Disposal of Public Assets Act (Chapter 22:23), are responsible for establishing the normative, institutional and administrative framework for public finance management in Zimbabwe. Other pieces of legislation complement the general framework created by these legislative pillars, and these include local government legislation (the Rural District Councils Act, the Urban Councils Act, the Provincial Councils and Administration Act and the Audit Office Act).

It should be noted that the essential legislative framework for public finance management was adopted before the passage of the Constitution of Zimbabwe (2013), which is the supreme law of the land. Without doubt, there is a visible attempt to ensure that the public finance primary legislation is consistent with key provisions in the Constitution of Zimbabwe. However, gaps still remain and several other improvements must be made to the primary legislation to ensure constitutional adherence.

In a similar vein, the SADC Model Law was adopted in July 2022. This means that the model law post-dates the Constitution and the key legislative pillars for public finance management in Zimbabwe. Accordingly, there is a clear need to ensure that the provisions of the laws of Zimbabwe are in tandem with the progressive normative and substantive principles of the SADC Model Law. For instance, a fundamental tenet of the SADC Model Law is the principle of performance-based budgeting (PBB), which is vital for prudent financial planning at the national level. Several other jurisdictions such as Ghana and South Africa have moved to embrace and implement performance-based budgeting in their public finance management frameworks, and Zimbabwe is already implementing the PBB but without supporting legislation.

The major reasons for formulating and adopting the SADC Model Law can be gleaned from the preamble to the Model Law itself. Rooted in the fundamental philosophy of improving good public finance management practises and achieving Sustainable Development Goals, the Model Law is also informed by the need to plug existing gaps in national jurisdictions on public finance management. In terms of the Concept Note to the SADC PF Model Law, the overarching objective of the SADC Model Law is to ensure that national parliaments of SADC member states are enabled to conduct their legislative, budgetary and oversight functions for public financial management in a way that is transparent, efficient and responsive to the needs of SADC citizens.¹

Some of the key findings on the SADC Model Law are that the model law reflects the key drivers of effective public finance management, which include a robust budget planning process; performance-based budgeting; balanced budget allocation; working with existing national systems; and adopting the correct budgeting approach. Critically, the Model Law recognizes the essential role of parliament in public financial management since parliament interfaces with public financial management at several levels. However, the Model Law is alive to the principle of separation of power, and strikes a balance between parliamentary oversight and the need for government to undertake its executive functions. In this context, the policy brief seeks to outline the major principles and mechanisms in the SADC Model Law that should be included in Zimbabwe's primary public finance management laws in order to improve the national frameworks on public finance management.

1. See paragraph 13 of the Concept Note to the SADC PF Model Law on PFM.



1. Introduction & background

Zimbabwe has been in a debt distress since 2000, and the country's public finance management malpractices have been a major factor for the rapid rise of the national debt, which is currently estimated to be [US\\$17.6 billion](#). The government has been spending beyond the budget approved by Parliament and huge amounts of unauthorized expenditure of [ZW\\$100.7 billion in 2020 and ZW\\$6.8 Billion in 2019](#) were brought for condonation in 2022. Furthermore, the credibility of the National Budget has been very low with the Minister of Finance and Economic Development disbursing on average 40% of the approved budgets to government departments, which has made it difficult to deliver services and implement programmes. The major reason for low and erratic disbursement has been challenges in mobilizing sufficient revenue. The country continues to be affected by weather phenomena such as uneven rain seasons, cyclones, droughts and floods, which demand additional financial resources to address the effects of such calamities on citizens. The Covid-19 pandemic has worsened the demand for government intervention to save lives and stimulate the economy.

The [National Development Strategy](#) (NDS) 1 identified good governance as one of the priority pillars that would enhance service delivery to citizens, new wealth creation and expand the horizons of economic opportunities for all Zimbabweans. In the quest for improving public finance management, the Government of Zimbabwe gazetted the [Public Finance Management Bill 2021](#), which offers a great opportunity for legislators and citizens to contribute to the formulation of robust legislation that would help steer the economy towards a sustainable and inclusive growth path. However, the Public Finance Management Bill 2021 was overtaken by events such as the adoption of the [SADC Model Law on Public Finance Management](#) in July 2022. Again, the government adopted the PBB without updating the PFM legislation to reflect the thrust on results and performance. The President in his [State of the Nation Address](#) urged the fifth session of the Ninth Parliament to speedily deal with all the outstanding bills including the Public Finance Management Bill.

The purpose of this policy brief is to identify gaps in the PFM Bill 2021 and make recommendations for inclusion in the bill.

2. The Public Finance Management Amendment Bill HB 4 of 2021

The Government of Zimbabwe gazetted [the PFM Amendment Bill](#) on 31 March 2021. Two years later, on 31 March 2023, the Parliament of Zimbabwe advised that the Bill was at Second Reading stage of the law-making process. It is clear the Bill has not moved much. At the end of 2022, Parliament noted that the delay in moving the Amendment Bill was caused by the need to consider and incorporate certain aspects from the newly adopted SADC PF Model Law. The Parliament of Zimbabwe was part of the technical committee in the development of the Model Law. From a reading of the Bill, it is very clear that the SADC PF Model Law PFM provisions are yet to be incorporated. Despite this, however, the Bill goes some distance in seeking to strengthen the PFM system in Zimbabwe. There are certain improvements from the SADC Model Law on Public Finance Management that should be factored in the Bill before it can be passed into law. These improvements are addressed below as policy recommendations.



Image of Zimbabwe parliament

3. Policy recommendation based on the SADC Model Law on Public Financial Management

3.1. Principles of Public Finance Management

The PFM Amendment Bill must be informed by clearly expressed principles to guide the whole public finance management regime. Article 11 of the SADC Model Law suggests the following principles:

3.1.1. Transparency Principle:

That information about the public financial management process should be made available to the public in a clear form and in a useful time frame (including fiscal transparency);

3.1.2. The Accountability and Participation Principle:

That government and other public bodies should be accountable in their exercise of public financial management functions, and there should be formal and meaningful opportunities for the public – including the most disadvantaged – to engage in the national budget process and other aspects of public financial management in accordance with principles of participatory democracy;

3.1.3. The Oversight Principle:

That oversight institutions including parliament, the National Audit Office, and other bodies with regulatory functions in relation to public finance should have the resources, powers and processes to provide effective independent oversight of the government's financial management;

3.1.4. The Parliamentary Engagement Principle:

That parliament should use the full range of mechanisms available to it for the purpose of overseeing and controlling the public financial management process. The Parliamentary Engagement Principle shall be applied by the Minister; the Auditor General; and the Speaker of Parliament;

3.1.5. The Public Accounting Principles:

These include the following primary principles, namely Principle of consistency; Principle of permanent methods; Principle of non-compensation; Principle of prudence; Principle of regularity; Principle of sincerity; Principle of good faith; Principle of materiality; Principle of continuity; Principle of periodicity; the International Financial Reporting Standards (IFRS).

In addition, based on section 298 of the Constitution of Zimbabwe, the following principle must be included in the PFM Amendment Bill:

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.

3.2. Strengthen and Enhance Parliamentary Control

The SADC Model Law strongly urges strengthening and enhancing of mechanisms for parliamentary control of public resource allocation and use. The major tenets from the Model Law that must be incorporated into Zimbabwe's PFM Amendment Bill are expressed in Article 39(3) of the Model Law. Fundamentally, the tenets are that Parliament must undertake the following:

- i. establish sub-Committees and inquiries, including sub-Committees and inquiries having expert external membership and advice;
- ii. require a public authority to prepare and submit work plans and implementation reports;
- iii. require the Auditor General or other audit bodies to prepare and submit reports on actual or alleged financial irregularities;
- iv. require public authorities to disclose commitments entered into;
- v. compel the attendance of witnesses and the giving of evidence or the submission of information or documents;
- vi. deploy electronic systems for the detection and reporting of financial irregularities;
- vii. evaluate and report on programmes and policies.

3.3. Enhance the independence and authority of the Auditor-General

- a. Parliament must progressively enhance the independence of the Auditor-General, and not erode such independence through the appointment process.
- b. The law must expressly grant the Auditor-General the right to audit the accounts or other financial records or affairs of any public authority (Art.45).
- c. The right of the Auditor-General to make regulations on the appointment and terms and conditions of his/her office and on the proceedings of the Auditor-General's office.
- d. The legal obligation on the Auditor-General to assist parliament with scrutinizing public accounts and public funds.

4. The role and focus of the Public Accounts Committee

As a committee of parliament, the Public Accounts Committee plays a crucial role in oversight. It guides and leads parliament in oversight over public finance. However, as it stands, the PAC has been limited to reports of the Auditor General mostly. In Part IIA, the PFM Amendment Bill directly grants certain responsibilities to the PAC. However, the proposed provisions are not comprehensive. The SADC Model Law proposes expansion of the responsibilities of the PAC in Part IIA to include the following:

- monitoring the financial management effectiveness of the Government;
- highlighting deficiencies and irregularities in relation to public financial management;
- monitoring and supporting action to prevent illicit financial flows; and
- monitoring and publishing progress in relation to addressing other failures and concerns in respect of public financial management.

A related issue reflected in the SADC Model Law is the general weakness of the PAC in monitoring implementation of recommendations, follow-up actions or enforcement and receiving information from whistle-blowers. Without this power, the PAC is unable to flex any muscle after the examination of the reports of the Auditor General. The following aspects of the SADC Model Law should also be considered for inclusion in Part IIA of the Amendment Bill:

The Speaker of Parliament must take all reasonable steps to ensure that the Standing Orders and other procedures of parliament enable the PAC to provide independent and effective scrutiny and oversight of government. In particular, the Speaker shall aim to ensure that the PAC—

- is chaired by a member who is not from the same party as ministers;
- is not dominated by members drawn from the same party as ministers;
- determines its own budget (subject to parliamentary approval) and participate in recruitment of its staff;
- maintains a published register of interests and guidance for addressing actual or perceived conflicts;
- incorporates in its membership appropriate representation of women;
- reflects in its membership the importance of other aspects of diversity (including appropriate representation of persons with disabilities and appropriate representation of marginalised and disadvantaged groups generally);
- includes financially literate persons among its membership or staff.

5. Inclusion of performance-based budgeting with clear key performance Indicators (KPIs)

In the past four years, the Government of Zimbabwe has gradually moved to introduce performance-based budgeting (PBB) as a government policy. However, this mechanism has not been legislated, and is simply practised as policy. There is nothing amiss with legislating for PBB as several countries such as Ghana, South Africa, Kenya, France and Australia have done so. Another good approach by the Government of Zimbabwe is its use of performance-based contracts for ministers, and other senior government officials. While this is commendable progress, there may be need to legislate the process together with the inclusion of legal repercussions/sanctions for poor performance. Accordingly, the PFM Amendment Bill needs to capture the expectation that the budget process should be related to clear performance indicators for ministries and public departments. A performance-based budget will ensure that budgets are voted when ministries/public departments comply with a set of pre-agreed performance indicators for the completed year in relation to set programmes.

For all accounting officers, the following performance provision is recommended for inclusion in the PFM Amendment Bill:

'The employment contract of an accounting officer for a department, trading entity or constitutional institution must be in writing and, where possible, include performance standards.'

For all annual reports and financial statements submitted by accounting officers, the following provision is recommended for inclusion in the Bill:

'The annual report and financial statements submitted by the accounting officer must fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned'.

Other comparative legislation can also be referred to such as section 27 of the Ghana Public Finance Management Act 921 of 2016.

6. The PFM amendment should remove the disconnect between International commitments and budgeting

There is a general disconnect between commitments taken under treaties, declarations or covenants, and the actual budget passed in parliament. For instance, it has been observed that budgets mostly fail to reflect corrective action with regards to the following: mainstreaming of gender through gender-based budgeting; implementation of Universal Health Coverage and the Sustainable Development Goals; meeting of regional benchmarks such as the Abuja Declaration on Health Financing; and implementation of regional objectives such Africa Agenda 2063, and provisions contained in human rights treaties such as those providing for the right to health and housing. The following provisions from Article 62 of the SADC PF Model Law are proposed:

The Minister shall take all reasonable steps to ensure that debate and votes in Parliament on the annual budget include an allocation of separate time to debate

- matters arising in respect of the SDG budget statement;
- matters arising in respect of the international commitments.

The sustainable development statement shall—

- (a) identify any relevant regional and international commitments of the State; and;
- (b) set out the implications of the annual budget for actual and projected compliance with those commitments.

7. Whistleblowing

The PFM Bill should include provisions to ensure that public authorities and other persons with information about actual or possible financial irregularities are enabled to make disclosures to the Public Accounts Committee. The following proposal is made in the SADC Model Law:

- i. The PAC shall make arrangements to ensure that public authorities and other persons with information about actual or possible financial irregularities are enabled to make disclosures to the PAC;
- ii. Unless the minister is satisfied that legislation already provides all necessary protection for persons making disclosures under this section, including protection from harassment, reprisals and employment-based or other detriment, the minister shall make regulations—
 - conferring protection on those persons
 - applying whistleblower protection laws to disclosures under this section.

8. Enhance and Strengthen Public Procurement Legal Regime

Zimbabwe has a clear public procurement legal framework, primarily encompassed in the Public Procurement and Disposal of Public Assets Act. Despite the progressive elements of this law, certain improvements can be made. The SADC Model Law proposes inclusion of the following positions:

Public authorities with responsibility for making or supervising arrangements for Government-to-Government assistance shall—

- apply the procurement principle with such qualifications or modifications as appear to them to be necessary or desirable in the circumstances; and;
- in particular, conduct an appropriate due diligence exercise to ensure value for money.



9. Mechanisms to curb and limit the number of public contracts entered into by the executive

In Zimbabwe there is currently no limit on the quantum of public contracts which can be entered into by the Executive. This in effect means that, over the tenure of the government in power (usually a 5-year term), the Executive is legitimately entitled to sign any contract irrespective of whether the policy was included in the electoral manifesto, or whether the contract would involve debt servicing in the long term, that is beyond 5 years. This unregulated prerogative to use public funds may lead to a situation where one government binds the next beyond the 5 year term, therefore leading to a breach of the principles of democracy, which are at the very foundation of the state. There is therefore a need for parliament to exercise oversight and control over public contracts to ensure long-term sustainability in financial management. Accordingly, the Public Debt Management Act needs to be revisited so that effective mechanisms can be developed to address this concerning issue.

In addition, there is need to always review the strength of the Public Debt Management agency in Government and link its work with Parliament. In Zimbabwe, the Public Debt Management office is based in the Ministry of Finance and Economic Development. However, this office is not a stand-alone office. It has no direct synergy with the parliament and is represented by the minister on matters requiring parliamentary scrutiny.

10. Other Policy Recommendations

A. Social Inclusion, Equality and Diversity Principle

The PFM Amendment Bill proposes to repeal section 7(1) (b) of the Act on the duties and powers concerning the allocation of public resources. It is suggested that the proposed provision be expanded to incorporate the principle of 'social inclusion'. Further, the SADC Model Law (article 62) proposes the following:

The Minister shall take all reasonable steps to ensure that arrangements are made for debate and votes in Parliament on the annual budget, and that such arrangements include an allocation of separate time to debate matters arising in respect of the equality and diversity statement.

B. Non-Compliance with Auditor-General Orders

Clause 29 of the PFM Amendment Bill deals with non-compliance with the orders of the Auditor-General. Subsection 4 should be strengthened considering the general culture of noncompliance with the orders or directions of the Auditor-General, without consequences. The provision needs to be amended to ensure that failure to comply with the orders of the Auditor-General made in terms of this section constitute gross misconduct. This is in line with the expectations of the SADC Model Law that requires effective enforcement functions for the Auditor-General (Part 6 of Model Law).

C. Central Internal Audit

Clause 31 of the PFM Amendment Bill seeks to enhance the audit function but is weak on independence of the audit function in ministries. To enhance independence, there is need to introduce an independent reporting unit where internal auditors in all ministries report to. The Unit should be located in the Ministry of Finance. This means that internal auditors are independent of their superiors in their government departments. The Unit may be called the Central Internal Audit Unit. Again, this is in line with the independence principle of the Auditor-General expressed in SADC Model Law (article 40 & 41 of the Model Law).

D. Writing off Public Resources

Section 11 (2) of the PFM Act provides that the Minister must bring a Bill to Parliament **to condone writing off any public resources** advanced to funds or other entities if the Treasury is of the opinion that the money is irrecoverable. This is tantamount to seeking parliamentary approval after the action had already been taken. This provision must be amended to ensure the Minister first brings the statement of public resources to be written off before Parliament for consideration and approval. This is in line with the parliamentary control and engagement principles expressed in Article 39 of the SADC Model Law.

E. Windfall Revenue Regulation

Section 19 of the PFM Act needs to be amended to provide for laying of a supplementary budget before Parliament in case of windfall revenue. The provision must read:

"If in respect of any financial year it is found that windfall revenue is received from any sources, including from revenue over-performance, special drawing rights, dividends from state-owned enterprises and other sources, an account of how such funds shall be appropriated shall be laid before the National Assembly by the Minister and, when such appropriation have been approved by the House, a supplementary Appropriation Bill shall be introduced into the House providing for the issue of such funds."

This is in accordance to the principle of Parliamentary oversight, transparency and control that underpins the SADC Model Law.



F. Parliament Approval of Terms and Conditions of Government Borrowing

The Public Debt Management Act must be amended to include new provisions that empower parliament by resolution to approve terms and conditions for government borrowings including the following:

- (a) the nature of facility;
- (b) purpose of government borrowing;
- (c) condition of drawdown;
- (d) terms of interest payment and repayment;
- (e) pre-payment and cancellation etc.

G. Fiscal Equalisation Model for Provincial and Local Government

Firstly, the PFM Act has to directly apply to devolved government without complications. Secondly, the SADC Model Law requires a clear framework for public financial management system to 'state governments', which are essentially devolved structures of government. Currently the allocation of devolution funds is based on unlegislated criteria, which has led to several controversies. Accordingly, it is proposed that the Minister must prescribe a fiscal equalisation model that is based on certain key parameters for purposes of appropriation such as the following:

- total amount to be allocated as declared in the national budgets provided for in Section 301(3) of the Constitution;
- poverty index (considered as the equivalency of the poverty equivalent rate);
- population size;
- population density;
- infrastructure quality and deficit;
- gross domestic products of the Council and local authorities;
- the local revenue base;
- the local tax base of each Council and local authorities;
- the need to provide basic services.

11. Conclusion

The SADC Model Law on Public Financial Management is a welcome legislative guide to national jurisdictions. It not only reflects aspirations of SADC member states on effective and transparent public financial management systems, but also proposes key interventions based on the perceived weaknesses of current national systems and frameworks. Zimbabwe has clear laws, institutions and administrative systems to manage public resources. However, despite the several progressive principles in the law, more needs to be done to reinforce this area. The policy recommendations in this Brief provide a guide on what aspects need strengthening on the basis of the normative principles in the SADC Model Law. It is hoped that the GoZ may consider these proposals in good faith, and that the Parliament can factor them in the PFM Amendment Bill that is currently undergoing the law-making process.