



MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT

DRAFT

**DISCUSSION PAPER ON THE REVIEW AND ALIGNMENT OF THE  
PUBLIC FINANCE MANAGEMENT ACT [CHAPTER 22:19]  
WITH THE CONSTITUTION OF ZIMBABWE**

**Prepared By:**



**INTER-MINISTERIAL TASK-FORCE ON THE ALIGNMENT OF LEGISLATION  
TO THE CONSTITUTION (IMT) TECHNICAL COMMITTEE**

## Contents

1.0	INTRODUCTION .....	11
2.0	CONSTITUTIONAL PROVISIONS ON PUBLIC FINANCE .....	11
2.1	Part 1: Chapter 17 of the Constitution: Financial Management .....	11
2.1.1	Principles Governing Public Finance in Zimbabwe .....	12
2.1.1.1	Transparency and accountability in financial matters.....	12
2.1.1.2	Public finance system must be directed towards national development .....	12
2.1.1.3	The burdens and benefits of the use of resources must be shared equitably between present and future generations .....	13
2.1.1.4	Public funds must be expended transparently, prudently, economically and effectively.....	13
2.1.1.5	Financial management must be responsible, and fiscal reporting must be clear .....	14
2.1.1.6	Public borrowing and all transactions involving the national debt must be carried out transparently and in the best interests of Zimbabwe. ....	14
2.1.1.7	Other Relevant Principles.....	14
2.1.1.8	Key Findings .....	16
2.1.1.9	Recommendations .....	17
2.1.2	Parliamentary oversight of State revenues and expenditure.....	17
2.1.2.1	Mechanisms for PoZ to monitor and oversee revenues and expenditure.....	17
2.1.2.2	Key Findings .....	18
2.1.2.3	Recommendations .....	19
2.1.3	Limits of State borrowings, public debt and State guarantees .....	19
2.1.4	Allocation of revenues between provincial and local tiers of government .....	19
2.1.4.1	A percentage of national revenue to be allocated to the provinces and local authorities annually .....	20
2.1.4.2	Key Findings .....	20
2.1.4.3	Recommendations .....	20
2.2	Part 2: Chapter 17 of the Constitution: Consolidated Revenue Fund .....	21
2.2.1	Establishment of a Consolidated Revenue Fund .....	21
2.2.1.1	Money to be paid into CRF .....	21
2.2.1.2	Key Findings .....	21
2.2.1.3	Recommendations .....	22
2.2.2	Withdrawals from Consolidated Revenue Fund.....	22
2.2.2.1	Control of expenditures and issues from Consolidated Revenue Fund .....	22
2.2.2.2	Control on Payments .....	23
2.2.2.3	Withdrawal from the CRF, cash management and investments .....	23
2.2.2.4	Key Findings .....	23
2.2.2.5	Recommendations .....	24
2.2.3	Charges upon Consolidated Revenue Fund .....	25
2.2.3.1	Debt Charges .....	25
2.2.3.2	Costs and expenses incurred in collecting and managing the CRF.....	25
2.2.3.3	Key Findings .....	25

2.2.3.4	Recommendations .....	25
2.3	Part 3: Chapter 17 of the Constitution: Authorisation of Expenditure from Consolidated Revenue Fund .....	26
2.3.1	Appropriations from Consolidated Revenue Fund .....	26
2.3.1.1	Presentation of Estimates of Revenue and Expenditure .....	26
2.3.1.2	Separate Estimates of revenue and expenditure for specific institutions .....	26
2.3.1.3	Appropriation Bill .....	27
2.3.1.4	Additional or Supplementary Estimate .....	27
2.3.1.5	Key Findings .....	27
2.3.1.6	Recommendations .....	28
2.3.2	Authorisation of expenditure in advance of appropriation .....	28
2.3.2.1	Withdrawals for unforeseen expenditure .....	28
2.3.2.2	Issue of money to carry on government at beginning of each financial year .....	29
2.3.2.3	Issue of money to carry on government after dissolution of Parliament .....	29
2.3.2.4	Key Findings .....	29
2.3.2.5	Recommendations .....	30
2.3.3	Unauthorised expenditure .....	30
2.3.3.1	Key Findings .....	31
2.3.3.2	Recommendations .....	31
2.4	Part 4 Chapter 17 of the Constitution: Safeguarding of Public Funds and Property ....	31
2.4.1	Duties of custodians of public funds and property .....	31
2.4.1.1	Duty of stewardship and Control over public funds .....	31
2.4.1.2	Duty of Care and control over public property .....	32
2.4.1.3	Detection of breaches and the disciplining and punishment of persons responsible for loss or destruction of public funds or public property .....	32
2.4.1.4	Key findings .....	32
2.4.1.5	Recommendations .....	33
2.5	Part 5 Chapter 17 of the Constitution: Auditor-General .....	33
2.5.1	Audit of Financial Statements .....	33
2.5.1.1	Key Findings .....	34
2.5.1.2	Recommendations .....	35
2.6	Part 6 of Chapter 17 of the Constitution: General .....	35
2.6.1	Procurement and other governmental contracts .....	35
2.6.1.1	Procurement of goods and services .....	35
2.6.1.2	State contracts .....	36
2.6.2	Management of statutory bodies .....	36
2.6.2.1	Key Findings .....	36
2.6.2.2	Recommendations .....	37
2.6.3	Reserve Bank of Zimbabwe .....	37
2.7	SUMMARY OF RECOMMENDATIONS ARISING FROM THE REVIEW OF THE PROVISIONS OF THE CONSTITUTION .....	37
2.7.1	Incorporate principles of public finance management .....	37
2.7.2	Align the PFM Act with the Constitution and relevant international agreements .....	38
2.7.3	Extent the scope of application of the PFM Act .....	38

2.7.4	Obligations relating to provincial and local governments .....	38
2.7.5	Parliamentary oversight over State revenues and expenditure .....	38
2.7.6	Institutional and administrative arrangements for monitoring and oversight of State revenues and expenditure .....	38
2.7.7	Rationalise portfolio committees and involve adhoc committees more .....	38
2.7.8	Allocation of revenue between provincial and local tiers of government .....	39
2.7.9	Allocation of at least five (5) percent of national revenue to provincial and local tiers of government .....	39
2.7.10	Preparation of estimates of revenue and expenditure .....	39
2.7.11	Establishment of the Exchequer account .....	39
2.7.12	Establishment of the Paymaster General's Account .....	39
2.7.13	Grants of Credit on the CRF .....	39
2.7.14	Cash management .....	40
2.7.15	Costs and expenses in connection with collection and managing the CRF .....	40
2.7.16	Submission of estimates after dissolution of Parliament .....	40
2.7.17	Submission of separate estimates of revenue and expenditure .....	40
2.7.18	Parliamentary committee to which commissions shall make representations .....	40
2.7.19	Withdrawal limits for Special warrants for unforeseen expenditure .....	41
2.7.20	Special warrants for issues to meet unforeseen expenditure .....	41
2.7.21	Issue of money to carry on government at beginning of each financial year .....	41
2.7.22	Issue of money to carry on government after dissolution of Parliament .....	41
2.7.23	Unauthorised expenditure .....	42
2.7.24	Definitions of public funds and public property in Section 2 of the Act .....	42
2.7.25	Obligations of public officers .....	42
2.7.26	Management of Government assets .....	42
2.7.27	Surcharges in cases of loss or destruction of public funds .....	42
2.7.28	Audit of all provincial and metropolitan councils and all local authorities .....	43
2.7.29	Compliance with orders from the Auditor General .....	43
2.7.30	Limiting the term of office for CEOs .....	43
3.	REVIEW OF THE PUBLIC FINANCE MANAGEMENT ACT .....	43
3.1	The Preamble of the PFM Act .....	43
3.1.1	Gap Analysis .....	43
3.1.2	Recommendations .....	43
3.2	Part I of the PFM Act: Preliminary .....	44
3.2.1	Gap Analysis .....	44
3.2.1.1	Section 2 of the Act: Interpretation .....	44
3.2.1.2	Section 3 of the Act: Object of Act .....	45
3.2.1.3	Section 4: Application of Act .....	46
3.2.2	Recommendations .....	46
3.3	New Part of the PFM Act: Parliamentary Oversight over state revenue and expenditure .....	46
3.3.1	Gap Analysis .....	46
3.3.2	Recommendations .....	46
3.4	Part II of the PFM Act: Control and Management of Public Resources .....	46

3.4.1	Gap Analysis.....	47
3.4.1.1	Section 6 of the PFM Act: Treasury to manage and control public resources .....	47
3.4.1.2	Section 7 of the PFM Act: Duties and powers of Minister .....	47
3.4.1.3	Roles and responsibilities of the Director for Finance .....	48
3.4.1.4	Obligations of public officers.....	48
3.4.1.5	Management of State Assets .....	48
3.4.1.6	Loss of public funds .....	48
3.4.1.7	Section 16 of the PFM Act: Money to be paid into Consolidated Revenue Fund.....	49
3.4.1.8	Section 17 of the PFM Act: Control of expenditures and issues from CRF ..	49
3.4.1.9	New section of the PFM Act: Costs and expenses to be direct charges.....	49
3.4.1.10	New section of the PFM Act: Grants of credit on the Consolidated Revenue Fund .....	49
3.4.1.11	Section 18: Establishment of other public funds.....	50
3.4.1.12	Section 19: Anticipated or unauthorised excess expenditure.....	50
3.4.1.13	Section 22 of the PFM Act: Establishment of banking accounts.....	50
3.4.1.14	Section 23 of the PFM Act: Accountant-General's warrants .....	51
3.4.1.15	Section 24 of the PFM Act: Special warrants for issues to meet unforeseen expenditure.....	51
3.4.1.16	Section 26 of the PFM Act: Issue of money to carry on government at beginning of each financial year .....	51
3.4.1.17	Section 27 of the PFM Act: Issue of money to carry on government after dissolution of Parliament .....	51
3.4.1.18	New Section of the PFM Act: Risk Management.....	51
3.4.2	Recommendations .....	52
3.5	Part III of the PFM Act: National Budget.....	53
3.5.1	Gap Analysis.....	53
3.5.1.1	Budgeting Process .....	53
3.5.2	Recommendations .....	54
3.6	Part IV of the PFM Act: Financial Statements .....	55
3.6.1	Gap Analysis.....	55
3.6.1.1	Financial Reporting Framework.....	55
3.6.1.2	Section 32 of the PFM Act: Preparation and reporting of annual financial statements by Ministries .....	56
3.6.1.3	Section 35 of the PFM Act: Consolidation of annual financial statements ...	56
3.6.1.4	Section 37 of the PFM Act: Financial statements and budgets to comply with generally accepted accounting practice .....	57
3.6.1.5	Publishing of reports on financial statements .....	57
3.6.1.6	Recommendations .....	57
3.7	Part V of the PFM Act: Public Entities.....	58
3.8	Provincial and Metropolitan Councils and Local Authorities .....	58
3.8.1	Gap Analysis.....	58
3.8.1.1	New Part for the PFM Act .....	58

3.8.2	Recommendations .....	58
3.9	Part VI of the PFM Act: Loans, Guarantees and Other Commitments .....	59
3.10	Part VIII of the PFM Act: Audit .....	59
3.10.1	Gap Analysis.....	59
3.10.1.1	Section 81 of the PFM Act: External auditors .....	59
3.10.1.2	Section 83 of the PFM Act: Annual reports and audited financial statements .....	60
3.10.1.3	Section 84 of the PFM Act: Audit committees .....	61
3.10.2	Recommendations .....	61
3.11	Part X of PFM Act: General .....	62
3.11.1	Gap Analysis.....	62
3.11.1.1	Section 90 of the PFM Act: Unclaimed money .....	62
3.11.1.2	Retention Monies .....	62
3.11.1.3	Recovery of debts due to the State .....	62
3.11.2.	Recommendations.....	62
4.0	SUMMARY OF RECOMMENDATIONS ARISING FROM THE REVIEW OF THE PFM ACT.....	63
4.1	Preamble and Interpretation sections .....	63
4.2	Section 3 of the PFM Act: Object of Act.....	63
4.3	Section 4 of the PFM Act: Application of Act.....	63
4.4	New Part of the PFM Act: Parliamentary oversight of state revenue and expenses .....	63
4.5	Section 6 of the PFM Act: Treasury to manage and control public resources.....	63
4.6	Section 7: Duties and powers of the Minister .....	64
4.7	New Section in PFM Act: Appointment, Roles and responsibilities of Director responsible for Finance .....	64
4.8	New section in PFM Act: Duties of custodians of public funds and public property .....	64
4.9	New Section in PFM Act Management of State assets.....	64
4.10	New Section of the PFM Act: Treasury Surcharge .....	64
4.11	Section 16 of the PFM Act: Money to be paid into Consolidated Revenue Fund .....	64
4.12	Section 17 of the PFM Act: Control of expenditures and issues from Consolidated Revenue Fund .....	64
4.13	New Section of the PFM Act: Costs and expenses to be direct charges .....	65
4.14	New Section of the PFM Act: Grants of credit on the CRF .....	65
4.15	Section 18 of the PFM Act: Establishment of other public funds .....	65
4.16	Section 19 of the PFM Act: Anticipated or unauthorised excess expenditure .....	65
4.17	Section 22 of the PFM Act: Establishment of banking accounts .....	65
4.18	Section 23 of the PFM Act: Accountant-General's warrants .....	65
4.19	Section 24 of the PFM Act: Special warrants for issues to meet unforeseen expenditure.....	66
4.20	Section 26 of the PFM Act: Issue of money to carry on government at beginning of each financial year .....	66
4.21	Section 27 of the PFM Act: Issue of money to carry on government after dissolution of Parliament .....	66

4.22	New Section of the PFM Act: Preparation of estimates of revenue and expenditure .....	66
4.23	New section of the PFM Act: Allocation of capital grants between provincial and local governments .....	66
4.24	New section of the PFM Act: Process of sharing five percent of national revenue amongst provincial and metropolitan provinces and local authorities.....	66
4.25	Section 28 of the PFM Act: Submission to Parliament of annual estimates of revenue and expenditure .....	67
4.26	New Section of the PFM Act: Budget Management .....	67
4.27	New Section of the PFM Act: Budget Management .....	67
4.28	New Section of the PFM Act.....	67
4.29	Section 35 of the PFM Act: Consolidation of annual financial statements.....	67
4.30	New section of the PFM Act: Submission of financial statements to the National Assembly.....	67
4.31	Section 37 of the PFM Act: Financial statements and budgets to comply with generally accepted accounting practice .....	67
4.32	Section 38 of the PFM Act: Publishing of reports on financial statements.....	68
4.33	New Part of the PFM Act: Provincial and Metropolitan Councils and Local Authorities.....	68
4.34	Part VI of the PFM Act: Loans, Guarantees and other Commitments .....	68
4.35	Section 81 of the PFM Act: External auditors.....	68
4.36	Section 83 of the PFM Act: Annual reports and audited financial statements.....	68
4.37	Section 90 of the PFM Act: Unclaimed money.....	68
4.38	New section of the PFM Act: Retention monies .....	68
4.39	New section of the PFM Act: Recovery of Debts due to the State .....	69
5.0	CONCLUSION.....	69

## **List of Figures**

Figure 1: Principles that must guide public finance management in Zimbabwe

Figure 2: Grants of credit on the Consolidated Revenue Fund

DRAFT



## **List of Tables**

Table 1: Definitions to be deleted from Section 2 of the PFM Act

Table 2: Definitions in Section 2 that need amendments

Table 3: Terms that need to be added to Interpretations

Table 4: Provisions repeated in two parts of the PFM Act

DRAFT

## Acronyms

Constitution	Constitution of Zimbabwe (Amendment number 20) Act of 2013
CRF	Consolidated Revenue Fund
GoZ	Government of Zimbabwe
IFAC	International Federation of Accountants
IPSAB	International Public Sector Accounting Standards Board
IPSASs	International Public Sector Accounting Standards
MoFED	Ministry of Finance and Economic Development
PAA Act	Public Accountants and Auditors Act [Chapter 27:09]
PAAB	Public Accountants and Auditors Board
PAC	Public Accounts Committee
PFM Act	Public Finance Management (PFM) Act [Chapter 22:19]
PoZ	Parliament of Zimbabwe

## **1.0 INTRODUCTION**

Zimbabwe adopted the Constitution of Zimbabwe (Amendment number 20) Act of 2013, (hereinafter referred to as the Constitution) as the supreme law of Zimbabwe.<sup>1</sup> In line with this promulgation the Government of Zimbabwe (GoZ) has initiated a Constitutional Alignment Process aimed at aligning all laws with the Constitution. It is against this background that the Ministry of Finance and Economic Development (MoFED) has conducted a review of the Public Finance Management (PFM) Act [Chapter 22:19] through the Inter-Ministerial Taskforce on Alignment of Legislation to the Constitution (IMT).

The purpose of this Discussion Paper is to review, identify gaps and recommend amendments to the PFM Act, with a view to aligning the statute with the Constitution.

The review and discussions in this Paper are two pronged. They are both in relation to the relevant constitutional provisions on Public Finance and the PFM Act, respectively. The objective is to identify principles that inform good public finance management; and carry out a gap analysis of the PFM Act. In addition, a comparative analysis of public finance management laws from other jurisdictions will be conducted with a view to identify international best practices.

## **2.0 CONSTITUTIONAL PROVISIONS ON PUBLIC FINANCE**

There are several constitutional provisions that have direct and indirect implication on public financial management. The direct provisions are contained in Chapter 17 of the Constitution where six (6) key areas that relate to public finance management are dealt with. There are other constitutional provisions that relate to public financial management indirectly. This Discussion Paper identifies gaps and instances of inconsistency or conflicts of the PFM Act with the constitutional provisions, be they direct or indirect.

### **2.1 Part 1: Chapter 17 of the Constitution: Financial Management**

Part 1 of Chapter 17 of the Constitution contains provisions relating to the principles governing public financial management; Parliamentary oversight of state revenues and

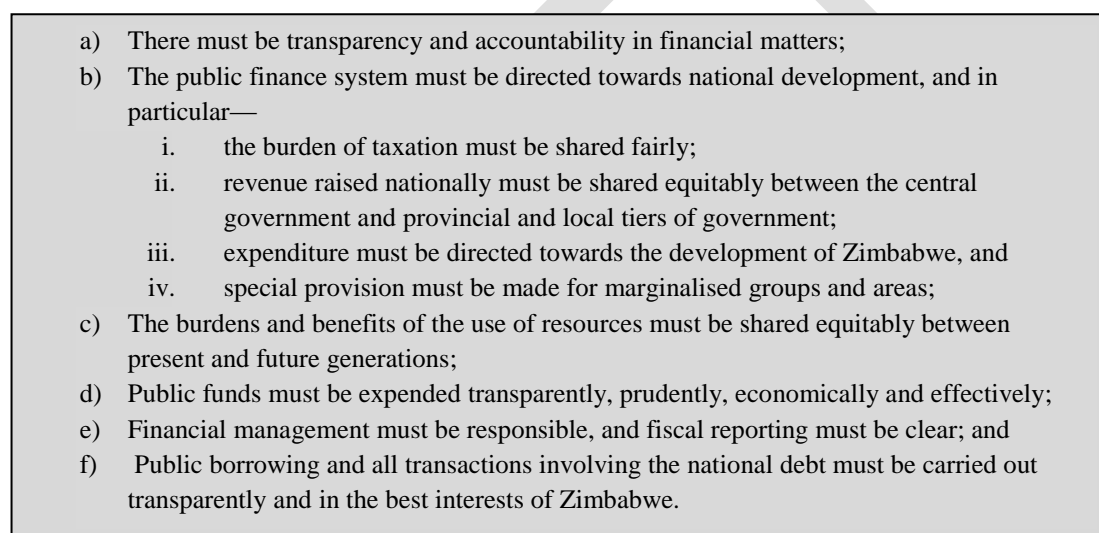
---

<sup>1</sup> Section 2(1) provides that the Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency

expenditure; limits of state borrowings, public debt and state guarantees; and the allocation of revenues between provincial and local tiers of government.

### **2.1.1 Principles Governing Public Finance in Zimbabwe**

Public finance management refers to the set of laws, rules, systems and processes used by sovereign nations (and sub-national governments), to mobilise revenue, allocate public funds, undertake public spending, account for funds and audit results.<sup>2</sup> The public finance management cycle is commonly conceived as a cycle of six phases namely, policy design, budget formulation, budget approval, budget execution, accounting and external audit. Section 298(1) of the Constitution provides a number of principles that must guide all aspects of public finance management in Zimbabwe. Figure 1 below contains the said principles.

- 
- 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
    - iv. 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.

**Figure 1: Principles that must guide public finance management in Zimbabwe**

#### **2.1.1.1 Transparency and accountability in financial matters**

Good governance is one of the founding values and principles of the Constitution and national objectives as provided for under Section 3 and Section 9 of the Constitution respectively. Transparency and accountability are some of the principles that inform good governance.

#### **2.1.1.2 Public finance system must be directed towards national development**

Section 13 of the Constitution identifies national development as one of the national objectives that informs it. This principle underscores the principle of equitable and

---

<sup>2</sup> Lawson, A. (2015). Public Financial Management. GSDRC Professional Development Reading Pack no. 6. Birmingham, UK: GSDRC, University of Birmingham

geographical distribution of resources between the central government and provincial and local tiers of government; that the burden of taxation must be shared fairly; and expenditure must be directed towards the development of Zimbabwe. It also recognises that marginalised groups and areas should be considered in relation to public finance management especially gender responsive budgeting.<sup>3</sup> Part 3 of the Constitution recognises marginalised and vulnerable groups such as women, children, elderly, persons with disabilities and War Veterans.

#### **2.1.1.3 The burdens and benefits of the use of resources must be shared equitably between present and future generations**

This principle is informed by the concept of sustainable development which is defined as “development that meets the needs of present without compromising the ability of future generations to meet their own needs”.<sup>4</sup> This means public finance systems must promote the rights of present and future generations.

#### **2.1.1.4 Public funds must be expended transparently, prudently, economically and effectively**

These principles underscore the objectives that public financial management systems should achieve. There are four objectives that public finance management systems should accomplish.<sup>5</sup> These relate to maintenance of aggregate fiscal discipline; allocative efficiency; operational efficiency and transparency. Achievement of fiscal discipline entails ensuring that aggregate levels of tax collection and public spending are consistent with targets for the fiscal deficit, and do not generate unsustainable levels of public borrowing. Attaining allocative efficiency involves ensuring that public resources are allocated to agreed strategic priorities. Operational efficiency entails ensuring achievement of maximum value for money in the delivery of services. Achieving transparency entails following due process and being seen to do so, with information publicly accessible, and by applying independent checks and balances to ensure accountability.

---

<sup>3</sup> The Council of Europe (2005) defines GRB as “an application of gender mainstreaming in the budgetary process. It means a gender-based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality

<sup>4</sup> Report of the World Commission on Environment and Development (the Brundtland Report), *Our Common Future* (1987),

<sup>5</sup> Lawson, A. (2015). Public Financial Management. GSDRC Professional Development Reading Pack no. 6. Birmingham, UK: GSDRC, University of Birmingham

Since the PFM Act is the main statute that governs public financial management in Zimbabwe, it is important that the provisions of the Act promote these principles.

#### **2.1.1.5 Financial management must be responsible, and fiscal reporting must be clear**

These principles are consistent with the values relating to accountability and transparency. Responsible financial management is the hallmark of good public finance management systems. A key element of statehood is the ability to tax fairly and efficiently and to spend responsibly.<sup>6</sup> Underpinning the requirement for clear fiscal reporting is the principle of accountability of GoZ to the key actors in the public financial management cycle who rely on fiscal reports for key decision making processes. These key actors include public officers, PoZ, civil society and development partners.

It is therefore important that the provisions of the PFM Act take into account these principles. The provisions of the PFM Act must make clear the reporting framework, type and contents of fiscal reports that Accounting Officers, Accounting Authorities and Treasury are expected to prepare for submission to PoZ and stakeholders.

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

This principle underscores the objective of maintenance of aggregate fiscal discipline and the fact that the PFM Act must be cross referenced with Public Debt Management Act [Chapter 22:21].

#### **2.1.1.7 Other Relevant Principles**

There are other relevant principles provided for by the Constitution which also either directly or indirectly inform public finance management. These principles are found in the founding values and principles as well as national objectives. Although these constitutional provisions are not legally enforceable, they are important in influencing the development of national laws and policies.

These principles are good governance, national development, empowerment and employment creation, gender balance and gender equality. In addition, Chapter 2 provides for the National

---

<sup>6</sup> Acemoglu and Robinson, 2012, 'Why Nations Fail'

Objectives that include good governance;<sup>\*7</sup> national development;<sup>\*8</sup> empowerment and employment creation;<sup>9</sup> gender balance;<sup>10</sup> and fair regional representation.<sup>11</sup>

#### **2.1.1.7.1 Good Governance**

Section 9(1) of the Constitution urges the State to adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution. As discussed above, the principle of good governance should be adopted as a standalone principle by the PFM Act because it embraces other principles such as transparency, accountability, public participation, protection of human rights and adherence to rule of law.

#### **2.1.1.7.2 Equitable Development and Stakeholder Consultations**

Section 13(1) of the Constitution encourages the State and all institutions and agencies of government at every level to adopt measures that facilitate rapid and equitable development. The State is called upon to consult the people in the formulation and implementation of national development plans and programmes in terms of Section 13(2) of the Constitution. The PFM Act should take into account the need for stakeholder consultations in budget formulation (both capital and recurrent).

#### **2.1.1.7.3 Empowering marginalised persons, groups and communities in Zimbabwe**

Section 14(1) of the Constitution urges the State and all institutions and agencies of government at every level to facilitate and take measures aimed at empowering, all marginalised persons, groups and communities in Zimbabwe through appropriate, transparent, fair and just affirmative action. This principle is also supported by Part 3 of the Constitution that elaborates on rights of various vulnerable and marginalised groups. The PFM Act should promote the rights of these groups and this may require affirmative action measures. This means that the provisions of the PFM Act should be cross-referenced with the Public Procurement Act [Chapter 22:14] and aligned with the Constitution.

---

<sup>7</sup> \*Section 9 of the Constitution already discussed

<sup>8</sup> \*Section 13 of the Constitution already discussed

<sup>9</sup> Section 14 of the Constitution

<sup>10</sup> Section 17 of the Constitution

<sup>11</sup> Section 18(2) of the Constitution

#### **2.1.1.7.4 Gender balance and equality**

Section 17(1) of the Constitution mandates the State to “promote full gender balance in Zimbabwean society and in particular the full participation of women in all spheres of Zimbabwean society on the basis of equality with men”. It further urges the State to take all measures, including legislative measures, needed to ensure that both genders are equally represented in all institutions and agencies of government at every level; and women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament.<sup>12</sup>

This principle requires that the Committees established in terms of the PFM Act should take into account gender balance, non-discrimination and equality. This is supported by Section 56 of the Constitution that promotes equality and non-discrimination between both sexes.

#### **2.1.1.7.5 Domestication of international instruments**

Section 34 of the Constitution states that the “State must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law”. This provision promotes the domestication of all international agreements that have been ratified by Zimbabwe into national laws, policies and programs. This means public finance management is central to the domestication and implementation of laws through allocation of financial resources. This is reflected in gender responsive budgets and its subset, namely child friendly budgets where the international and regional commitments arising from human rights agreements and protocols on finance and investment are clearly demonstrated through public finance management systems.

#### **2.1.1.8 Key Findings**

The principles provided for by the Constitution were reviewed in relation to the PFM Act and whether they were incorporated in this statute. The only principles that are provided for in the PFM Act are transparency and accountability. For example, one of the objectives of this Act is “to secure transparency, accountability and sound management of the revenues, expenditure, assets and liabilities”. This means that the PFM Act is neither informed by the principles discussed above nor does it have gender sensitive provisions.

---

<sup>12</sup> Section 17 (2) of the Constitution



#### **2.1.1.9 Recommendations**

- a) Amend the PFM Act and incorporate principles relating to public finance management.
- b) Align the PFM Act with the Constitution and relevant international agreements.
- c) Cross-reference the PFM Act with Procurement Act, Public Debt Management Act and other relevant statutes.

#### **2.1.2 Parliamentary oversight of State revenues and expenditure**

The Constitution requires Parliamentary oversight of state revenues and expenditure. For example, Section 299(1) of the Constitution compels 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, in order to ensure that all revenue is accounted for; all expenditure has been properly incurred; and any limits and conditions on appropriations have been observed”. This provision requires a statute that monitors and regulates revenue and expenditure by various state institutions, commissions, agencies of government statutory bodies; government-controlled entities; provincial and metropolitan councils; and local authorities.

This constitutional provision implies that the scope of the application of the PFM Act should include provincial and metropolitan councils as well as local authorities.

##### **2.1.2.1 Mechanisms for PoZ to monitor and oversee revenues and expenditure**

According to Section 299(2) of the Constitution, “an Act of Parliament must provide mechanisms for Parliament to carry out the duties of monitoring as well as oversight over revenue and expenditure by the State; all Commissions; institutions and agencies of government at every level; statutory bodies; government-controlled entities; provincial and metropolitan councils; and local authorities”. The implication is that the PFM Act is supposed to incorporate institutional and administrative frameworks that will be used by PoZ in the monitoring and oversight of public finance management system.

### 2.1.2.2 Key Findings

Section 4 of the PFM Act provides that this Act applies to the Ministries; designated corporate bodies and public entities; constitutional entities; and statutory funds. This provision is partially in conflict with Section 299(1) of the Constitution.

However, it is important to note the implication of extending the scope of the PFM Act is that it imposes obligations on these institutions that include submitting annual budgets and financial performance reports to the Government, Auditor General and PoZ.

The provisions of Section 28(5) of the PFM Act states 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 which purpose the appropriate portfolio committee shall 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 PoZ in the monitoring and oversight of public finance management system. This means that the PFM Act is not aligned to the Constitution.

In practice, the PoZ monitors public finances through nineteen (19) Parliamentary Portfolio Committees such as Finance and Economic Development and the Public Accounts Committee but the roles and responsibilities of these Committees are not provided for in the Act. According to PoZ,<sup>13</sup> the role of Parliamentary Portfolio Committees is to examine the expenditure, administration and policy of government departments and other matters falling under their jurisdictions as Parliament may by resolution determine. These Committees perform both a pre-audit and post-audit functions. For example, the post audit function is carried out by the Public Accounts Committee (PAC). The PAC has a mandate to examine the financial affairs and accounts of Government departments and state owned enterprises. It also examines all reports of the Auditor General. The PAC performs an oversight role of looking at the financial statements of departments funded from public funds.

There is therefore a gap between provisions of the PFM Act and practice that is adopted by PoZ and its relevant Committees. The PFM Act needs to be aligned to the Constitution and

---

<sup>13</sup> <http://www.parlzim.gov.zw/about-parliament/committee-system/types-of-committees> accessed 12 September 2016

practise adopted by PoZ and relevant Committees. Lessons can be learnt from the Kenyan<sup>14</sup> example where the statute governing public finance management contains specific provisions relating to Parliamentary oversight of national finances.

### **2.1.2.3 Recommendations**

- a) Amend Section 4 of the PFM Act and incorporate provisions that extent the scope of application of statute to provincial and metropolitan councils as well as local authorities;
- b) Amend the PFM Act and incorporate obligations relating to provincial and metropolitan councils as well as local authorities. The obligations should include submitting annual budgets and financial performance reports to GoZ, Auditor General and PoZ;
- c) Amend the PFM Act and incorporate a provisions relating to Parliamentary oversight;
- d) Amend the PFM Act and incorporate provisions that establish institutional and administrative frameworks that are used by PoZ in monitoring and oversight of State Revenues and Expenditure;
- e) Rationalise portfolio committees and involve adhoc committees more; and
- f) Align the PFM Act with the Constitution.

### **2.1.3 Limits of State borrowings, public debt and State guarantees**

According to Section 300(1) of the Constitution, an act of Parliament must set limits on State borrowings, public debt and State guarantees. The implementation of these provisions is dealt with under the Public Debt Management Act. As discussed earlier in the paper, the provisions of this act should be synchronised and cross referenced with the PFM Act.

### **2.1.4 Allocation of revenues between provincial and local tiers of government**

Section 301(1) of the Constitution requires the enactment of an Act of Parliament that promote equitable allocation of capital grants between provincial and metropolitan councils and local authorities; any other allocations to provinces and local authorities, and provision of

---

<sup>14</sup> Republic of Kenya Public Finance Management Act [2012]. PART II contains provisions on Parliamentary oversight of national finances. The provisions contain responsibilities of Committees of Parliament and Parliamentary Budget Office.

any conditions on which those allocations may be made. This provision is informed by the principle of equitable and geographical distribution of resources.

The appropriate Act that should implement these provisions is the PFM Act. These provisions should be tied to the national budgeting process. As highlighted earlier in this paper, the PFM Act does not have provisions that are informed by this principle. This means the PFM Act is in conflict with section 301(1) of the Constitution.

#### **2.1.4.1 A percentage of national revenue to be allocated to the provinces and local authorities annually**

Section 301(3) of the Constitution provides that the allocation of national revenue provincial and local authorities should not be less than five (5) per cent of the national revenues raised in any financial year.

The PFM Act does not have a provision on allocation of finances from national to provincial and local levels. This means that the PFM Act is in conflict with the Constitution. It is also important to note that there has not been a formula on the allocation of these resources from a constitutional perspective.

#### **2.1.4.2 Key Findings**

The current provisions on budgeting that are in Part III of the PFM Act do not have adequate provisions on the national budgeting process. It only provides for budget submission to the National Assembly and approval.

Lessons should be learnt from the Kenyan example which has adopted a process for sharing national revenue.<sup>15</sup> Whilst the responsibility for determining allocation to provinces and local authorities may be the responsibility of an independent body, the PFM Act must provide for this requirement.

#### **2.1.4.3 Recommendations**

- a) Amend the PFM Act and incorporate provisions relating to allocation of revenue between provincial and local tiers of government;

---

<sup>15</sup> Republic of Kenya Public Finance Management Act [Chapter 412C]

- b) Amend the PFM Act and incorporate provisions relating to the allocation of not less than five (5) percent of national revenue to provincial and local tiers of government;
- c) Amend the PFM Act and insert provisions relating to the preparation of revenue and expenditure estimates; and
- d) Amend the PFM Act and align the statute to the Constitution.

## **2.2 Part 2: Chapter 17 of the Constitution: Consolidated Revenue Fund**

The focus of the provisions for Part 2 of Chapter 17 of the Constitution is the establishment of the Consolidated Revenue Fund (CRF), withdrawals from the CRF and charges upon the CRF.

### **2.2.1 Establishment of a Consolidated Revenue Fund**

#### **2.2.1.1 Money to be paid into CRF**

The provisions of Section 302 of the Constitution establishes a CRF into which must be paid all fees, taxes and borrowings and all other revenues of the Government, whatever their source, unless an Act of Parliament—

- a) requires or permits them to be paid into some other fund established for a specific purpose; or
- b) permits the authority that received them to retain them, or part of them, in order to meet the authority's expenses.

The PFM Act should implement these constitutional provisions.

#### **2.2.1.2 Key Findings**

The constitutional provisions of Section 302 of the Constitution are dealt with in Sections 16 and Section 18 of the PFM Act. Section 16 of the PFM Act is aligned to the Constitution as it states that all revenues, with the exception of the provision of Section 18 (9), shall be paid into the CRF. There is however need to cross-reference the provisions of section 16 of the PFM Act with the provisions of section 15 of the Public Debt Management Act.<sup>16</sup>

---

<sup>16</sup> Section 15 states 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.

There is also a gap between the provisions of Section 16 of the PFM Act and practice that is adopted by MoFED in the operation of the CRF. In practice the CRF comprises of two Accounts, viz the Exchequer and the Paymaster General's Account. All fees, taxes and borrowings and all other revenues of the Government, whatever their source are deposited into the Exchequer Account. All payments that are proper charges to public funds are made out of the Paymaster General's Account. Likewise, Government ministries operate Sub-Exchequer Accounts for the purpose of depositing public funds and maintain Sub-Paymaster General Accounts for effecting payments.

Whilst the vision of the MoFED is to set up a Treasury Single Account, it is not yet in place. A Treasury Single Account<sup>17</sup> is a centralised bank account system where all deposits and payment transactions are processed for State departments; Commissions; Independent offices; and any national government entity which draws directly from the CRF. A number of jurisdictions have adopted a Treasury Single Account and this is clearly stated in their public finance laws.<sup>18</sup> It is therefore important that the provisions of the PFM Act reflect the current practice in the operation of the CRF in Zimbabwe.

### **2.2.1.3 Recommendations**

- a. Amend Section 16 of the PFM Act and incorporate provisions relating to the establishment and operations of the Exchequer account into which all revenue is deposited.

## **2.2.2 Withdrawals from Consolidated Revenue Fund**

### **2.2.2.1 Control of expenditures and issues from Consolidated Revenue Fund**

According to Section 303(1) of the Constitution, no money may be withdrawn from the CRF except to meet expenditure authorised by the Constitution or by an Act of Parliament. These constitutional provisions are dealt with in Section 17(1) of the PFM Act.

---

<sup>17</sup> See the Republic of Kenya Public Finance Management Act [Chapter 412C]; the Republic of Seychelles Public Finance Management Act (Act No 9 of 2012); and Republic of Liberia Public Finance Management Act of 2009.

<sup>18</sup> See Ghana Public Financial Management Bill, 2016; Republic of Liberia Public Finance Management Act of 2009; and the Republic of Kenya Public Finance Management Act [Chapter 412C]

#### **2.2.2.2 Control on Payments**

Section 303(2) of the Constitution requires that money withdrawn from the CRF must be paid only to the person to whom the payment is due. This provision underscores the importance of systems of controls on cash disbursements and reinforces the principles of accountability and responsible financial management discussed in 2.1.1.4 and 2.1.1.5 and above.

These Constitutional provisions are dealt with in section 17 of the PFM Act. The Constitutional provisions are also partly addressed by section 14 of the PFM Act whose aim is to deal with ministerial directives with financial implications.

#### **2.2.2.3 Withdrawal from the CRF, cash management and investments**

According to Section 303(3) of the Constitution, an Act of Parliament must prescribe the way in which:

- a. withdrawals are to be made from the CRF and any other public fund; and
- b. money in the CRF and any other fund is to be held and invested.

These constitutional provisions are dealt with in Section 17 of the PFM Act.

#### **2.2.2.4 Key Findings**

The need for clarity on the name of the CRF Account from which payments are made was alluded to in 2.2.1.2 above.

It is also important to note that there are no provisions in the PFM Act that deal with the controls that exist and the approval process on the movement of funds from the Account that receives all public funds (the Exchequer Account) to the Account from which funds are withdrawn (the Paymaster General's Account). The Audit and Exchequer Act [Chapter 22:03], which the PFM Act repealed, provided for the authorisation of the transfer of money from the Exchequer Account to the Paymaster General's Account through grants of credit on the CRF. These grants of credit were issued by the Auditor General.

The objectives of the grants of credit<sup>19</sup> mechanism are to ensure transparency and accountability as well as to promote financial discipline. A brief description of the grants of

---

<sup>19</sup> See Section 28 of the Audit and Exchequer [Chapter 22: 03]; Sections 31 and 32 of Government of Uganda Public Finance Management Act of 2015; and Trinidad and Tobago Exchequer and Audit Act [Chapter 69:01].

credit system that was in operation before the Auditor General relinquished the responsibility is given in the Figure 2 below.

1. Treasury would request the Auditor-General to issue a grant a credit on the Exchequer Account. The requested amount is limited to the lawfully authorised withdrawals from the CRF.
2. On receipt of the requisition, the Auditor General granted a credit on the Exchequer Account only if satisfied that:
  - a. the amount requested has been lawfully authorized; and
  - b. the amount so requisitioned, together with any other amounts previously requisitioned during the financial year, does not exceed the aggregate amount that may lawfully be authorized.
3. A credit granted by the Auditor-General constituted the necessary authority to the Reserve Bank of Zimbabwe to transfer the amount specified from the Exchequer Account to the Paymaster-General's Account in accordance with the directions of the Treasury.
4. The Reserve Bank provided the Auditor-General with statements showing payments into and withdrawals from the Exchequer Account at such intervals and in such form as the Treasury, after consultation with the Auditor-General, directed.

**Figure 2: Grants of credit on the Consolidated Revenue Fund**

Source: Audit and Exchequer [Chapter 22: 03]

In the absence of the Treasury Single Account system, the principle of accountability and transparency as provided for in terms of Sections 3, 9 and 298 of the Constitution is better promoted and demonstrated through a control mechanism on the movement of funds from the Exchequer to the Paymaster Generals' Account. This means the PFM Act should adopt provisions that promote accountability and transparency of the CRF through mechanisms such as grants of credit on the CRF. In jurisdictions that have not yet adopted the Treasury Single Account, the responsibility lies with the Auditor General. Given the fact in Zimbabwe, the Auditor General has relinquished this responsibility one option is for the Minister responsible for Finance to issue the grants of credit to the Accountant General.

There is also a gap that exists between practice and the provisions of the PFM Act in relation to the management of cash. In practice, MoFED issues monthly expenditure targets (ceilings) to Accounting Officers and the release of funds to Ministries is governed by cash availability and cash flow forecasts that Ministries submit at intervals and in a format determined by Treasury. It is important that the provisions of the PFM Act formalises these practices.

#### **2.2.2.5 Recommendations**

- a. Amend Section 17 of the PFM Act and incorporate provisions relating to the establishment and operations of the Paymaster General's Account;



- b. Amend the PFM Act and incorporate provisions relating to controls on the movement of funds from the Exchequer to the Paymaster General's Account; and
- c. Amend the PFM Act and incorporate provisions relating to cash management

## **2.2.3 Charges upon Consolidated Revenue Fund**

### **2.2.3.1 Debt Charges**

Section 304(1) of the Constitution states that all debt charges for which the State is liable must be charged upon the CRF. These constitutional provisions are dealt with in Section 31 of the Public Debt Management Act [Chapter 22:21]. It is also important that the provisions of the PFM Act are cross-referenced to the Public Debt Management Act.

### **2.2.3.2 Costs and expenses incurred in collecting and managing the CRF**

According to Section 304(2) of the Constitution, the costs and expenses incurred in collecting and managing the CRF form the first charge on the Fund. GoZ at the various levels incur costs in collecting funds, making payments and maintaining bank accounts. These provisions require that such costs be paid from the CRF. The PFM Act should implement these constitutional provisions.

### **2.2.3.3 Key Findings**

The PFM Act does not have provisions on costs and expenses in connection with collecting revenue and managing the CRF. The Act is therefore inconsistent with the Constitution.

### **2.2.3.4 Recommendations**

- a. Amend the PFM Act and incorporate provisions relating to costs and expenses in connection with collection and managing the CRF being a direct charge to the CRF; and
- b. Align the PFM Act to the Constitution.

## **2.3 Part 3: Chapter 17 of the Constitution: Authorisation of Expenditure from Consolidated Revenue Fund**

The provisions of Part 3 of Chapter 17 of the Constitution focus on the measures and controls relating to appropriations from the CRF, authorisation of expenditure in advance of appropriation and unauthorised expenditure.

### **2.3.1 Appropriations from Consolidated Revenue Fund**

#### **2.3.1.1 Presentation of Estimates of Revenue and Expenditure**

Section 305(1) of the Constitution requires that every year the Minister responsible for Finance present to the National Assembly a statement of the estimated revenues and expenditures of the Government in the next financial year. Section 305(2) of the Constitution obliges the Minister to present the estimates on a day on which the Assembly sits before or not later than thirty days after the start of each financial year. In addition, the provisions require that if Parliament is dissolved and it is impossible to lay estimates before the Assembly by that time, then they must be laid before the Assembly within thirty days after the Assembly first meets following the dissolution.

These provisions are dealt with in Part III and specifically Sections 28(1) and 28(2) of the PFM Act.

#### **2.3.1.2 Separate Estimates of revenue and expenditure for specific institutions**

The provisions of Sections 305(3) of the Constitution require separate estimates of revenue and expenditure for the following:-

- a. each Commission established by the Constitution;
- b. the office of the Auditor-General;
- c. the National Prosecuting Authority;
- d. the Council of Chiefs; and
- e. any other institution prescribed in an Act of Parliament.

It is also instructive to note that Section 325(2) of the Constitution states that the Commissions and other institutions established by the Constitution must be given a reasonable opportunity to make representations to a parliamentary committee as to the funds to be allocated to them in each financial year.

The PFM Act should implement these provisions.

### **2.3.1.3 Appropriation Bill**

According to Section 305(4), when the National Assembly has approved the estimates of expenditure for a financial year, other than expenditure that is specifically charged on the CRF by this Constitution or an Act of Parliament, the Minister responsible for finance must cause a Bill to be known as an Appropriation Bill to be introduced into the National Assembly, and that Bill must—

- (a) provide for money to be issued from the CRF to meet the approved expenditure; and
- (b) appropriate the money to the purposes specified in the estimates, under separate votes for the different heads of expenditure that have been approved.

These provisions are dealt with in Section 28(3) of the PFM Act.

### **2.3.1.4 Additional or Supplementary Estimate**

The provisions of Section 305(5) states that if the money appropriated to a purpose under an Appropriation Act is insufficient or if expenditure is needed for a purpose for which no money has been appropriated, the Minister responsible for finance must cause an additional or supplementary estimate to be presented to the National Assembly. If the National Assembly approves the estimate the Minister must cause an additional or supplementary appropriation Bill to be introduced into the Assembly providing for the necessary money to be issued from the CRF.

These provisions are dealt with in Section 28(4) of the PFM Act.

### **2.3.1.5 Key Findings**

Section 28(2) of the PFM Act is partially inconsistent with the provisions of Section 305(2) of the Constitution on the period within which estimates should be laid before the National Assembly, after the Assembly first meets following dissolution. The provisions of the Constitution give a period of thirty days and the PFM Act provides that “if Parliament is dissolved less than three months before the commencement of any financial year, the estimates for that year may be laid before the House of Assembly as soon as is possible after the commencement of that year”. The provisions of Section 28(2) of the PFM Act should be aligned to the Constitution.

The PFM Act does not have provisions dealing with the submission of separate estimates of revenue and expenditure for commissions and institutions stated by Section 305(3) of the Constitution. The statute also makes no provision for mechanisms through which such institutions can make representations to a Parliamentary Committee as to the budgets allocated to them each financial year. This means the PFM Act is in conflict with the Constitution. The PFM Act should be aligned to the Constitution and make provisions for separate estimates of revenue and expenditure for commissions and other institutions established by the Constitution. The PFM must also make provisions for a parliamentary committee to which commissions shall make representations as to the funds allocated to them each financial year.

#### **2.3.1.6 Recommendations**

- a. Amend Section 28(2) of the PFM Act and align the statute to the Constitution;
- b. Amend the PFM Act and incorporate provisions relating to submission of separate estimates of revenue and expenditure for commissions and other institutions established by the Constitution; and
- c. Amend the PFM Act and incorporate provisions relating to a parliamentary committee to which commissions shall make representations as to the funds allocated to them each financial year.

#### **2.3.2 Authorisation of expenditure in advance of appropriation**

##### **2.3.2.1 Withdrawals for unforeseen expenditure**

According to Section 306(1) of the Constitution an Act of Parliament may allow the President 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, but—

- a. the Act 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 Act;
- b. 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.

These provisions are dealt with in Section 24 of the PFM Act.

#### **2.3.2.2 Issue of money to carry on government at beginning of each financial year**

The provisions of Section 306(2) of the Constitution states that if the Appropriation Act for a financial year has not come into operation by the beginning of that financial year, an Act of Parliament allow the President to authorise the withdrawal of money from the CRF to meet expenditure necessary to carry on the services of the Government for the first four months of the financial year, but—

- a. the 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
- b. 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.

These provisions are dealt with Section 26 of the PFM Act.

#### **2.3.2.3 Issue of money to carry on government after dissolution of Parliament**

According to Section 306(3) of the Constitution, states that if Parliament is dissolved before adequate financial provision has been made for carrying on the services of the Government, an Act of Parliament may allow the President to authorise the withdrawal of money from the CRF to meet expenditure needed to carry on those services until three months after the National Assembly first meets after the dissolution, but any money withdrawn under the Act must be included in an Appropriation Act under separate votes for the different heads of expenditure .

These provisions are dealt with in Section 27 of the PFM Act.

#### **2.3.2.4 Key Findings**

Section 24(2) of the Act is partially inconsistent with the provisions of Section 306(1)(a) of the Constitution on limits for money withdrawn to meet expenditure which was unforeseen or whose extent was unforeseen and for which no provision has been made under any other law. Section 24(2) of the PFM Act puts the limit of the amount of money authorised to be withdrawn to five per centum of the total amount appropriated in the last main Appropriation. The Constitution states that it should not be in excess of one and one-half percent. The PFM Act should be aligned to the Constitution.

In addition, Section 24(3) should be aligned to the Constitution on the fact that any money withdrawn must be included in additional or supplementary estimates of expenditure laid without delay before the National Assembly. The PFM Act suggests they are laid “on one of the fourteen days on which the House of Assembly sits next after such issue has been authorised”.

Section 26(1) of the PFM Act is inconsistent with the Constitution on the period covered by the Presidential warrant for expenditure prior to the promulgation of the Appropriation Act. According to Section 302(2) of the Constitution, the Presidential warrant is for the first four months of the financial year. Section 26(1) of the PFM Act indicates that the Presidential warrant is for the “period commencing with the beginning of that financial year and expiring four months thereafter or on the date of commencement of the main Appropriation Act, whichever is the earlier”. This means that the provisions of the PFM must be aligned to the Constitution.

Section 27(1) of the PFM Act is not consistent with the Constitution on the chapter the Act refers to. The provisions of the PFM Act must be aligned to the Constitution.

#### **2.3.2.5 Recommendations**

- (a) Amend Section 24(2) of the PFM Act and align the statute to the Constitution;
- (b) Amend Section 24(3) of the PFM Act and align the Act to the Constitution;
- (c) Amend Section 26(1) of the PFM Act and align the Act to the Constitution; and
- (d) Amend Section 27(1) of the PFM Act and align the Act to the Constitution.

#### **2.3.3 Unauthorised expenditure**

According to Section 307(1) of the Constitution, if it is found that more money has been expended on a purpose than was appropriated to it or that money has been expended on a purpose for which no money was appropriated, the Minister responsible for finance must introduce a Bill into the National Assembly seeking condonation of the unauthorised expenditure. In addition, Section 307(2) of the Constitution requires that the Bill be introduced into the National Assembly without delay and in any event no later than sixty days after the extent of the unauthorised expenditure has been established. The PFM Act should take into account these provisions.

### **2.3.3.1 Key Findings**

The constitutional provisions in 2.3.3 above are dealt with in Section 19(2) and 19(3) of the PFM Act. Section 19(3) of the PFM Act is partially inconsistent with the Constitution as it quotes Section 105 of a constitution that was repealed. Section 19(3) should be aligned to the Constitution.

### **2.3.3.2 Recommendations**

- (a) Amend Section 19(3) of the PFM Act and align the statute to the Constitution

## **2.4 Part 4 Chapter 17 of the Constitution: Safeguarding of Public Funds and Property**

### **2.4.1 Duties of custodians of public funds and property**

Section 308(1) of the Constitution gives the following definitions for public funds and public property.

“public funds” includes 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” means 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 should provide for these provisions in the section on Interpretation.

#### **2.4.1.1 Duty of stewardship and Control over 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 authorised purposes and in legally authorised amounts. These provisions give emphasis to the importance of controllership with regard to public funds and the PFM Act should make provisions for this principle.

#### **2.4.1.2 Duty of Care and control over public property**

Section 308(3) of the Constitution states that it is the duty of every person who has custody or control of public property to safeguard the property and ensure that it is not lost, destroyed, damaged, misapplied or misused. The focus of these constitutional provisions is the efficient and effective management of Government assets. The PFM Act should have provisions relating to the systems and processes that prevent the loss, destruction, damage, misapplication and misuse of Government assets.

#### **2.4.1.3 Detection of breaches and the disciplining and punishment of persons responsible for loss or destruction of public funds or public property**

The provisions of Section 308(4) of the Constitution require an Act of Parliament to provide for the speedy detection of breaches in relation to the safeguarding of public funds and public property. It also requires the same Act to provide for the disciplining and punishment of persons responsible for any such breaches and, where appropriate, the recovery of misappropriated funds or property. These constitutional provisions must be provided for in the PFM Act.

Section 12 of the PFM Act provides for the disciplining and punishment of persons responsible for loss or destruction of or damage to State property as well as the recovery thereof.

#### **2.4.1.4 Key findings**

Section 2 of the PFM Act is inconsistent with the Constitution in relation to the definitions of public funds and public property. These definitions should be incorporated in the Interpretation section of the PFM Act.

The PFM Act is in conflict with the Constitution on the duties of custodians of public funds. Whilst the PFM Act defines a public officer, there are no provisions on their obligations in relation to safeguarding funds and control over purpose and amounts spend. The PFM Act must be aligned to the Constitution on provisions on the obligation of public officers over the safeguarding of public funds.

The PFM Act is partially inconsistent with the Constitution in relation to the safeguarding and control of assets. Whilst Sections 44 and 45 of the PFM Act makes provisions for



safeguarding assets, these two sections relate to public entities only. There are no provisions relating to the safeguarding of assets in central and local tiers of Government. The PFM Act should make provisions for the management of assets in central and local tiers of Government.

The PFM Act is also in conflict with the Constitution on provisions relating to the disciplining and punishment of persons responsible for loss or destruction of public funds. The PFM Act should have provisions for the raising of surcharges.

#### **2.4.1.5 Recommendations**

- a. Amend Section 2 of the PFM Act and incorporate definitions relating to public funds and public property in of the Act;
- b. Amend the PFM Act and incorporate provisions relating to obligations of public officers in relation to safeguarding funds and control over purpose and amounts spend;
- c. Amend the PFM Act and incorporate provisions relating to management of Government assets;
- d. Amend the PFM Act and incorporate provisions relating to the raising of surcharges in cases of loss or destruction of public funds.

### **2.5 Part 5 Chapter 17 of the Constitution: Auditor-General**

The provisions of Part 5 of Chapter 17 of the Constitution relate to the functions, appointment, independence, remuneration, removal from office and staff of the Audit Office. The implementation of these provisions are dealt with in the Audit Office Act [Chapter 22:18]. The provisions of the PFM Act apart from making reference to the Constitution should also be cross-referenced to the Audit Office Act.

#### **2.5.1 Audit of Financial Statements**

Section 309(2) of the Constitution gives the functions of the Auditor-General as 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; at the request of the Government, to carry out special audits of the accounts of any statutory body or government-controlled entity; to order the taking of measures to rectify any defects in the management and safeguarding of public funds and public property; and to exercise any

other functions that may be conferred or imposed on him or her by or under an Act of Parliament.

In addition, the provisions of Section 309(3) of the Constitution compel public officers to comply with orders given to them by the Auditor-General.

Since external audit is one of the key phases<sup>20</sup> of the public financial management cycle, it is important that the PFM Act have provisions relating to the audit of public finances.

### **2.5.1.1 Key Findings**

Sections 81 and 82 of the PFM Act contain provisions relating to the functions and powers of the Auditor General.

Section 81(1) of the PFM Act is however partially in conflict with the provisions of Section (309)(2)(a) of the Constitution on the institutions that should be audited. The provisions of Section 81(1) of 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. Section (309)(2)(a) of the Constitution states the functions of the Auditor-General as “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. The provisions of the PFM Act should be aligned to Constitution to take into account the audit all provincial and metropolitan councils and all local authorities.

Section 81 of the PFM Act is in conflict with the Constitution on the requirement of public officers to comply with orders given to them by the Auditor General. In practice, the orders to take measures to rectify any defects in the management and safeguarding of public funds and public property are contained in the Auditor General’s report that is submitted to Parliament through the Public Accounts Committee.

On the basis of the Auditor General’s report, Parliament makes recommendations to each Accounting Officer. Accounting Officers are then required to give responses to Treasury on measures taken to implement the recommendations of Parliament in respect to the Report of

---

<sup>20</sup> Lawson, A. (2015). Public Financial Management. GSDRC Professional Development Reading Pack no. 6. Birmingham, UK: GSDRC, University of Birmingham

the Auditor General. Treasury, on the basis of the responses from Accounting Officers, is required to submit a memorandum to Parliament indicating measures taken by each Ministry to implement the recommendations of Parliament in respect to the report of the Auditor General of the preceding financial year. Lessons can be learnt from the Ugandan public finance laws<sup>21</sup> that require the Minister responsible for Finance to submit a Treasury memorandum to Parliament within six months from the date of Parliament's consideration of the report of the Auditor General.

The PFM Act should therefore incorporate provisions compelling Accounting officers and Treasury to comply with orders from the Auditor General and to provide responses on measures taken by each Ministry to implement the recommendations of Parliament in respect to the report of the Auditor General of the preceding financial year.

#### **2.5.1.2 Recommendations**

- a. Amend Section 81 of the PFM Act and incorporate provisions relating to the audit of all provincial and metropolitan councils and all local authorities; and
- b. Amend Section 81 of the PFM Act and insert provisions compelling Accounting officers and Treasury to comply with orders from the Auditor General and to provide responses on measures taken by each Ministry to implement the recommendations of Parliament in respect to the report of the Auditor General of the preceding financial year.

### **2.6 Part 6 of Chapter 17 of the Constitution: General**

The provisions of Part 6 of Chapter 17 of the Constitution relate to procurement and other governmental contracts, management of statutory bodies and Reserve Bank of Zimbabwe.

#### **2.6.1 Procurement and other governmental contracts**

##### **2.6.1.1 Procurement of goods and services**

Section 315(1) of the Constitution states that an Act of Parliament 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. The implementation of these provisions is dealt

---

<sup>21</sup> Section 53 of Government of Uganda Public Finance Management Act of 2015

with in the Procurement Act [Chapter 22:14]. It is instructive to note that supporting these provisions is the principles of transparency, fairness, honesty, value for money and competition. These are the same principles that guide public financial management. As already stated in 2.1.1.9 above, the PFM Act must be cross referenced with the Procurement Act.

### **2.6.1.2 State contracts**

According to Section 315(2) of the Constitution, an Act of Parliament must provide for the negotiation and performance of the following State contracts—

- (a) joint-venture contracts;
- (b) contracts for the construction and operation of infrastructure and facilities; and
- (c) concessions of mineral and other rights;

to ensure transparency, honesty, cost-effectiveness and competitiveness

These provisions are dealt with in separate statutes. The provisions of the PFM Act must be cross-referenced to these statutes.

## **2.6.2 Management of statutory bodies**

The provisions of Section 316 of the Constitution requires that an Act of Parliament should provide for the competent and effective operation of statutory bodies and, in particular, must ensure that their Chief Executive Officers (CEOs) serve for limited periods whose renewal is dependent on the efficient performance of their duties. The provisions are informed by the basic values and principles governing public administration and leadership as enshrined in the Constitution.<sup>22</sup> They also underscore the requirement for abiding by generally accepted standards of good corporate governance.<sup>23</sup> The provisions of the PFM Act should promote these principles.

### **2.6.2.1 Key Findings**

Section 50 of the PFM Act is partially in conflict with the Constitution. The provisions of section 50 the PFM Act states that “every public entity shall adhere to and implement the principles of sound corporate governance policies, procedures and practices”. The

---

<sup>22</sup> Section 194 of the Constitution

<sup>23</sup> Section 195(1) of the Constitution

Constitution requires that the provisions ensure that “chief executive officers serve for limited periods whose renewal is dependent on the efficient performance of their duties”.

The PFM Act should be aligned to the Constitution on provisions relating to limiting the term of office for CEOs and basing the renewal of terms on efficient performance of duties.

#### **2.6.2.2 Recommendations**

- (a) Amend Section 50 of the PFM Act and incorporate provisions relating to limits on the term of office for CEOs and requirement to renew terms on the basis of efficient performance of duties; and
- (b) Align the PFM Act to the Constitution

#### **2.6.3 Reserve Bank of Zimbabwe**

The implementation of the provisions of Section 317 of the Constitution are dealt with in the Reserve Bank of Zimbabwe Act [Chapter 22:15]. The provisions of the PFM Act should be cross-referenced to the Reserve Bank Act in relation to banking arrangements with the central bank.

The PFM Act is silent as to the financial institutions with which the State maintains the CRF. Lessons can be learnt from other jurisdictions where the CRF is established with the country’s central bank.<sup>24</sup>

### **2.7 SUMMARY OF RECOMMENDATIONS ARISING FROM THE REVIEW OF THE PROVISIONS OF THE CONSTITUTION**

#### **2.7.1 Incorporate principles of public finance management**

The recommendation is to amend section 3 of the PFM Act and to incorporate the principles that must guide public finance management.

---

<sup>24</sup> See Solomon Islands Public Financial Management Act 2013; Government of Uganda Public Finance Management Act of 2015; Republic of Liberia Public Finance Management Act of 2009; and the Republic of Kenya Public Finance Management Act [Chapter 412C]; and Ghana Public Financial Management Bill, 2016.

### **2.7.2 Align the PFM Act with the Constitution and relevant international agreements**

The recommendation is to amend relevant sections and to incorporate provisions that promote principles such as gender responsive budgeting and elimination of discrimination against women.

### **2.7.3 Extent the scope of application of the PFM Act**

The recommendation is to amend section 4 of the PFM Act and to incorporate provisions that extent the scope of application of the Act to provincial and metropolitan councils as well as local authorities.

### **2.7.4 Obligations relating to provincial and local governments**

The recommendation is to amend the PFM Act and to incorporate provisions relating to provincial, metropolitan councils as well as local authorities. The obligations should include submitting annual budgets and financial performance reports to the GoZ, Auditor General and PoZ.

### **2.7.5 Parliamentary oversight over State revenues and expenditure**

The recommendation is to amend the PFM Act and to incorporate provisions relating to parliamentary oversight over State revenues and expenditure. The provisions should require the Speaker of Parliament to designate the committees involved in the oversight and monitoring of State revenues and expenditure.

### **2.7.6 Institutional and administrative arrangements for monitoring and oversight of State revenues and expenditure**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the establishment of institutional and administrative arrangement for PoZ to monitor and oversee the public finance management system. The provisions should include roles and responsibilities of the offices and committees involved in the public finance management cycle and the ways in which they would be involved.

### **2.7.7 Rationalise portfolio committees and involve adhoc committees more**

The recommendation is meant to ensure that the number of parliamentary portfolio committees involved in the monitoring and oversight of State revenues and expenditure is

reduced from nineteen (19) to fewer numbers. The provisions should also cater for adhoc committees for public finance matters.

#### **2.7.8 Allocation of revenue between provincial and local tiers of government**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the allocation of capital grants between provincial and local tiers of government.

#### **2.7.9 Allocation of at least five (5) percent of national revenue to provincial and local tiers of government**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the allocation of at least five (5) percent of national revenue to provincial and local tiers of government. The provisions should include the process of sharing the five percent among the provincial and local tiers of government.

#### **2.7.10 Preparation of estimates of revenue and expenditure**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the national budgeting process. The new provisions should include budget preparation; budget execution; budget reports; commitment of approved budgets and budget variation (virementing). Lessons can be learnt from the public finance laws of Solomon Islands.<sup>25</sup>

#### **2.7.11 Establishment of the Exchequer account**

The recommendation is to amend Section 16 of the PFM Act and to incorporate provisions relating to the establishment of the Exchequer account with the Reserve Bank of Zimbabwe or a financial institution approved by Treasury.

#### **2.7.12 Establishment of the Paymaster General's Account**

The recommendation is to amend section 22 of PFM Act and to incorporate provisions relating to the establishment of the Paymaster General's Account with the Reserve Bank of Zimbabwe or a financial institution approved by Treasury.

#### **2.7.13 Grants of Credit on the CRF**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the granting of authority to transfer of funds from the Exchequer to the Paymaster General's

---

<sup>25</sup> See Sections 44 to 55 of Solomon Islands Public Finance Management Act, 2013

Account. It is recommended that the Minister issue the grants the credit on the Exchequer to the Accountant General.

#### **2.7.14 Cash management**

The recommendation is to amend the PFM Act and to incorporate provisions relating to cash management. The provisions should include Treasury controls such as expenditure ceiling, the submission of cash flow forecasts and controls on budget releases.

#### **2.7.15 Costs and expenses in connection with collection and managing the CRF**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the payments in connection with the costs and expenses in connection with collection and managing the CRF. These shall be direct charges against the CRF. The section should also be cross-referenced to the Public Debt Management Act.

#### **2.7.16 Submission of estimates after dissolution of Parliament**

The recommendation is to amend Section 28(2) of the PFM Act to align the statute to the Constitution. The amended Section 28(2) would read:

(2) Notwithstanding subsection (1), if Parliament is dissolved and it is impossible to lay estimates before the Assembly by that time, then they must be laid before the Assembly within thirty days after the Assembly first meets following the dissolution

#### **2.7.17 Submission of separate estimates of revenue and expenditure**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the submission of separate estimates of revenue and expenditure for commissions and other institutions established by the Constitution. The provision should fall under national budgeting and shall state the fact that separate estimates of revenue and expenditure must be given 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.

#### **2.7.18 Parliamentary committee to which commissions shall make representations**

The recommendation is to amend the PFM Act and to incorporate provisions for a Parliamentary committee to which commissions shall make representations as to the funds allocated to them each financial year.



#### **2.7.19 Withdrawal limits for Special warrants for unforeseen expenditure**

The recommendation is to amend Sections 24(2) of the PFM Act and to align the statute to the Constitution in relation to the withdrawal limits for special warrants. The amended Section 24(2) would read:

(2) The total amount of issues authorised under subsection (1) shall not at any one time exceed one and one-half percent of the total amount appropriated in the last main Appropriation Act.

#### **2.7.20 Special warrants for issues to meet unforeseen expenditure**

The recommendation is to amend Section and 24(3) of the PFM Act and to align the statute to the Constitution. The amended section 24(3) would read:

(3) An issue authorised in terms of subsection (1) shall 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 Consolidated Revenue Fund by an additional or supplementary Appropriation Act

#### **2.7.21 Issue of money to carry on government at beginning of each financial year**

The recommendation is to amend Section 26(1) of the PFM Act and to align the statute to the Constitution. The amended Section 26(1) of the PFM Act would read:

(1) Subject to this section, the President may in any financial year, authorise in advance of the main Appropriation Act for that year the issue from the Consolidated Revenue Fund of such money as may be necessary to carry on the services of the Government for the first four months of the financial year.

#### **2.7.22 Issue of money to carry on government after dissolution of Parliament**

The recommendation is to amend section 27(1) of the PFM Act and align the statute with the Constitution. The amended section 27(1) should read-

(1) Subject to subsection (2), if at any time Parliament has been dissolved before any provision or sufficient provision has been made in terms of Chapter 17 of the Constitution or this Act for the carrying on of the Government of Zimbabwe, the President may authorise the issue of money from the Consolidated Revenue Fund for the purpose of meeting expenditure

necessary to carry on the services of the Government until three months after the National Assembly first meets after the dissolution.

### **2.7.23 Unauthorised expenditure**

The recommendation is to amend Section 19(3) of the PFM Act and to align the Act to the Constitution. The amended Section 19(3) of the PFM Act would read:

(3) Where the House of Assembly, by means of a motion, allows any excess or any amount expended but not appropriated to stand charged to the Consolidated Revenue Fund, the sum required to meet such excess or such amount as shall be allowed, shall be included in a Financial Adjustments Bill introduced to the House of Assembly in accordance with section 307(2) of the Constitution.

### **2.7.24 Definitions of public funds and public property in Section 2 of the Act**

The recommendation is to amend section 2 of PFM Act and to insert definitions of public funds and public property and align the statute to the Constitution.

### **2.7.25 Obligations of public officers**

The recommendation is to amend the PFM Act and to incorporate a section containing provisions on the obligations of public officers in relation to safeguarding funds and control over purpose and amounts spend.

### **2.7.26 Management of Government assets**

The recommendation is to amend the PFM Act and to incorporate provisions relating to management of Government assets. The provisions should include controls to prevent loss, destruction, misuse and misapplication. Lessons can be learnt from the public finance laws of other jurisdictions, for example Ghana<sup>26</sup>.

### **2.7.27 Surcharges in cases of loss or destruction of public funds**

The recommendation is to amend the PFM Act and to incorporate provisions relating to the raising of surcharges in the case of loss or destruction of public funds. The provisions should cover application, power of surcharge, appeals against surcharge and recovery.

---

<sup>26</sup> See Ghana Public Financial Management Bill, 2016

### **2.7.28 Audit of all provincial and metropolitan councils and all local authorities**

The recommendation is to Amend Section 81 of the PFM Act and to insert provisions relating to the audit of all provincial and metropolitan councils as well as all local authorities.

### **2.7.29 Compliance with orders from the Auditor General**

The recommendation is to amend Section 81 of the PFM Act and to insert provisions compelling Accounting Officers and Treasury to comply with orders from the Auditor General and to provide responses on measures taken by each Ministry to implement the recommendations of Parliament in respect to the report of the Auditor General of the preceding financial year

### **2.7.30 Limiting the term of office for CEOs**

The recommendation is to amend Section 50 of the PFM Act and to insert provisions relating to limiting the term of office for CEOs and basing the renewal of terms on efficient performance of duties.

## **3. REVIEW OF THE PUBLIC FINANCE MANAGEMENT ACT**

The PFM Act was promulgated in 2009 and some provisions have since been overtaken by events and developments within the public financial management environment. This part of the Discussion Paper is a review and a gap analysis for the PFM Act in relation to constitutional provisions, international best practice and developments within the public financial management environment.

### **3.1 The Preamble of the PFM Act**

#### **3.1.1 Gap Analysis**

The gaps noted are that the preamble includes provisions that have been repealed by section 39(a) of the Public Debt Management Act. In addition, the preamble it is not aligned to the constitutional provisions on allocation of revenues between government and provincial and local governments.

#### **3.1.2 Recommendations**

- (a) Amend the preamble of the PFM Act and align it to the Constitution;
- (b) Amend the preamble and remove provisions repealed by section 39(a) of the Public Debt Management Act.

## **3.2 Part I of the PFM Act: Preliminary**

### **3.2.1 Gap Analysis**

#### **3.2.1.1 Section 2 of the Act: Interpretation**

Section 2 of the PFM Act contains definitions that were repealed by section 39(b) of the Public Debt Management Act and is also partially inconsistent with the Constitution on some definitions that appear in the Constitution but are not included in the PFM Act. There is therefore need to repeal, amend and insert new terms in section 2 of the PFM Act. The terms that should be repealed are listed in Table 1 below.

**Table 1: Definitions to be repealed from Section 2 of the PFM Act**

<b>Term</b>	<b>Definition</b>
Bond	means a document issued in pursuance of Part VI acknowledging a debt and binding the State to pay a specified sum at a stated time or on special conditions, and includes a debenture or other form of certificate of indebtedness;
Cancelled	in relation to bonds or stock, means cancelled in terms of section 77(3);
Registrar	means a person appointed in terms of section 70(b) for the registration of bonds and stock
Sinking fund	means a sinking fund established in terms of section 74;
State loan	means a sum of money borrowed in terms of Part VI
Stock	means stock issued in pursuance of Part VI
Treasury bill	means a Treasury bill issued in pursuance of Part VI
Trustees	in relation to a sinking fund, means trustees appointed in terms of section 75.

The terms that need to be amended and aligned to the Constitution are listed in the Table 2 below.

**Table 2: Definitions in Section 2 that need amendments**

<b>Term</b>	<b>Definition</b>
Auditor-General	means the person appointed as such in terms of section 310 of the Constitution
Consolidated Revenue Fund	means the Consolidated Revenue Fund referred to in section 302 of the Constitution
officer or public officer	means any person— (a) in the employment of the State or a designated corporate body; or (b) whose salary is paid from a fund required to be audited by the Auditor-General other than the Consolidated Revenue Fund or the funds of a designated corporate body;
reporting unit	means a division, department, agency or other unit of a Ministry that is independently required to report or account through the accounting officer of the Ministry concerned to the Secretary or the Auditor-General in terms of this Act:

	Provided that if a constitutional entity is required to report or account to the accounting officer of any Ministry, that constitutional entity shall be deemed to be a reporting unit of that Ministry;
Revenues	means all taxes, fees and other income of the State from whatever source arising (not being moneys which are required by law to be paid into a separate fund), including the proceeds of all loans raised by the State which, in terms of section 302 of the Constitution, form part of the Consolidated Revenue Fund;

The terms that should be inserted in the PFM Act are listed in the Table 3 below.

**Table 3: Terms that need to be inserted in section 2 Interpretations**

Term	Definition
Assets	means resources controlled by an entity as a result of past events and from which future economic benefits or service potential are expected to flow to the entity
Financial assets	include deposits, cheques, loans, accounts receivable and marketable securities including bonds, notes and shares
Liabilities	means present obligations of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits or service potential.
Public funds	includes 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	means 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.
Treasury memorandum	means an action report by the Minister detailing the actions taken on the recommendations of Parliament arising out of the report of the Auditor-General;
Virement	means the application, as authorised by an Appropriation Act, of savings on a subhead of a Vote to meet excess expenditure on another subhead or expenditure on a new subhead of the same Vote

### **3.2.1.2 Section 3 of the Act: Object of Act**

The gap identified in relation to Section 3 of the PFM Act has already been discussed in 2.1.1.9 and 2.7.1 above and the suggestion is that the object of the Act incorporates the fact that the Act seeks to ensure public finances are managed in accordance with the principles set out in the Constitution.

### **3.2.1.3 Section 4: Application of Act**

The gap identified in relation to the application of the Act has been already discussed in 2.1.2.3 and 2.7.2 above. The recommendation is that the scope of application for the PFM Act be extended to provincial and metropolitan councils and local authorities.

### **3.2.2 Recommendations**

- (a) Amend section 2 of the PFM Act and cancel definitions relating to public debt, insert new terms and align Act with the Constitution;
- (b) Amend section 3 of the PFM Act and incorporate constitutional provisions on public finance management principles; and
- (c) Amend section 4 of the PFM Act and insert provisions that extend the scope of application of the statute to provincial and metropolitan councils and local authorities.

## **3.3 New Part of the PFM Act: Parliamentary Oversight over state revenue and expenditure**

### **3.3.1 Gap Analysis**

The gap and recommendations were discussed in 2.1.2.3 and 2.7.5 above.

### **3.3.2 Recommendations**

The recommendation is to amend the PFM Act and to incorporate provisions relating to parliamentary oversight over State revenues and expenditure. The provisions should require the Speaker of Parliament to designate the committees involved in the oversight and monitoring of State revenues and expenditure.

## **3.4 Part II of the PFM Act: Control and Management of Public Resources**

Part II of the PFM Act provides for the roles, responsibilities and powers of the Minister responsible for Finance, officers within Treasury, Accounting Officers and appropriate Ministers.

### **3.4.1 Gap Analysis**

#### **3.4.1.1 Section 6 of the PFM Act: Treasury to manage and control public resources**

The provisions of Section 6(3) states that Treasury may require an accounting officer or receiver of revenue to issue written departmental instructions to the officers in his or her Ministry or department in relation to matters involving—

- (a) the collection, receipt, custody, control, issue or expenditure of public money;
- (b) the acquisition, receipt, custody, control, issue, sale, delivery, transfer or disposal of any State property;
- (c) expenditure on any service involving a charge on the Consolidated Revenue Fund;
- (d) the operation of any statutory fund;
- (e) the acceptance, on behalf of the State, of any gift, donation, bequest or other grant of moneys or other property which is made subject to a condition or is likely to involve a charge on the Consolidated Revenue Fund;

and the accounting therefor.

Given the distinctiveness of Ministries, the provisions of the PFM Act should make the requirement for written Accounting Officer's Instructions mandatory. In addition, each Ministry's departmental instructions must be approved by Treasury and the Auditor General should be given a copy of the approved instructions.

#### **3.4.1.2 Section 7 of the PFM Act: Duties and powers of Minister**

The duties of the Minister should be aligned to the Constitution by incorporating the constitutional provisions on the principles that must guide public finance management. It is recommended that section 7(1) of the PFM Act is repealed and substituted by-

- (1) It shall be the duty of the Minister—
  - (a) to develop and implement a macroeconomic and fiscal policy for Zimbabwe and he or she shall, for that purpose—
    - (i) supervise and monitor the finances of Zimbabwe; and
    - (ii) coordinate international and inter-governmental financial and fiscal relations;
  - (b) to advise the Government on the allocation of public resources as between Ministries, reporting units, public entities, constitutional entities and any programmes of Government independent of the foregoing.

- (c) to advise the Government on equitable distribution of revenues between provincial and local tiers of government;
- (d) to advise Government on balanced national development and gender responsive resource allocation

#### **3.4.1.3 Roles and responsibilities of the Director for Finance**

The PFM Act provides the definition of a director for finance and assigns the responsibility for the preparation financial statements to this post. It is recommended that the PFM Act is amended by inserting before section 11, a new section that deals with the appointment as well as the roles and responsibilities of the Director for Finance. The roles of Directors for Finance must be to help Accounting Officers with the day to day public financial management responsibilities.

#### **3.4.1.4 Obligations of public officers**

The PFM Act provides the definition of a public officer but as already discussed in 2.4.1.5 and 2.7.24 the Act should be aligned to the Constitution in relation to the obligations in relation to the custody of public funds and public property. It is recommended that the PFM Act is amended by inserting before section 12, a new section providing for the duties of custodians of public funds and public property.

#### **3.4.1.5 Management of State Assets**

The gap relating to the need to align the PFM Act to the Constitution in relation to the custody and control of State assets has already been discussed in 2.4.1.5 and 2.7.25 above. It is recommended that the PFM Act is amended by inserting before section 12, a new section providing for the management of State assets.

#### **3.4.1.6 Loss of public funds**

The provisions of Section 12 of the PFM Act, deal with the disciplining and punishment of persons responsible for public property and where appropriate, the recovery of thereof. As already indicated in 2.4.1.5 and 2.7.6 above, there is a gap on provisions that deal with:-

- (a) deficiency in the collection of or accounting for public moneys; or
- (b) any improper payment of public moneys; or
- (c) any payment of public moneys which is not duly vouched; or
- (d) any deficiency in or destruction of public moneys and



the disciplining and punishment of persons responsible for any such breaches and, where appropriate, the recovery of misappropriated funds.

It is recommended that the PFM Act is amended by inserting before section 12, a new section that deal with Treasury surcharges. The provisions for this section should address the issues relating to application of a Treasury surcharge, power of surcharge, appeal against surcharges and recovery action.

#### **3.4.1.7 Section 16 of the PFM Act: Money to be paid into Consolidated Revenue Fund**

The gap and the recommendation relating to section 16 of the PFM Act are discussed in 2.2.1.3 and 2.7.12 above. The recommendation is to amend section 16 of the PFM Act and incorporate provisions relating to the establishment of the Exchequer account into which all revenue is deposited.

#### **3.4.1.8 Section 17 of the PFM Act: Control of expenditures and issues from CRF**

Section 17(5) of the PFM Act relates to virementing and it is recommended that the provisions constitute a section that should address a number of budget variation issues. In practice, virements are not allowed within the first six months of the financial year. There are also restrictions relating to virementing between recurrent and capital budgets. The provisions of the PFM Act should also deal with the two types of virements (Accounting Officer and Treasury) as well as the restrictions relating to virementing.

It is recommended that section 17(5) of the PFM Act is amended by inserting before section 31 a new section that deals with virements.

#### **3.4.1.9 New section of the PFM Act: Costs and expenses to be direct charges**

The gap relating to the absence of provisions on costs and expenses incurred in collecting and managing the CRF forming the first charge on the Fund are dealt with in 2.2.3.4 and 2.7.16 above. The recommendation is to amend the PFM Act and insert, after section 17, a new section providing for direct charges to the CRF.

#### **3.4.1.10 New section of the PFM Act: Grants of credit on the Consolidated Revenue Fund**

The gap and recommendations relating to grant of credit were discussed in 2.2.2.5 and 2.7.13 above. The recommendation is to amend the PFM Act and to incorporate provisions relating

to the granting of authority to transfer of funds from the Exchequer to the Paymaster General's Account. It is recommended that the Minister issue the grants of credit on the CRF to the Accountant General.

#### **3.4.1.11 Section 18: Establishment of other public funds**

In practice, Accounting Officers appoint management committees to run the affairs of Funds set up in terms of section 18 of the PFM Act. The PFM Act should be consistent with the current practice that Accounting Officers are adopting in the running of the financial affairs of some of the Treasury Funds. It is recommended that section 18 of the PFM Act provides for the roles and responsibilities as well as the payment of fees for such committees.

#### **3.4.1.12 Section 19: Anticipated or unauthorised excess expenditure**

The title of section 19 of the PFM Act needs to be corrected and to be aligned to the Constitution. It should therefore read "unauthorised expenditure".

The provisions of Section 19(1) of the PFM Act relate to additional or supplementary estimates and also replicate provisions in section 28(4) of the same Act. The provisions are better placed in their own section as they have no relationship with unauthorised excess expenditure. It is recommended that the provisions are discussed under the National Budget. The PFM Act must be amended by inserting before section 31, a new section that provides for additional or supplementary estimates.

As already stated in 2.3.3.2 and 2.7.23 above, the provisions of section 19(3) of the PFM Act should be aligned to the Constitution.

#### **3.4.1.13 Section 22 of the PFM Act: Establishment of banking accounts**

The need for clarity on the type of bank accounts that GoZ should establish has been dealt with in 2.2.1.2 and 2.7.13.

The other gap relating to section 22 of the PFM Act is the need for clarity on the financial institutions with which the Accounts are established. In practice, MoFED has set up Accounts with the Reserve Bank of Zimbabwe (RBZ) and with commercial banks authorised by Treasury. Treasury has also allowed the opening of bank accounts outside Zimbabwe. It is recommended that the provisions of the PFM Act are consistent with current practice.

#### **3.4.1.14 Section 23 of the PFM Act: Accountant-General's warrants**

In public finance, a warrant relates to the authority given to Accounting Officers to commit government. The provisions of this section do not give an explanation on what an Accountant General's warrant is and how different it is from the Paymaster General's warrant. It is recommended that section 23 of the PFM Act is amended to give clarity on the two types of warrants.

#### **3.4.1.15 Section 24 of the PFM Act: Special warrants for issues to meet unforeseen expenditure**

The gap and recommendations relating to section 24 of the PFM Act have been discussed in 2.3.24, 2.7.19 and 2.7.20. The recommendations are to amend sections 24(2) of the PFM Act and to align the statute to the Constitution in relation to the withdrawal limits for special warrants; and to amend section 24(3) of the PFM Act and to align the statute to the Constitution.

#### **3.4.1.16 Section 26 of the PFM Act: Issue of money to carry on government at beginning of each financial year**

The gap and recommendation relating to section 26 of the PFM Act is discussed in 2.3.2.5 and 2.7.21. The recommendation is to amend section 26(1) of the PFM Act and to align the statute to the Constitution.

#### **3.4.1.17 Section 27 of the PFM Act: Issue of money to carry on government after dissolution of Parliament**

The gap and recommendation relating to section 17 of the PFM Act are dealt with in 2.3.2.4 and 2.7.22 above. The recommendation is to amend section 27(1) of the PFM Act and align the statute with the Constitution.

#### **3.4.1.18 New Section of the PFM Act: Risk Management**

Whilst the provisions of section 44 of the PFM Act require that Accounting authorities for public entities establish and maintain effective, efficient and transparent systems of risk management, the Act does not have these provisions as far as Ministries and Provincial and Local government.

### **3.4.2 Recommendations**

- (a) Amend section 6 of the PFM Act and insert after subsection (3) a new subsection that makes the requirement for written Accounting Officer's Instructions mandatory and provides that the departmental instructions must be approved by Treasury and the Auditor General should be given a copy of the approved instructions.
- (b) Amend section 7(1) of the PFM Act and repeal and substitute it with a section that takes into account the Minister's responsibility relating to allocation of revenue between provincial and local government as well as gender responsive resource allocation processes.
- (c) Amend the PFM Act and insert before section 11, a new section that deals with the appointment as well as the roles and responsibilities of the Director for Finance
- (d) Amend the PFM Act and insert before section 12, a new section that deals with the duties of custodians of public funds and public property
- (e) Amend the PFM Act and insert before section 12, a new section that provides for the management of assets;
- (f) Amend the PFM Act and insert before section 12, a new section that deal with Treasury surcharges;
- (g) Amend section 16 of the PFM Act and incorporate provisions relating to the establishment of the Exchequer account into which all revenue is deposited;
- (h) Amend section 17(5) of the PFM Act and insert before section 31, a new section dealing with virementing;
- (i) Amend the PFM Act and insert, after section 17, a new section providing for direct charges to the CRF.
- (j) Amend the PFM Act and insert, after section 17, a new section providing for grants of credit on the CRF
- (k) Amend section 18 of the PFM Act and insert after subsection 11, a new subsection that provides for the appointment, roles and responsibilities as well as the payment of fees for management committees;
- (l) Amend section 19 of the PFM Act and align the title of the section with the Constitution

- (m) Amend section 19(1) of the PFM Act and insert before section 31, a new section that provides for additional or supplementary estimates.
- (n) Amend section 19(3) of the PFM Act and align statute with the Constitution.
- (o) Amend section 22 of the PFM Act and insert provisions relating to the setting up of Accounts with the Reserve Bank of Zimbabwe and with commercial banks authorised by Treasury
- (p) Amend section 23 of the PFM Act and give clarity on the two types of warrants.
- (q) Amend sections 24(2) of the PFM Act and align the statute to the Constitution in relation to the withdrawal limits for special warrants;
- (r) Amend section 24(3) of the PFM Act and align the statute to the Constitution; and
- (s) Amend section 26(1) of the PFM Act and align the statute to the Constitution.
- (t) Amend section 27(1) of the PFM Act and align the Act with the Constitution.
- (u) Amend PFM Act and insert provisions relating to risk management within central and local government.

### **3.5 Part III of the PFM Act: National Budget**

#### **3.5.1 Gap Analysis**

The gaps and amendments relating to the provisions in Part III of the PFM Act have been addressed in 2.1.4.2, 2.3.1.6, 2.7.18 above. The recommendations relate to amending the PFM Act and inserting new sections with provisions for preparation of estimates; allocation of revenue between national and provincial governments; sharing of five (5) percent of national revenue to provincial, metropolitan and local authorities; and submission of separate estimates by commissions and other institutions established in terms of the Constitution.

##### **3.5.1.1 Budgeting Process**

It is important to note that Part III of the PFM Act only provides for the timing of submission of draft budgets but has no provisions relating to the timing for the preparation of estimates of revenue and expenditure. The provisions of the PFM Act obliges the Minister to “lay before the House of Assembly the annual budget for the forthcoming financial year, not earlier than thirty days before or not later than thirty days after the start of the forthcoming financial year”. There is need to have provisions on the timing for preparation of estimates of revenue and expenditure for the forthcoming year.

In practice, MoFED has an established budget calendar which it communicates, together with budget guidelines to ministries and State entities through budget call circulars. The PFM Act is therefore in conflict with practice. Part III should therefore be amended by inserting before section 28, new sections that provide for the timing of preparation of estimates of revenue and expenditure, the setting up of a budget calendar and issuance of guidelines for preparation of budgets.

As already discussed in 3.3.1.11, section 28(4) needs to be amended and move the provisions to a new section that provides for supplementary or additional estimates.

Another gap is the fact that Part III of the PFM Act has no provisions relating to budget implementation, budget monitoring and reporting. It is recommended that these provisions are incorporated in the PFM Act. It is also recommended that the amendments in 2.2.2.5 relating to cash management are incorporated by inserting new sections after section 28 of the PFM Act.

### **3.5.2 Recommendations**

- (a) Amend the PFM Act and insert before section 28, new sections that provide for the timing of preparation of estimates of revenue and expenditure, the setting up of a budget calendar and issuance of guidelines for preparation of budgets;
- (b) Amend the PFM Act and insert before section 28, a new section that provide for the allocation of capital grants between provincial and local tiers of government.
- (c) Amend the PFM Act and insert before section 28, a new section that provide for the process of sharing five (5) percent of national revenue to provinces and local authorities
- (d) Amend section 28 of the PFM Act and insert after subsection (1) a new subsection that provides for the submission of separate estimates by commissions and other institutions established in terms of the Constitution.
- (e) Amend section 28(4) of the PFM Act and move provisions to a new section.
- (f) Amend the PFM Act and insert after section 28 new sections that provide for budget implementation, budget monitoring and reporting; and
- (g) Amend the PFM Act and insert after section 28 a new section that provide for cash management.

## **3.6 Part IV of the PFM Act: Financial Statements**

### **3.6.1 Gap Analysis**

The provisions of Part IV of the PFM Act do not state the financial reporting framework that governs reporting and preparation of financial statements in Zimbabwe. Section 298 of the Constitution calls for transparency and accountability in financial matters and states that “fiscal reporting must be clear”. The absence of a reporting framework means that the PFM Act is in conflict with the Constitution and the Act must be aligned with constitutional provisions.

#### **3.6.1.1 Financial Reporting Framework**

In practice, GoZ has adopted the cash basis of accounting for voted funds and the accrual basis of accounting for statutory funds and funds set up in terms of the PFM Act. In addition, public entities operating as commercial enterprises adopt International Financial Reporting Standards (IFRSs). Furthermore the Accountant General has indicated that they intend to adopt International Public Sector Accounting Standards (IPSAs) as the financial reporting framework for the public sector. The objective for which International Public Sector Accounting Standards Board (IPSASB) developed IPSASs matches the constitutional provisions on fiscal reporting and the principle of transparency and accountability. The adoption of IPSASs by governments, according to the International Federation of Accountancy (IFAC),<sup>27</sup> has the effect of enhancing the quality and transparency of public sector financial reporting and this strengthens public confidence in public sector financial management.

Zimbabwe has an Accounting Standard setting Board set up in terms of an Act of Parliament ( the Public Accountant and Auditors Board [Chapter 27:12]). According to section 44(2) of the PAAB Act, the Board may make regulations prescribing “auditing standards, accounting standards and accountancy reporting standards for use in Zimbabwe, including the application of internationally recognised auditing, accounting and reporting standards and one of their responsibilities is to determine accounting standards for use in Zimbabwe”.

The provisions of the PFM Act should be aligned to practice and the Constitution by inserting before section 32, a new section providing for GoZ’s financial reporting framework that

---

<sup>27</sup> <http://www.ifac.org>

promotes transparency and accountability. The provisions should provide for the basis of accounting and the Accounting Standards in use.

### **3.6.1.2 Section 32 of the PFM Act: Preparation and reporting of annual financial statements by Ministries**

The gap in relation to section 32(1) of the PFM Act concerns the inconsistency of this section with section 35 of the Act as discussed in 3.5.1.3 below.

There is also a gap in relation to submission of financial statements to the Auditor-General. It is not clear whether it is the Accounting Officers' responsibility or the Accountant General to submit financial statements to the Auditor General.

In addition, the provisions of sections 32(2) and 32(3) of the PFM Act relate to external audit and are better discussed in section 83 of the PFM Act. The two subsections need to be amended and aligned with the Constitution.

### **3.6.1.3 Section 35 of the PFM Act: Consolidation of annual financial statements**

The provisions of section 35(1) of the PFM Act are not harmonised with the provisions of section 32(1) of the PFM Act as they suggest that Ministries are required to prepare appropriation accounts rather than financial statements.

The provisions of section 35(2) of the PFM Act are in conflict with section 32(1) of the same Act on the timing of submission of financial statements. Section 35(2) of the PFM Act states that "every accounting officer or receiver of revenue shall prepare and transmit to the Accountant-General, within two months after the end of each financial year in such form as may be required by the Accountant-General and with such explanatory notes as the accounting officer or receiver of revenue may consider necessary, statements showing receipts and disbursements of public money". Section 32(1) of the PFM Act provides that "every director of finance shall prepare or cause to be prepared the annual financial statements of the Ministry concerned and shall submit such statements to the accounting officer in that Ministry and to the Accountant-General within thirty days of the year concerned". The time-frames on the submission of annual financial statements need to be revisited. The two-month period provided for by section 35(2) seems more realistic than



thirty days and is also comparable to other jurisdictions<sup>28</sup>. In Kenya the statute governing public financial management provides for a three-month period.

The provisions of section 35(6) of the PFM Act relate to reporting and preparation of financial statements. The provisions are best discussed under section 32 of the Act.

The provisions in sections 35(7), 35(8), 35(9) and 35(11) of the PFM Act do not relate to consolidation but submission of annual statements to the National Assembly. It is recommended that section 35 is amended by repealing the provisions relating to submission of financial statements to the National Assembly. It is also recommended that the PFM Act is amended by inserting after section 36, a new section that provides for the submission of financial statements to the National Assembly.

#### **3.6.1.4 Section 37 of the PFM Act: Financial statements and budgets to comply with generally accepted accounting practice**

Section 37 of the PFM Act states that the financial statements required to be prepared in terms of the Act shall be “prepared in accordance with generally accepted accounting practice”. It is not adequate to state that financial statements and budgets must comply with generally accepted accounting practice. The provisions of the PFM Act should be consistent with the policy position of the accounting standard setting board in Zimbabwe as discussed in 3.6.1.1 above.

#### **3.6.1.5 Publishing of reports on financial statements**

The provisions of sections 38(1) and 38(2) of the PFM Act require that Treasury publishes reports in the Gazette. To ensure wider access to information, it is recommended that the provisions in sections 38(1) and 38(2) of the PFM Act extent the publication of financial statements to other media.

#### **3.6.1.6 Recommendations**

- (a) Amend the PFM Act and align the statute to practice and the Constitution by inserting before section 32 of the PFM Act, a new section providing for GoZ’s financial reporting framework;
- (b) Amend section 32 of the PFM Act and align the statute to the Constitution;

---

<sup>28</sup> See section 84 of Ghana Public Financial Management Bill, 2016

- (c) Amend section 35 of the PFM Act and repeal the provisions relating to submission of financial statements to the National Assembly and by inserting after section 36, a new section that provides for the submission of financial statements to the National Assembly;
- (d) Amend section 37 of the PFM Act and align statute to Zimbabwe's accounting standard setting board's policy position; and
- (e) Amend section 38 of the PFM Act and insert provisions that extent the publication of financial statements to other media.

### **3.7 Part V of the PFM Act: Public Entities**

The gap and recommendation in relation to Section 50 of the PFM Act have already been discussed in 2.6.2.2 and 2.7.29 above. The recommendation is to amend section 50 of the PFM Act and insert provisions relating to limits on the term of office for CEOs and requirement to renew terms on the basis of efficient performance of duties.

### **3.8 Provincial and Metropolitan Councils and Local Authorities**

#### **3.8.1 Gap Analysis**

The gap relating to the need for PFM Act to have provisions relating to Provincial and Metropolitan Councils and Local Authorities was discussed in 2.1.4.2.

##### **3.8.1.1 New Part for the PFM Act**

The PFM Act must be amended by inserting, after Part V, a new part providing for Provincial and Metropolitan Councils and Local Authorities. The sections of the new Part should include provisions relating to obligations such as submission of budgets and financial statements.

#### **3.8.2 Recommendations**

- (a) Amend the PFM Act and insert a new Part providing for Provincial and Metropolitan Councils and Local Authorities and align the statute with the Constitution

### **3.9 Part VI of the PFM Act: Loans, Guarantees and Other Commitments**

The provisions of Part VI of the PFM Act were repealed by section 39(c) of the Public Debt Management Act and the PFM Act must be amended.

### **3.10 Part VIII of the PFM Act: Audit**

#### **3.10.1 Gap Analysis**

##### **3.10.1.1 Section 81 of the PFM Act: External auditors**

Some of the gaps and recommendations relating to Section 81 of the PFM Act have been discussed in 2.5.1.2 above. The recommendations are to amend section 81 and insert provisions:-

- a) relating to the audit of all provincial and metropolitan provinces and all local authorities;
- b) compelling accounting officers and Treasury to comply with orders from the Auditor General and to provide responses on measures taken by each Ministry to implement the recommendations of Parliament in respect to the report of the Auditor General of the preceding financial year.

Another gap is the need to align paragraphs (c) to (g) of Section 81(3) of the PFM Act with the Constitution in relation to the names of commissions and institutions that are listed therein. The provisions of section 81(3) of PFM Act should include the Anti-Corruption Commission on the list of organisations that the Auditor-General can refer cases to. It is recommended that section 81(3) of the PFM Act be repealed and substituted by-

(3) If at any time it appears to the Auditor-General that any irregularity has occurred in—

- (a) the collection, receipt, custody, control or payment of public money; or
  - (b) the receipt, custody, control, issue, sale, transfer or delivery of any State property;
- he or she shall immediately bring the matter to the notice of the Treasury, the appropriate accounting officer or receiver of revenue, as the case may be, and—
- (c) the Public Service Commission, where in his or her opinion the irregularity constitutes misconduct on the part of any member of the Public Service; and

- (d) the Commander of the branch of the Defence Forces concerned, where in his or her opinion the irregularity constitutes misconduct or a breach of discipline on the part of any member of the Defence Forces; and
- (e) the Commissioner-General of Police, where in his or her opinion the irregularity constitutes misconduct or breach of discipline on the part of any member of the Police Force; and
- (f) the Commissioner-General of Prisons, where in his or her opinion the irregularity constitutes misconduct or a breach of discipline on the part of any member of the Prison Service; and
- (g) the Prosecutor-General, where in his or her opinion the irregularity constitutes a criminal offence.
- (h) the Anti-Corruption Commission, where in his or her opinion the irregularity constitutes a suspected case of corruption.

### 3.10.1.2 Section 83 of the PFM Act: Annual reports and audited financial statements

As already stated in 3.5.1.2, the provisions of section 83 of the PFM Act are similar to those contained in Section 32(3) of the same Act as is shown in Table 4 below.

**Table 4: Provisions repeated in two parts of the PFM Act**

Section 32	83 Annual reports and audited financial statements
<p>(2) The Comptroller and Auditor-General or any independent auditor shall audit the annual financial statements and return the audited statements to the accounting officer within sixty days of receipt thereof.</p> <p>(3) The annual report and audited financial statements shall—</p> <ul style="list-style-type: none"> <li>(a) contain a report on the activities, outputs and outcomes of the Ministry;</li> <li>(b) fairly present the state of affairs of the Ministry, reporting unit, constitutional entity or public entity for which the Ministry is responsible;</li> <li>(c) include, where appropriate— <ul style="list-style-type: none"> <li>(i) particulars relating to losses arising through criminal activities, and criminal and disciplinary action taken;</li> <li>(ii) instances of unauthorised expenditure;</li> <li>(iii) instances of irregular expenditure;</li> <li>(iv) instances of fruitless and wasteful expenditure;</li> <li>(v) recoveries and write-offs of public resources;</li> </ul> </li> </ul>	<p>The annual report and audited financial statements of a Ministry, public entity, constitutional entity or statutory fund shall—</p> <ul style="list-style-type: none"> <li>(a) contain a report on the activities, outputs and outcomes of the Ministry;</li> <li>(b) fairly present the state of affairs of the Ministry, public entity or constitutional entity, as the case may be;</li> <li>(c) include, where appropriate— <ul style="list-style-type: none"> <li>(i) particulars relating to losses arising through criminal activities;</li> <li>(ii) instances of unauthorised expenditure;</li> <li>(iii) instances of irregular expenditure;</li> <li>(iv) instances of fruitless and wasteful expenditure;</li> <li>(v) criminal and disciplinary action taken in connection with any of the foregoing;</li> <li>(vi) recoveries and write-offs;</li> <li>(vii) any other matters as may be prescribed.</li> </ul> </li> </ul>

(vi) any other matters as may be prescribed.	
--	--

It is recommended that section 83 of the PFM Act is amended by inserting the provisions of sections 32(2) and 32(3) of the Act in this section.

### **3.10.1.3 Section 84 of the PFM Act: Audit committees**

The provisions of section 84 of the PFM Act should promote the principle of gender equity and gender balance with regard to the composition of this Committee. In addition, the provisions of section 84(3)(a)(iii) that state that “the chairperson shall not be a member of the Public Service employed in the Ministry”, should be harmonised with the statute governing official secrecy. There should be a requirement that such persons sign the required the required documentation as provided for by the Official Secrecy Act[Chapter 11.09].

### **3.10.2 Recommendations**

- a) Amend section 81 of the PFM Act and insert provisions relating to the audit of all provincial and metropolitan provinces and all local authorities;
- b) Amend section 81 of the PFM Act and insert before subsection (4) a new subsection compelling Accounting officers and Treasury to comply with orders from the Auditor General and to provide responses on measures taken by each Ministry to implement the recommendations of Parliament in respect to the report of the Auditor General of the preceding financial year.
- c) Amend section 81(3) of the PFM Act and align with the constitution
- d) Amend section 83 of the PFM Act and insert the provisions of sections 32(2) and 32(3) of the Act in this section.
- e) Amend section 84 and engender its provisions
- f) Amend section 84 and insert provisions relating to compliance with the provisions of the Official secrecy Act

### **3.11 Part X of PFM Act: General**

#### **3.11.1 Gap Analysis**

##### **3.11.1.1 Section 90 of the PFM Act: Unclaimed money**

Section 90 (1) the PFM Act states that “unless otherwise provided for in any other enactment, at the end of each financial year any money in any bank account of a Ministry, constitutional entity, public entity or statutory fund that has remained unclaimed for a period of six years from the date it was payable to any person entitled thereto, shall be deposited with the Treasury”. Keeping unclaimed monies for a period of six years may be too long. It is recommended that the period be reduced to six months.

##### **3.11.1.2 Retention Monies**

In practice, the procurement process, as provided for in the Procurement Act, provides that some money payable by the State under a contract is withheld to ensure due performance of that contract. The PFM Act is not consistent with the Procurement Act on the provisions relating to retention monies. It is recommended that the PFM Act is amended by inserting after section 90, a new section providing for retention monies.

##### **3.11.1.3 Recovery of debts due to the State**

Whilst section 79 of the PFM Act has provisions relating to determination of interest rates for debts owing to State, the Act has no provisions relating to recovery of debts owing to the State. It is recommended that the PFM Act is amended by inserting before section 91, a new section with provisions relating to the recovery of debts due to the State. Such provisions should include the rule of set-off.

#### **3.11.2. Recommendations**

- (a) Amend section 90(1) the PFM Act and reduce the period for keeping unclaimed monies to six months
- (b) Amend the PFM Act and align the statute to the Procurement Act by inserting after section 90, a new section providing for retention monies
- (c) Amend the PFM Act by inserting before section 91, a new section with provisions relating to the recovery of debts due to the State.

## **4.0 SUMMARY OF RECOMMENDATIONS ARISING FROM THE REVIEW OF THE PFM ACT**

### **4.1 Preamble and Interpretation sections**

The recommendation is to amend the PFM Act in relation to:-

- (a) those provisions repealed by the Public Debt Management Act;
- (b) the sections of the Constitution quoted in the PFM Act;
- (c) the term Comptroller and Auditor General to reflect changes in title to Auditor-General; and
- (d) new terms that should be inserted in section 2 to align statute to the Constitution.

### **4.2 Section 3 of the PFM Act: Object of Act**

The recommendation is to amend section 3 of the PFM Act and incorporate constitutional provisions on public finance management principles

### **4.3 Section 4 of the PFM Act: Application of Act**

The recommendation is to amend section 4 of the PFM Act and insert provisions that extend the scope of application of the statute to provincial and metropolitan councils and local authorities.

### **4.4 New Part of the PFM Act: Parliamentary oversight of state revenue and expenses**

The recommendation is to amend the PFM Act and insert before Control and Management of Resources, a new Part providing for Parliamentary oversight over state revenues and expenditure. The part should deal with the roles and responsibilities of parliamentary portfolio and adhoc committees that have an oversight role over public finances.

### **4.5 Section 6 of the PFM Act: Treasury to manage and control public resources**

The recommendation is to amend section 6(3) of the PFM Act and insert a new subsection that makes the requirement for written Accounting Officer's Instructions mandatory. In addition, the provisions must compel Accounting Officers to ensure the departmental instructions departmental instructions are approved by Treasury and the Auditor General gets a copy of the approved instructions.

#### **4.6 Section 7: Duties and powers of the Minister**

The recommendation is to amend section 7(1) of the PFM Act and repeal and substitute it with a section that takes into account the Minister's responsibility relating to allocation of revenue between provincial and local government as well as promoting gender and equity in resource allocation processes.

#### **4.7 New Section in PFM Act: Appointment, Roles and responsibilities of Director responsible for Finance**

The recommendation is to amend the PFM Act and insert before section 11, a new section that deals with the appointment as well as the roles and responsibilities of the Director for Finance. Their roles should include assisting Accounting Officers in the day to day responsibilities on public financial management.

#### **4.8 New section in PFM Act: Duties of custodians of public funds and public property**

The recommendation is to amend the PFM Act and insert before section 12, a new section that deals with the duties of custodians of public funds and public property

#### **4.9 New Section in PFM Act Management of State assets**

The recommendation is to amend the PFM Act and insert before section 12, a new section that provides for the management of assets

#### **4.10 New Section of the PFM Act: Treasury Surcharge**

The recommendation is to amend the PFM Act and insert before section 12, a new section that deals with Treasury surcharges.

#### **4.11 Section 16 of the PFM Act: Money to be paid into Consolidated Revenue Fund**

The recommendation is to amend section 16 of the PFM Act and incorporate provisions relating to the establishment of the Exchequer account into which all revenue is deposited

#### **4.12 Section 17 of the PFM Act: Control of expenditures and issues from Consolidated Revenue Fund**

The recommendation is to amend Section 17 of the PFM Act as follows:



- (a) Repeal section 17(5) and to move the provisions relating to virementing and create, before section 31, a new section. In addition, the new section should also contain provisions relating to types of virements as well as restrictions.
- (b) amend section 17(8), and move the provisions on budget duration to Section 31

#### **4.13 New Section of the PFM Act: Costs and expenses to be direct charges**

Amend the PFM Act and insert, after section 17, a new section providing for direct charges to the CRF.

#### **4.14 New Section of the PFM Act: Grants of credit on the CRF**

The recommendation is to amend the PFM Act and insert before section 18, a new section with provisions relating to the granting of authority to transfer of funds from the Exchequer to the Paymaster General's Account

#### **4.15 Section 18 of the PFM Act: Establishment of other public funds**

The recommendation is to amend section 18 of the PFM Act and insert after section 18(11), a new subsection that has provisions on the appointment, roles and responsibilities as well as the payment of fees management committees.

#### **4.16 Section 19 of the PFM Act: Anticipated or unauthorised excess expenditure**

The recommendation is to amend the title of the section to align the statute to the Constitution. The title should read "unauthorised expenditure". The other recommendation is to amend section 19(1) of the PFM Act and move the provisions to a new section for additional and supplementary estimates. Section 19(3) of the PFM Act must be amended and aligned with the Constitution.

#### **4.17 Section 22 of the PFM Act: Establishment of banking accounts**

The recommendation is to amend section 22 of the PFM Act and insert provisions relating to the setting up of Accounts with the Reserve Bank of Zimbabwe and with commercial banks authorised by Treasury.

#### **4.18 Section 23 of the PFM Act: Accountant-General's warrants**

The recommendation is to amend Section 23 of the PFM Act and to add provisions that give clarity on the Accountant General's warrants and how it is differentiated from the Paymaster General's Warrant.

**4.19 Section 24 of the PFM Act: Special warrants for issues to meet unforeseen expenditure**

The recommendation is to amend sections 24(2) of the PFM Act and to align the statute to the Constitution in relation to the withdrawal limits for special warrants. The other recommendation is to amend section 24(3) of the PFM Act and to align the statute to the Constitution.

**4.20 Section 26 of the PFM Act: Issue of money to carry on government at beginning of each financial year**

The recommendation is to amend section 26(1) of the PFM Act and to align the statute to the Constitution.

**4.21 Section 27 of the PFM Act: Issue of money to carry on government after dissolution of Parliament**

The recommendation is to amend section 27(1) of the PFM Act and to align the statute to the Constitution

**4.22 New Section of the PFM Act: Preparation of estimates of revenue and expenditure**

The recommendation is to amend the PFM Act and insert before section 28, a new sections that provide for the timing of preparation of estimates of revenue and expenditure; the setting up of a budget calendar; budget framework; and guidelines for preparation of capital and recurrent budgets.

**4.23 New section of the PFM Act: Allocation of capital grants between provincial and local governments**

The recommendation is to Amend the PFM Act and insert before section 28, a new section that provide for the allocation of capital grants between provincial and local tiers of government.

**4.24 New section of the PFM Act: Process of sharing five percent of national revenue amongst provincial and metropolitan provinces and local authorities**

The recommendation is to amend the PFM Act and insert before section 28, a new section that provide for the process of sharing five (5) percent of national revenue to provinces and local authorities

#### **4.25 Section 28 of the PFM Act: Submission to Parliament of annual estimates of revenue and expenditure**

The recommendation is that section 28(2) of the PFM Act be amended and aligned with the Constitution. The other recommendation is to amend section 28 of the PFM Act by inserting, before subsection (2), a new subsection providing for the submission of separate estimates. The other recommendation is to amend section 28(4) and repeal the provisions and to move them to a new section on additional estimates.

#### **4.26 New Section of the PFM Act: Budget Management**

The recommendation is to amend the PFM Act and insert after section 28, a new section that provide for budget implementation, budget monitoring and reporting

#### **4.27 New Section of the PFM Act: Budget Management**

Amend the PFM Act and insert after section 28 a new section that provide for cash management.

#### **4.28 New Section of the PFM Act**

The recommendation is to amend the PFM Act and insert before section 32, a new section providing for GoZ's financial reporting framework and align the statute to practice and the Constitution

#### **4.29 Section 35 of the PFM Act: Consolidation of annual financial statements**

The recommendation is to amend section 35 of the PFM Act and repeal the provisions relating to submission of financial statements to the National Assembly.

#### **4.30 New section of the PFM Act: Submission of financial statements to the National Assembly**

The recommendation is to amend the PFM Act and insert after section 36, a new section that provides for the submission of financial statements to the National Assembly

#### **4.31 Section 37 of the PFM Act: Financial statements and budgets to comply with generally accepted accounting practice**

The recommendation is to amend Section 37 of the PFM Act and to incorporate provisions relating to the pronouncement of the PAAB on Accounting Standards.

#### **4.32 Section 38 of the PFM Act: Publishing of reports on financial statements**

The recommendation is to amend Section 38(1) and to incorporate provisions that extend the publishing of financial statements to other media.

#### **4.33 New Part of the PFM Act: Provincial and Metropolitan Councils and Local Authorities**

The recommendation is to amend the PFM Act and insert after Part V, a new Part providing for Provincial and Metropolitan Councils and Local Authorities and align the statute with the Constitution.

#### **4.34 Part VI of the PFM Act: Loans, Guarantees and other Commitments**

The recommendation is Amend the PFM Act and repeal Part VI

#### **4.35 Section 81 of the PFM Act: External auditors**

The recommendation is to amend section 81 of the PFM Act and insert provisions relating to the audit of all provincial and metropolitan provinces and all local authorities; insert before subsection (4) a new subsection compelling Accounting officers and Treasury to comply with orders from the Auditor General and to provide responses on measures taken by each Ministry to implement the recommendations of Parliament in respect to the report of the Auditor General of the preceding financial year; and align section 81(3) of the PFM Act with the Constitution

#### **4.36 Section 83 of the PFM Act: Annual reports and audited financial statements**

The recommendation is to amend section 83 of the PFM Act and insert the provisions of sections 32(2) and 32(3) of the Act in this section.

#### **4.37 Section 90 of the PFM Act: Unclaimed money**

The recommendation is to amend Section 90 (1) of the PFM Act and to reduce the period for which unclaimed money can be held in an account from six years to six months.

#### **4.38 New section of the PFM Act: Retention monies**

The recommendation is to amend the PFM Act and insert after section 90, a new section providing for retention monies and align the statute with the Procurement Act;

#### **4.39 New section of the PFM Act: Recovery of Debts due to the State**

The recommendation is to amend the PFM Act and insert before section 91, a new section with provisions relating to the recovery of debts due to the State and align statute to practice.

### **5.0 CONCLUSION**

This Discussion Paper reviewed the Constitution and the PFM Act, to determine the key aspects of the PFM Act that need to be aligned to the Constitution. The Discussion Paper also reviewed the PFM Act to ascertain areas that need to be updated and aligned to international practice. The fundamental aspects of the PFM Act that require amendment are summarised in 4 above.