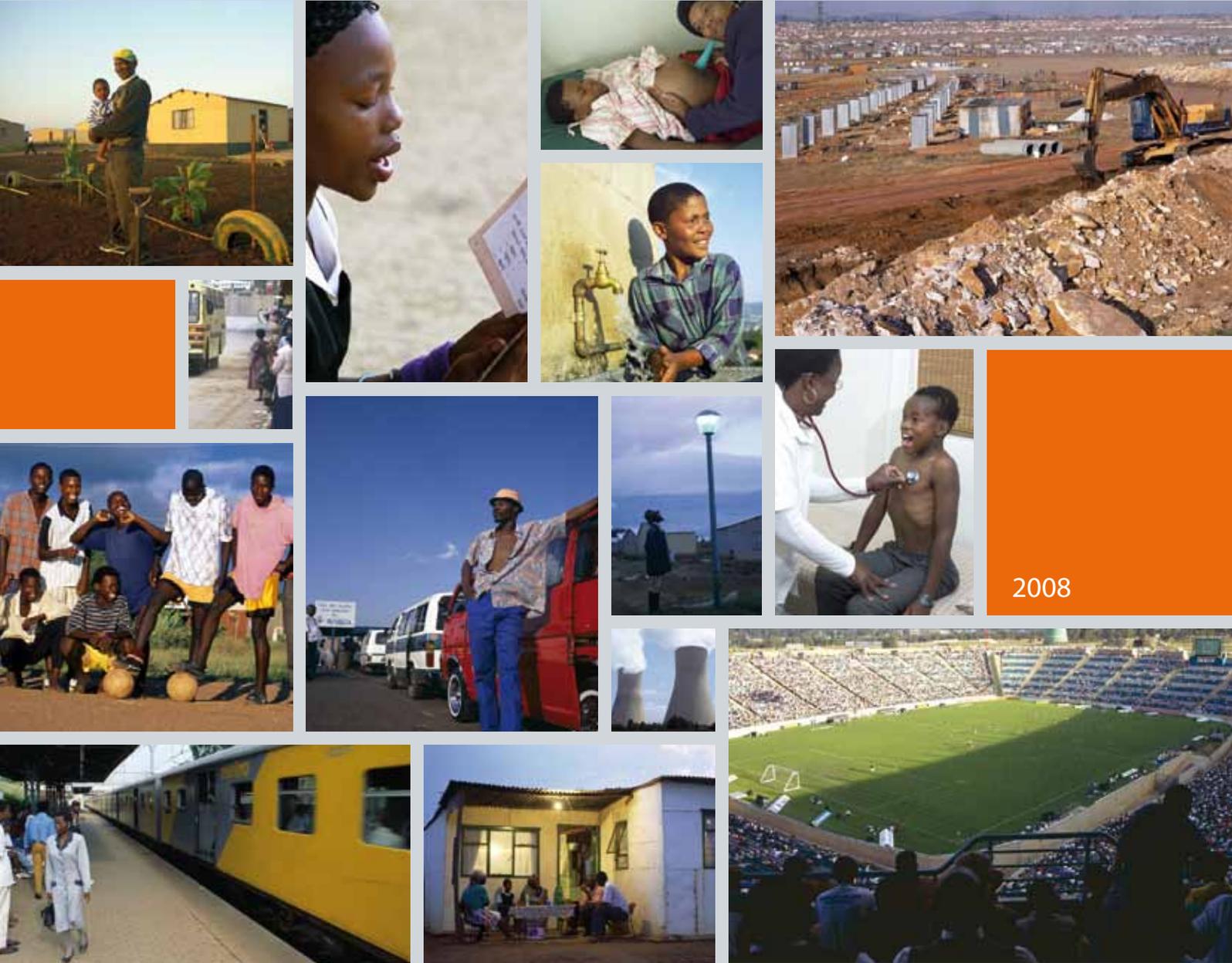


Preliminary Comments on the Public Finance Management Bill 2008



2008

FINANCIAL AND FISCAL COMMISSION
SUBMISSION ON THE
FINANCIAL MANAGEMENT OF PARLIAMENT BILL

November 2008

Introduction and General Observation

This submission is made in terms of Section 3 (2) [b] {ii} of the Financial and Fiscal Commission Act 25 of 2003 as amended. The Commission welcomes the opportunity to comment on the Bill as it is always critical that recommendations of the Commission are sought whenever legislation of a financial and fiscal nature is tabled.

In general the Commission welcomes the Bill in so far as its primary purpose is to strengthen the management of public finances (taxpayers' money). This in turn should strengthen and entrench the implementation of sound financial management practices in Parliament.

There are however, concerns that the Commission would like to raise upfront in terms of principle in relation to the Bill. It is not clear why the management of Parliament's finances should be regulated through a different piece of legislation from the Public Finance Management Act (PFMA). What is contained in the memorandum on the objects of the Bill suggests that the primary reason for this legislation is to consolidate Parliament's independence through recognising the principle of the separation of powers. This argument on its own is not sufficient to justify why a separate piece of legislation is required to regulate the management of Parliament's finances.

The Commission is aware that the PFMA is currently under review. It is unclear why that review of the PFMA should not of necessity address issues pertaining to Parliament to ensure that there is completeness and consistency in the system.

The separation of powers argument should apply equally across the three spheres of government, i.e. the legislature, the executive and the judiciary. The move to develop a piece of legislation driven solely by the separation powers argument has the potential to set a precedent that may prove unsustainable in the future. There is no reason why, for example, the legislative arm in local government should be treated any differently from that in the other two spheres, i.e. be governed by the MFMA while the other two spheres are governed by a different piece of legislation. Similarly, there is no reason why a separate Act governing the management of finances for the judiciary as a separate arm should not be developed. These scenarios are hypothetical but could turn out to be real if a precedent is set.

A further matter that the Commission wishes to raise in responding to the Bill as matter of principle is that there are a number of Constitutional entities, mostly Chapter 9 but also Chapter 13 (FFC) that are supposed to be independent yet they are governed by the PFMA (in some cases their budgets are even under the direct control of the Executive) even though they report to Parliament and are subject only to the Constitution. The Bill as it currently stands is very silent on these institutions.

The FFC submission is that the separation of powers rationale for separate legislation is weak, and sets a precedent for, for example, the Judiciary to claim a similar prerogative. If the Bill in question is merely replicating most of the provisions in the PFMA, the FFC does not frankly see the point of separate legislation. Furthermore, should the PFMA be substantially amended or re-written, substantial deviations between the PFMA and this proposed piece of legislation could arise. The FFC also does not feel very comfortable about the definition of transfers in the act, and how this would relate to donations or gifts, for instance. The vagueness of the clause could leave it prone to abuse. If Parliament wishes to retain unspent funds, surely this could be done in terms of PFMA regulations and exemptions, rather than in an entirely new Act?

The Constitution itself requires *uniform* treasury norms and standards. This is quite a strong wording. In interpreting the Constitution, the FFC submits that a "sphere of government" would include both executive and legislative arms.

Section 216 of the Constitution calls for the Treasury control.—(1) National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing—

- (a) generally recognised accounting practice;
- (b) uniform expenditure classifications; and
- (c) uniform treasury norms and standards.

If then there is any evidence to the contrary (that a legislature lies outside the relevant sphere of government) the FFC would be interested in knowing what cogent rationale there is for this. If there are no substantive reasons the Commission proposes that the PFMA be reviewed to deal with the specific difficulties, rather than a parallel piece of legislation introduced. The FFC is not clear on what the specific difficulties under the current arrangement are, other than rollovers.

These general comments notwithstanding the Commission makes the following specific comments on the Bill as it currently stands.

1. Summary of the Bill

This Bill seeks to regulate the financial management of Parliament in a manner that is consistent with the constitutional status of Parliament and the constitutional requirements for tabling money Bills.

Secondly, the Bill seeks to ensure that all revenue, expenditure and assets and liabilities of Parliament are managed in a manner that is consistent with national financial management frameworks and practices.

Assessment

This Bill is different from the Public Finance Management Act (PFMA) which regulates (a) national and provincial departments and trading entities; (b) constitutional institutions; and (c) public entities listed in Schedules **3A** and 3C of the PFMA. This Bill seeks to stipulate the responsibilities of persons who are entrusted with the financial management in Parliament and providing for parliamentary oversight of Parliament's budgeting and expenditure through a joint committee of Parliament.

This Bill is likely to replicate itself in Provincial Legislatures. There is no doubt that there are elements of Intergovernmental Financial Relations which will be affected by the Bill. The fiscal framework will have to be tilted to cater for Parliamentary needs. A pertinent question to be answered is the role of Parliament in the Budget Process.

2. Apportion of Financial Management Responsibilities

Clause 5 provides that the Executive Authority of Parliament consisting of the Speaker of National Assembly and the Chairperson of the National Council of Provinces acting jointly are accountable to Parliament for the sound financial management of Parliament.

Clause 6 provides that the Secretary of Parliament is the Accounting Officer and is accountable to the Executive Authority for the financial management of Parliament.

Clause 9 specifies that in the absence of the Accounting Officer, his or her functions are performed by another official designated by the Executive Authority.

Assessment:

This Bill is silent on the relationship between Executive Authority and the joint committee of Parliament. Nowhere is the Bill saying the Executive Authority of Parliament will report to the joint committee to report on the financial performance of Parliament.

Regulations will need to be developed to specify the duties of the Chief Financial Officer, the Supply Chain Office and any other structures that will be required to implement the Bill.

3. Dealing with Under and Over-expenditure

Clause 23 provides that Parliament is not required to return to the National Revenue Fund funds appropriated for a particular year that are not spent in that year. In subsequent financial years, any expenditure of such funds must be approved on the basis that these funds are funds derived from Parliament's revenue sources.

Clause 38 provides for the Accounting Officer to report in writing to the Executive Authority on any impending shortfalls and overspending and to identify steps to prevent or rectify such shortfalls or expenditure.

Assessment

The Bill provides that appropriated money unspent by Parliament should not be taken away from it. Unspent budgeted funds can be treated as savings. The Commission is concerned that this provision might generate very negative incentives that may result in unintended negative consequences for sound financial management practices.

The FFC is of the view that for consistency Parliament should also hold itself to the same set of rules that it has demanded of other state organs in passing the PFMA. Treating Parliament differently from other organs of state has the potential to create an impression that Public Finance Management rules are not applied

in a standard manner, leading not only to the proliferation of similar legislation but also to some counter-arguments from those entities left under the PFMA.

It is troubling that money unspent by Parliament for no genuine reasons should be appropriated back to it. The Bill is silent on how to deal with the adjustment process in case of over and under-expenditure. There must be a provision that if there is malicious compliance to the PFM rules, funds can be delayed, stopped and withheld. This should apply to all spheres of government. The main point about allowing automatic rollovers and other forms of earmarking is that they undermine the comprehensiveness of the budget. Given that Parliament will be playing a major role in the budget process henceforth, if Parliament as an institution requires a certain amount of funding, this should be dealt with in the budget process itself, not outside of it via automatic rollovers.

5. Asset Management Systems

Clause 30 provides that the Accounting Officer is responsible for managing Parliament's assets and liabilities and must ensure that Parliament has an accounting and information system for this purpose..

Assessment

Asset Management policy encompassing physical and financial assets will need to be developed. Regulations stipulating how assets must be acquired, registered, recorded, treated, preserved and disposed off are needed. A risk management strategy for this effect will also need to be regulated.

6. Dealing with Transfers

Clause 35 provides that the Accounting Officer may transfer funds from Parliament to another entity only if that entity implements, or has undertaken to implement, effective financial management. Transfers to entities in other countries or international institutions are governed by the instrument regulating South Africa's relationship with that entity or institution.

Assessment

This clause is vague. Under definitions and interpretations, there is a need to clarify what is payment and a transfer, noting that a transfer is not expenditure?

Also, a clarification is needed on transfer to an entity to implement an effective financial management. What is the rationale of giving powers to Parliament for Financial Management only for funds to be 'transferred to another entity only if that entity implements, or has undertaken to implement, effective financial management'. What is effective financial management? Does this assume that no transfer is to be made for an entity performing Asset Management functions?

In this regard, an executing authority should (a) determine the Parliament: Finance Department's organisational structure in terms of its core and support functions; (b) define the posts necessary to perform the relevant functions, and the posts so defined shall constitute the department's approved establishment; to implement the Bill if it is enacted.

Regulations are needed for the treatment of transfers and payments.

7. Monitoring and Reporting

Clause 36 requires the Accounting Officer to ensure that spending is in accordance with the approved budget and that revenue and expenditure are properly monitored.

Assessment

The Bill states that the Accounting Officer must report to the Audit Committee and the latter to Joint Committee. There should be quarterly reporting to the Joint Committee by the Executive Authority and the Accounting Officer. Clarity is also needed on the role of National Treasury in this regard as Treasury can only report on quarterly performance in terms of section 32 of the PFMA which is not applicable in this Bill.

8. Financial Implications for the State

The cost of implementing the Bill will not only entail the strengthening of the financial management systems but the development of regulations to give rise to the enactment of the Bill such as the development of the Supply Chain Policy and Systems, Asset Management Register, Policy and Systems and additional resources to implement the ACT.

Recommendations

Having considered the principles of the Financial Management of Parliament Bill, the Financial and Fiscal Commission (FFC) makes the following recommendations:

- The FFC submits that as the Bill currently stands, there are no sufficient reasons to justify the enactment of a separate piece of legislation outside the ambit of the PFMA to regulate the management of Parliament's finances. In interpreting the Constitution, the FFC submits that a "sphere of government" would include both executive and legislative arms.
- The FCC is aware that the PFMA is currently under review. If there is a need to strengthen the management of public finances by entrenching the implementation of sound financial management practices in Parliament, then the review of the PFMA should of necessity address issues pertaining to Parliament to ensure that there is completeness and consistency in the public finance management system in South Africa.

If a sufficient case for the Bill can be made, the Commission makes the following recommendations on specific sections of the Bill:

- Strengthen the relationship between Executive Authority and the joint committee of Parliament. Currently the Bill is silent on the relationship between Executive Authority of Parliament and the Joint Committee in

- relation to reporting on the financial performance of Parliament. **(Clause 5)**.
- The Bill provides that appropriated money unspent by Parliament should not be taken away from it. Unspent budgeted funds can be treated as savings. The Commission is of the view that for consistency Parliament should also hold itself to the same set of rules that it has demanded of other state organs in passing the PFMA. **(Clause 23)**.
 - Asset Management and procurement policies will need to be developed. A risk management strategy for this effect will also need to be regulated. **(Clause 30)**.
 - The clause dealing with transfers is vague. Under definitions and interpretations, there is a need to clarify what is meant by payment and a transfer, noting that a transfer is not expenditure. **(Clause 35)**.
 - The legislation should make provision for quarterly reporting to the Joint Committee by the Executive Authority and the Accounting Officer. Clarity is also needed on the role of National Treasury in this regard as Treasury can only report on quarterly performance in terms of section 32 of the PFMA which is not applicable in this Bill. **(Clause 36)**.

For and on behalf of the Commission



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