



## CONCEPT NOTE

### FOR A SADC MODEL LAW ON PUBLIC FINANCIAL MANAGEMENT

### BY THE SADC PARLIAMENTARY FORUM

**“ENSURING THAT SADC NATIONAL PARLIAMENTS ARE ENABLED TO CONDUCT THEIR LEGISLATIVE, BUDGETARY AND OVERSIGHT FUNCTIONS FOR PUBLIC FINANCIAL MANAGEMENT TO BE TRANSPARENT, EFFICIENT AND RESPONSIVE TO THE NEEDS OF SADC CITIZENS”**

#### I. BACKGROUND

1. Public financial management refers to the administration and supervision exercised over the finances of the State. It is a continual and ongoing activity, with the Executive and Parliament complementing each other through checks and balances to ensure that financial tasks conducted by Government or its agents are efficient, are for the purpose intended in accordance with budget lines, and are predicated on transactions which reflect value for money. Despite a general increase in economic growth perceived in 11 out of 15 SADC Member States over the period 2015-2018, there are major symptoms of economic frailty, excessive budget deficits, loss in purchasing power for citizens, and poor debt servicing across the SADC region. In 2018, Government debt in SADC as a percentage of GDP has been the highest since the last 10 years<sup>1</sup>, albeit below 60%. Additionally, in the period 2015-2018, reports of the Public Accounts Committees of more than 6 SADC countries indicate situations where public funds appropriated by Parliament may have been misused due to administrative lapses.
2. This is reflective of root causes whereby Parliament as an institution is often unable to achieve its functions in public financial management efficiently, leading to lack of prudential financial planning, lack of oversight in the procurement processes of the State, and possible wastages of public funds through corruptive practices. Pursuant to the doctrine of separation of powers<sup>2</sup>, Parliament is the only institution which has sovereign authority to adopt the yearly public budget proposed by the Executive and

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<sup>1</sup> International Monetary Fund, Regional Economic Outlook Database, September 2019, as reported at SADC weblink <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/#GovernmentDebt> (Accessed on 27<sup>th</sup> January 2020)

<sup>2</sup> This doctrine was propounded by Montesquieu in his book “the Spirit of Law” in 1748, and it found its way through several Constitutions around the world, including the US Constitution and the Constitutions of most SADC nations.

to exercise oversight over proposed heads of expenditure at Committee stage<sup>3</sup>, prior to their adoption by the National Assembly.

3. In addition, most SADC Member States have subscribed to international commitments such as the implementation of the Sustainable Development Goals (SDGs) inclusive of Universal Health Coverage, and gender-related treaties such as the African Charter on Human and Peoples' Rights, and its corresponding Protocol on the Rights of Women in Africa (the Maputo Protocol), the ICCPR and ICESCR<sup>4</sup>, to cite but a few. Such international commitments need to be mainstreamed through the yearly budget appropriated by Parliament through the allocation of sufficient funds to ensure a progressive realisation of objectives and related targets. Since SADC countries are dualist in nature<sup>5</sup>, international commitments taken need also be domesticated or incorporated through domestic legislation which is adopted by Parliament. Moreover, Parliament ensures an oversight over enabling administrative processes which are conducted under authority of law to give effect to international commitments taken.

## **II. THE ROLE OF PARLIAMENT IN PUBLIC FINANCIAL MANAGEMENT**

1. The institution of Parliament interfaces with public financial management at several levels. These include the following:
  - a) Oversight parliamentary questions by Parliamentarians (MPs) to interrogate executive action which involves use of public funds, for instance recruitment processes, building of infrastructure, creation of public institutions etc;
  - b) Taking cognisance of the Budget Speech read by the Minister of Finance which sets out the main economic, financial and fiscal measures for the incoming year, and taking stock of the Annexes to the Budget Speech which may contain further information on particular measures, the capital budget and information on economic variables such as public sector debt;
  - c) Adoption of the yearly budget through the Appropriation Act for the coming financial year, and adoption of the supplementary budget through a supplementary legislation after the end of the financial year;
  - d) Adoption of financial resolutions by Parliament immediately after reading of the Budget Speech for immediate changes in taxes and levies;
  - e) Debating on the Budget Speech and the economic, financial and fiscal measures contained therein;

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<sup>3</sup> The Committee Stage for the adoption of the budget is usually termed as "Committee of Supply" in Standing Orders and Rules of the National Assembly.

<sup>4</sup> The International Covenant on Civil and Political Rights (ICCPR) 1977; the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1977.

<sup>5</sup> "Dualism" refers to the doctrine in international law whereby treaties and covenants need to be domesticated by internal processes through the Executive and the Legislature (Parliament) for them to have legal effect at the national level.

- f) Adoption of a Finance Act which is the legislation that gives legal effect to measures announced in the Budget. This Act validates and subsumes financial resolutions made;
- g) Examination of the Director of Audit/Auditor General's report on public expenses made by Government and public departments, through the Public Accounts Committee which is usually a Committee of Parliament;
- h) Adoption of laws relating to sound financial management, such as revenue laws, legislation on financial reporting; laws on management of public debt, banking and non-banking financial services etc;
- i) Review of regulations (secondary legislation) which are tabled in Parliament and which relate to public financial management;
- j) Ensuring domestication of international commitments taken by Government, for instance the SDGs, UHC, or human rights treaties.

Whilst the list above is non-exhaustive, there are several legal and regulatory gaps across the SADC region which undermine the above functions of Parliament and therefore impede on sound public financial management.

### **III. EXISTING LEGAL AND REGULATORY GAPS IN PUBLIC FINANCIAL MANAGEMENT ACROSS THE SADC REGION**

#### **1. Narrow ambit of reports under scrutiny of Public Accounts Committee**

In at least 5 SADC countries, the Public Accounts Committee examines only the report of the Director of Audit/Auditor General, and not the audit reports of other statutory bodies or public authorities. This means that in case of mismanagement of public funds from such statutory bodies, it is the board of that statutory body which is required to take action, and this audit report is not tabled in Parliament although Parliament may be allocating funds to that statutory body/public authority through the yearly budget. In some instances, Parliament is not empowered to consider the audit reports of statutory bodies, whereas in other cases, Parliament is empowered to do so but the reports are not tabled for consideration. It is estimated that in at least 10 SADC countries, there are statutory bodies/public authorities which have a public element (that is which depend at least partly on public funds) but which fall outside the ambit of the supervisory authority of Parliament, exercised through the Public Accounts Committee.

#### **2. Lack of enforcement powers of the Public Accounts Committee**

Moreover, in all SADC countries, it has been observed that Public Accounts Committees do not have sufficient enforcement powers pursuant to the examination of the report of the Director of Audit/Auditor General. In most cases, the report of the Public Accounts Committee is tabled in Parliament, without follow-up action;

#### **3. Lack of enforcement for regulation of public sector debt**

In at least 4 SADC countries, there are laws or administrative guidelines on the management of public debt, with targets such as 50% of GDP, but without any penalty

on Government if this debt target is not achieved. In more than 5 SADC countries, the laws and administrative guidelines on debt management and related targets as a percentage of GDP are unclear, if not nonexistent. Moreover, the full details of existing public debt are often not disclosed in Parliament;

**4. Lack of performance-based budget with clear KPIs**

In nearly 6 SADC countries, the budget process is not related to clear performance indicators for Ministries and public departments. In other words, a performance-based budget will ensure that budgets are voted when Ministries/public departments comply with a set of pre-agreed performance indicators for the completed year in relation to set programmes. Key Performance Indicators (KPIs) can both be quantitative and qualitative, for instance number of complaints dealt with by a public authority, the number of children passing primary school examinations for a public school, or whether research of an agricultural department has yielded a constructive result. If in some countries, KPIs do exist, there is little evidence that they are strictly adhered to. A performance-based budget established over the medium term (budget for next year and forecast for 2 additional years) with clear KPIs will promote predictability in the management of public finance and ensure proper financial planning by Government;

**5. Disconnect between international commitments and budgeting**

There is a general disconnect between commitments taken under treaties, declarations or covenants, and the actual budget passed in Parliament. For instance, it has been observed that SADC Member States' budgets mostly fail to reflect corrective action with regards to the following:

- a) the 90-90-90 targets to eradicate HIV/AIDS by 2030;
- b) the mainstreaming of gender through gender-based budgeting;
- c) the implementation of Universal Health Coverage and the Sustainable Development Goals;
- d) the implementation of regional strategies such as the SADC SRHR Regional Strategy (2019-2030) or the SADC Regional Strategy for HIV Prevention, Treatment and Care and SRHR among Key Populations (2018);
- e) implementation of regional objectives such Africa Agenda 2063, and provisions contained in human rights treaties such as those providing for the right to health and housing.

**6. Misuse of supplementary budgets**

In at least 3 SADC countries, Supplementary budgets are passed in Parliament after the end of the financial year, and these budgets account for expenses which were made over and above the budget appropriated by Parliament for that year. Whereas supplementary budgets are necessary due to new circumstances occasioned during the completed year (for instance draughts or cyclones), it should not become a cause for improper financial planning. Often, it has been observed that supplementary budgets are abusive in nature and relate to expenses which could have been anticipated through proper budget management.

**7. No limit on quantum of public contracts entered into by the Executive**

In at least 10 SADC countries, there is no limit on the quantum of public contracts which can be entered into by the Executive. This in effect means that, over the democratic tenure of Government (usually a 5-year term), the Executive is legitimately entitled to pass any contract irrespective of whether the policy was included in the electoral manifesto, or whether the contract will involve debt servicing on the long term, that is beyond 5 years<sup>6</sup>. This unregulated prerogative to use public funds may lead to a situation where one Government binds the next beyond 5 years, therefore leading to a breach in democratic principles which are at the very foundation of the State. There is therefore a need for Parliament to exercise oversight and control over public contracts to ensure long-term sustainability in financial management.

**IV. OBJECTIVES OF A SADC MODEL LAW ON PUBLIC FINANCIAL MANAGEMENT**

1. Due to the existing legal and regulatory gaps, it is deemed necessary to prepare a SADC Model Law on Public Financial Management, to be adopted by the SADC Parliamentary Forum's Plenary Assembly, to serve as a benchmark and guiding legal instrument for national Parliaments to reinforce their domestic legal framework on public financial management. The Model Law will be incorporated by SADC Member States through amendments conducted to the Constitution, finance laws, regulations or the Standing Orders and Rules of the National Assembly, as may be necessary.
2. The overarching objective of the SADC Model will be to ensure that SADC national parliaments are enabled to conduct their legislative, budgetary and oversight functions for public financial management to be transparent, efficient and responsive to the needs of SADC citizens.
3. The specific objectives and expected outcomes of the SADC Model Law will include the following:
  - a) To provide for Parliament to pass Performance-based budgets which are related to programmes and corresponding KPIs;
  - b) To ensure that all statutory bodies and public authorities file their annual audit report/audited financial statements to Parliament;
  - c) To provide for the empowerment of Public Accounts Committees, so that they can review/examine all reports of statutory bodies/public authorities, in addition to the Report of the Director of Audit/Auditor General, and have qualified enforcement powers with regards to the recommendations made. In particular, the Public Accounts Committee shall be empowered to report issues through its Secretariat to relevant authorities such as the anti-corruption agency, or the

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<sup>6</sup> For instance, the Executive may suddenly enter into a public contract for the building of 10 water dams or hospitals, and the significant quantum involved may require immediate spending of Government, and also debt servicing over 30 years.

public services commission, and in case of such a report, it shall be mandatory for the recipient authority to report back on action taken;

- d) To provide that Parliament, through a dedicated Public Financial Parliamentary Committee, is empowered to monitor public debt, and call public officials for explanations in case the debt ceiling is exceeded. Moreover, the Model Law will provide for legal provisions to govern the management of public debt towards a target of 50% of GDP, failing which officials of the relevant Ministry/public authority will be called to account;
- e) To ensure that supplementary budgets which appear to be abusive to a quorum of the Public Financial Parliamentary Committee, should be scrutinised in detail and reported upon to Parliament sitting in Plenary;
- f) To ensure that international commitments such as the SDGs, UHC or gender-based budgeting are mainstreamed by Ministries and public departments into the budget, and that related KPIs be developed accordingly. There is an urgent need to ensure a progressive prioritisation of UHC with worldwide health concerns recently identified, such as the COVID-19 outbreak which is likely to upset financial markets and strain heavily the financing of public health care systems. Unless there is efficient public financial management, SADC Member States are likely to take years to recover from unstable public finances and economic recession;
- g) To provide a framework whereby Parliament is called upon to ratify public contracts which exceed 3% of GDP by a qualified majority (eg three-quarters), in case such public contracts do not appear in the electoral manifesto of the Government of the day. A framework shall also be developed for a formal electoral manifesto to be filed with the independent Electoral Commission.

## **V. DURATION**

- 1. It is expected that the development of the Model Law will take place over 6 months, during which statutory meetings of the Forum will take place.

## **VI. ABOUT THE SADC PARLIAMENTARY FORUM**

- 1. The SADC Parliamentary Forum is an international organization composed of 15 SADC Member Parliaments, with headquarters based in Windhoek, Namibia. It is an institution of the Southern African Development Community (SADC) established under Article 9(2) of the SADC Treaty in August 1997 and has a rich history in the development of Model Laws.
- 2. The SADC Parliamentary Forum has already developed 3 Model Laws namely the SADC Model Law on HIV in Southern Africa (2008), the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (2016), and the SADC Model Law on Elections (2018). A Model Law on the Prevention of Gender-based violence is currently under preparation.

3. The SADC Model Law on Public Financial Management will thus constitute the 4<sup>th</sup> Model Law to be developed by the Forum in collaboration with its Member Parliaments. The Forum furthermore has a high-level parliamentary committee called the Regional Parliamentary Model Laws Oversight Committee (RPMLOC) which is an organ dedicated to the monitoring of the domestication of adopted Model Laws and related Forum policy.
4. For any queries related to this Concept Note, please contact:

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