PUBLIC DEBT SUBMISSION

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POLICY MONITORING AND RESEARCH CENTRE SUBMISSION - PUBLIC DEBT MANAGEMENT BILL

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INTRODUCTION

In a quest to stem excessive public expenditure and borrowing, and to formalize decision-making responsibilities relating to the contraction of public debt, the Public Debt Management Bill 2022 has been developed, among other things, to cure recognized weakness in the Loans and Guarantees (Authorization) Act, Chapter 366 of the Laws of Zambia. One such weakness is the disconnect with the Constitution of Zambia (Amendment) Act No. 2 of 2016 relating to the final authorization function on debt contraction. The Loans and Guarantees (Authorization) Act provides that final authority for debt is Cabinet meanwhile, the Constitution calls for debt to be approved by the National Assembly before contraction.

Previously, Cabinet has contracted loans for and on behalf of the Republic of Zambia. In most instances, "Cabinet" has been the President and one Minister. The magnitude of debt incurred without vetting by the Legislature which represents the interests of citizens has been debated recently, with the attendant impact on livelihoods because the debt must be serviced from resources that should otherwise be spent on public service provision.

Therefore, it is the aim of reforms in this sector to achieve the following:

- Streamline the reporting of public debt and ensure full disclosure
- Tighten oversight role of Parliament in contracting debt
- Ensure transparency and accountability in procurement and reporting of public debt
- Restructure debt management by creating a National Debt Management Office as an autonomous body; this office will be responsible for developing and executing debt management policies that minimize financing costs over the long term and for managing the aggregate cash needs of the Ministry of Finance and National Planning in the most cost-effective way
- Strengthen public investment management as well as project selection and financing to ensure any debt contracted for project development yields adequate investment dividends to ensure debt sustainability.

CURRENT LEGAL FRAMEWORK FOR DEBT CONTRACTION

Against this background, PMRC understands the current legal framework relating to the management of public finances and how this will interface with the proposed Bill.

1. The Constitution of Zambia (Amendment) Act

The Constitution of Zambia (Amendment) Act No.2 of 2016 provides for the following:

- The Legislature collaborates with the Executive on a wide range of national matters, including debt contraction
- It is mandatory for Cabinet to seek the approval of the National Assembly before the contraction of any loans/debts
- Provides for core principles of transparency and accountability for public finance management
- Provides for an auditing and reporting structure through which the Executive avails

Parliament with information on stock of loans at least once a year

2. The Loans and Guarantees (Authorization) Act Chapter 366

The Act provides for the raising of loans, the establishment of sinking funds, the giving of guarantees and indemnities and the granting of loans by or on behalf of the Government; and to provide for matters incidental thereto and connected therewith. The Minister responsible for Finance has broad powers to commit Government to debt without necessarily seeking approval from the National Assembly.

- There are some similar provisions in the Bill and the Act, *vis a vis* designating the Minister as substantive officer for debt contraction, power to the Minister to give guarantees on behalf of the Government, to establish sinking funds, and to contract loans outside, and without the approval, of Parliament.

Some shortcomings have been noted in the Legislation, which could explain the new direction in the proposed Bill. Some of these shortcomings are:

- In its application, it excludes loans from international bodies with which Zambia has loan agreements;
- It concentrates the power to raise loans for the country in the Minister;
- It makes it mandatory to inform the National Assembly about loans contracted or guarantees given only if they exceed one year;
- It makes provision for the creation of sinking funds for loans at the discretion of the Minister responsible for finance;
- Ministerial discretion extends to obtaining loans even when the National Assembly is not sitting.

These shortcomings have been remedied in the proposed Bill.

3. Public Finance Management Act No.1 of 2018

This Act was consequential to the Constitution (Amendment) Act No.2 of 2016; it repealed and replaced the Public Finance Act No.15 of 2004 and came into effect as a result of stakeholder and the Government recognition that there was need to strengthen the legal framework relating to the management of public resources. In so far as monies borrowed are spent out of the public purse, this Act designates public spending. This Act governs fiduciary duties of controlling officers, whether in Ministries, Provinces or spending agencies; for boards of State-owned Enterprises and Statutory Corporations.

Public Financial Management (PFM) refers to the set of laws, rules, systems and processes used by sovereign nations to mobilise revenue, allocate public funds, undertake public spending, account for funds and audit results.

A perusal of the proposed Bill highlights the following notable provisions aimed at meeting the aims outlined above:

- It seeks to establish a debt management office with attendant functions, *inter alia*, to advise Government on medium term debt strategy and the annual borrowing plan. The annual borrowing plan shall be presented to the National Assembly for approval at a stipulated time. This provision is applauded as it firmly places the National Assembly in a position to approve or veto debt prior to contraction.

- The proposed Bill contains a provision for reporting to the National Assembly over performance of debt.
- Integral provisions relating to publication of annual borrowing plan and medium-term debt strategy; regulating state owned enterprises and quasi-government institutions to ensure parliamentary approval prior to contraction have also been noted.

We however note gaps in relation to the following:

- The role of Cabinet in obtaining loans has not been expressly provided for.
- The manner of publication of information relating to public debt has not been expressly stipulated.

In relation to public debt management, the proposed Bill makes extensive reference to the Public Finance Management Act and it is recognised that this was in an effort to ensure there was harmony in the legislation.

LESSONS FROM OTHER COUNTRIES

In terms of public debt legal frameworks, Kenya, Botswana and Rwanda compare well with the objectives of the proposed Bill.

We can draw an example from the **Kenyan** Public Finance Management Act of 2012 which establishes a unified debt management office called the Public Debt Management Office based on good international practice providing a front, middle and back office. The country's National Treasury also publishes, on annual basis, a medium-term debt management strategy through which it appraises Government's performance on debt, re-assesses debt sustainability conditions and continues to guide debt policy over the medium term. (PMRC Analysis of the Public Finance Management Act)

In the same vein, **Botswana** legislation provides specific regulations that set limits for Government debt and guarantees; they cannot exceed 40% of GDP.

Rwanda PFM reforms have been anchored on an Integrated Financial Management Information Management System (IFMIS) to provide the necessary communication facilities and financial management information.

AREAS OF CONCERN RELATING TO THE BILL

PMRC wishes to highlight the following concerns for consideration as they have a bearing on the successful establishment of the proposed Debt Management Office:

- AUTONOMY: Placing the Debt Management Office under the Ministry of Finance casts a cloud over its autonomy to make decisions relating to approvals for debt contraction. The necessary boundaries will have to be stipulated.

- The discretion given to the Minister and to the President (i.e. Cabinet) to contract loans *under certain conditions* without approval of the National Assembly perpetuates the major weakness of the Loans and Guarantees (Authorisation) Act.

- The discretionary power of the Minister to publish loan information undermines calls public access to this information.

PMRC RECOMMENDATIONS

In view of the above concerns, PMRC wishes to make the following recommendations:

(a) In addition to the staff of the proposed Debt Management Office, it is recommended that a Board be included to oversee the decision-making function.

(b) The role of Cabinet in debt contraction should be clearly set out in the Bill; this incudes matters pertaining to:

- Composition of Cabinet in relation to debt contraction must be the President, Minister of Finance and National Planning, and two other members of the Executive.
- The Bill should also clearly stipulate the role of Cabinet in debt contraction.
- Updates to the nation on matters relating to debt management should include the status of established sinking funds both on deposits and balance sheet.

(c) The provisions for publication and public access to information should be elaborated upon and strengthened.

(d) Part III of the bill provides for Parliament to approve annual borrowing plans and set limits for annual borrowing. PMRC submits that annual borrowing must be set within the ceiling of the Debt-to-GDP ratio. Best practice provides that the Debt-to-GDP ratio should utmost be 40%. This is in order to limit borrowing when the country's economy stagnates as witnessed in the period 2012 to 2022, where borrowing was not aligned with economic growth. In 2019, for instance, the country's economy had started declining but borrowing continued to rise against the ability of the country to sustain its repayments. According to the African Development Bank (AfDB), by 2020 Zambia's Debt-to-GDP ratio was 102% demonstrating an unsustainable trajectory in its borrowing.