PUBLIC FINANCE MANAGEMENT ACT LEAVES GOVERNMENT BACK FOOTED AS THEY SEEK AMENDMENTS

By Mark Keith Muhumuza

I. Background

It is less than a year since President Museveni assented to the Public Finance Management Act 2015 (PFMA), but already, amendments have been proposed. In September, the Ministry of Finance Planning and Economic Development (MoFPED) proposed at least eight amendments to the Act. The amendments, according to the MoFPED, are to correct the challenges of implementing the Act. The PFMA became law on 23rd February 2015 and was heralded as a law that would transform the budgeting process in the country, and improve budget transparency and accountability. Notably, it also provides rules for management of oil revenues.

The implementation of the law started this financial year, but because it became law three months to the end of the financial year 2014/15, its effectiveness has yet to be measured. Already, government ministries are conducting Joint Sector Reviews to start the planning process for 2016/17. As they plan, it appears the Ministry of Finance is admitting that clauses in the law are flawed. State Minister for Planning David Bahati explained to Parliament that the challenges faced included the cumbersome procedure of getting the Certificate of Gender and Equity Responsiveness and failure to cater for a source of funds to run the government in instances of revenue shortfalls. Other proposed amendments are seeking authorization to transfer funds from one vote to another without approval parliament, reallocation of funds and advances of Bank of Uganda (BOU).

It has been reported that "the strict requirements under the Public Finance Management Act, 2015 have made it hard [for] government to fund supplementary budgets."[1] Section 25 of the Act provides that "the total sum of money that may be spent by government, in excess of the amount

[1] Solomon Kakaire & Deo Walusimbi, 'Why Governmnet wants Public Finance Act Amended,' The Observer, November 4, 2015, accessed at http://observer.ug/business/38-business/40815-why-govt-wants-public-finance-act-amended.

appropriated for that purpose will not be more than that budgeted for in the contingencies fund."[2] It is these circumstances that have greatly informed the proposed amendments. The State Minister's arguments during the tabling of the amendments, received numerous heckles in Parliament. MPs forced the deputy Attorney General, Mwesigwa Rukutaana to withdraw until he could bring more convincing explanations on why the Act should be amended.

In a space of one week, Members of Parliament were recalled to debate a report by the Finance Committee of Parliament regarding the amendments. There was a rush to have the amendments made, but MPs rejected them leading to the Speaker, Ms. Rebecca Kadaga to postpone the debate "until further notice." The short window in which the amendments were to be made on a law regarding allocation and disbursement of funds was inadequate. The expectation is that the amendments will be passed—with some changes recommended by the committee--before the 2016 elections.

II. Contentious Provisions

a. Accounting Officer Responsibility

The first proposed amendment seeks to remove the accounting officer's responsibility in the Act. The amendment proposes a change in the wording by removing "accounting officer" and replacing it with "sector." Section 9 of the Act states that an accounting officer would prepare the "budget framework paper in consultation with stakeholders." The amendment seeks to make this a role of the sector. In the Act, a sector is defined as a "group of institutions or votes that have common functions or objectives and mandates." If compared to the accounting officer function that has words like responsibility, the word sector leaves it open to interpretation especially for purposes of accountability. The argument from the Ministry of Finance is that the amendment is necessary to provide for a "sector wide" approach during the budget formulation and management process.

However, the MoF's argument is not entirely true. In the Act, there is already a provision that allows for a sector-wide approach in the budgeting process, located in the same clause that they

[2] Id.

are trying to amend. The very nature of the proposed amendment appears to take away the individual responsibility of accounting officers in the budget formulation process. The act had been lauded for being able to bring accounting officers to book if they have not accounted for public resources and assets in their dockets. Taking into consideration the role of accounting officers and for purposes of leaving individual responsibility in the allocation of resources, the amendments fails the test. Leaving it open to interpretation erodes the very principle of accountability. The amendment appears to be unnecessary at the moment. The Ministry of Finance will have to be far more convincing, in explaining the reason for this proposed amendment.

b. Gender and Equity Certificate

The Ministry of Finance argues that the requirement to have the Certificate of Compliance with Gender and Equity Responsiveness for each ministerial policy statement is highly bureaucratic. The essence of the certificate is to give a green-light on proposals if only they are non-discriminatory to gender, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability and age.

In the budgeting process, each Ministry is required to submit a policy statement where they indicate the plan for the next financial year. The Ministerial Policy Statement also spells out the implementation plan for the government ministry, department or agency. According to the Ministry of Finance, the process of acquiring the certificate is “not practical” and delays the submission of the policy statement. One of the principles of good governance, as provided for by the recently adopted UN Sustainable Development Goals, is equity, which is why there is the Equal Opportunities Commission (EOC) in Uganda. If Ministerial Policy Statements ignore this principle, then good governance has been ignored. Appearing before the Committee on Finance, Planning and Economic Development of Parliament, the EOC argued that repealing the need for the certificate goes against the inclusion of marginalized groups. Additionally, in removing the requirement for this certificate, the accountability on the part of the executive to ensure that budgets consider gender and equity issues will be diluted.

Therefore, instead of seeking to remove this from the procedure, the Ministry of Finance should engage the EOC and reach an agreement on the time required to have acquired the certificate. That way the Ministry will receive policy statements on time but also still ensure that it adheres to principles of good governance.

c. Powers of Parliament Clipped

During the debate that eventually saw the passing of the PFMA 2015, the Members of Parliament—more specifically Hon. Cecilia Ogwal, Woman MP for Dokolo County–were vocal in ensuring the maintenance of the oversight role of Parliament. Hon. Ogwal partly achieved that in the areas of government borrowing and appropriation, where Parliamentary approval has to be sought. One of the sections that gives Parliament the authority to approve or reject the reallocation of funds is Section 20. The Act in reads, “Parliament may, by resolution, authorize the Minister to reallocate funds from a vote to another vote.” For example, if in the middle of a financial year, a particular need for a government ministry or department may arise as a result of additional roles given after appropriation, funds to complete that task have to be reallocated. This reallocation, as quoted in the Act, requires the Minister to seek the approval of Parliament. In the proposed amendments, the Ministry of Finance proposes that approval from Parliament is not necessary and wants the entire section 20 be replaced.

In as much as it is important to allow reallocations, Parliamentary approval should remain necessary, but within a short and clearly defined window. Under the current Act, it requires the minister to table a request for any unforeseen expenditure within four months to secure approval from Parliament, which may delay the implementation of a project. In this amendment, the Ministry of Finance also wants to use the supplementary funds to cater for the reallocation. The committee in Parliament rejected the entire amendment clause by specifying that any supplementary expenditure—as the Act provides, should be “un-absorbable, unavoidable and unforeseeable.”

d. Budget Indiscipline

Similarly, the Ministry of Finance wants to add a subsection to section 4 of the Act allowing the government to reallocate resources to finance supplementary expenditure without Parliamentary approval. In denying Parliament the right to approve any reallocated money, the Ministry of Finance argues that this is intended to give government more flexibility on supplementary budgeting. This amendment would allow indiscipline, yet the 2015 Act was passed to minimize budget indiscipline. In Section 26 of the Act, all supplementary expenditure was to be funded from the Contingencies Fund—at least 3.5% of the budget for a previous financial year. Furthermore, in section 26 (5) it states that a threshold of 85% of the contingency fund is meant to finance supplementary expenditure.

In other words, whatever is meant for supplementary expenditure should be budgeted for in the National Budget. However, the proposed amendments would like to change this and allow the government to finance expenditure over and above the allocation stated in the Contingency Fund. The argument provided by the Minister of State for Planning, Mr. David Bahati, is that the Act never provided for how supplementary expenditure would be made, in case the money in the Contingency Fund is depleted. He argues that the amendment is meant to provide for that possibility in case the country gets into such a scenario. But the Act already provides a mechanism to finance additional expenditure if the contingency is depleted. Section 26 (b), gives Parliament the authority to "appropriate such other monies as it may deem necessary."

Supplementary expenditure has been one of the greatest sources of budget indiscipline and corruption. To minimize government use of supplementary budgets, the 2015 Act mandated that supplementary budgets be funded through the contingency fund. Leaving it as open as the amendments propose would leave supplementary budgeting open to abuse. The principle of the contingency fund was to limit spending, especially that which arises after the budget has been passed. In the last financial year, the supplementary budget was UGX 876 billion whereas in the 2013/14 financial year, the supplementary budget was UGX 678 billion, which money was raised by increasing borrowing from Central Bank. The Ministry of Finance had been one of the biggest critics of supplementary budgets, which makes it rather surprising that the same ministry is now proposing amendments that take the country back, increasing the likelihood of fiscal indiscipline.

Bahati told Members of Parliament that this amendment was necessary because it would allow government get advances from BOU whenever there is a shortfall of money available to spend in the consolidated fund. This, according to the minister was never anticipated to be a problem at the time of passing the PFMA, 2015.

e. Short Term Borrowing Approval

Uganda's local governments have been struggling to secure funds from the central government. The release of funds for expenditure by the Ministry of Finance, which isdone quarterly, sometimes encounters delays, hence crippling service delivery. In one recent example, the Daily Monitor reported on how a government cheque for salaries bounced in July 2015, due to a nearly depleted consolidated fund. The result was salary payment delays. In some months, the government faces revenue collection shortfalls, hence limiting the availability of funds for expenditure already provided for in the budget. This is the reasoning being used to amend section 36 of the Act. The amendment is meant to allow Bank of Uganda (BOU) to advance the government money without the approval of Parliament. It is argued that this would be done in order to allow government business to continue in instances of a revenue shortfall.

The BOU does not have free money it can distribute to the government whenever requested. The money at BOU is meant to stabilize the economy and shield it from shocks that may arise out of inflation or natural disasters. The BoU has to lend the government money, and the expectation is money shall be paid back during the financial year it has been borrowed. Appearing before the committee, Hon. Bahati described it as a "normal global practice." Missing in the amendment was what percentage of the money that can be borrowed, to which, the committee in its report recommended that it should not exceed 18% of the recurrent expenditure of government for that financial year.

For instance, in the current financial year, recurrent expenditure is UGX7.6 trillion, meaning that the government could borrow up to UGX1.4trillion in the financial year. The challenge for the government is ensuring that this tool is not used to borrow money in a period when revenue shortfalls are in surplus or within the target. Considering that it doesn't require parliamentary approval, it can easily be abused. Of greater concern though, is that the bulk of the money borrowed is for recurrent expenditure and not for development. If this amendment, which appears to make sense, goes ahead it should include a cap on how much can be borrowed and over a short window. This will help avoid giving the government a “blank cheque” for money to be printed, whenever it feels there is a need. These limits, as proposed by the committee, will help keep the government in check.

III. Recommendations

- If the certificate of compliance with Gender and Equity Responsiveness is creating a bureaucratic headache and delays in budgeting, it doesn’t have be ignored. Instead, more attention should be paid on making how the Equal Opportunities Commission issues the certificate more efficient.
- Parliament is an institution set-up by the 1995 Constitution, with one of its functions being keeping the executive in check and ensuring accountability. The argument presented by the Ministry of Finance that getting approval from parliament to reallocate expenditure is flawed. The time taken to approve expenditure from the contingency fund is provided for in the Act as being within four months of authorization. Additionally, the Speaker can recall MPs to give special consideration when reallocating resources.
- A disciplined government is one that budgets well too. If the supplementary expenditure has been projected ahead of time, then it should be in the budget. There is no need to amend the Act in that regard because Parliament already has the mandate to provide for any additional expenditure.
- In a given month, there could be revenue shortfalls, meaning the government would fail to meet obligations like salaries. That is why it seeks to have temporary advances from Bank of Uganda. Understandable as it seems, the due diligence to tell whether the advance is required needs to be thorough. This is to avoid this window being abused to finance avoidable and unplanned expenditure. MPs also need to request for more disclosures from the Ministry of Finance in case such an advance is made in order for them to play the oversight role. There must be a cap on how much advance the government can get in order to avoid some “unintended consequences.”

IV. Conclusion

Since 2013, Uganda has been going through a series of reforms of public finance management in order to rid the country of an image tainted by corruption. The image was tainted by two major scandals, namely the UGX 60 billion and UGX 340 billion embezzled from the Office of Prime Minister and Ministry of Public Service respectively. As a result of these scandals, donors decided to cut some aid funds. To appease donors, the government embarked on reforms, including the formulation of the Public Finance Management Act, 2015. Its implementation is yet to be tested but already moves to amend it seem premature. It is therefore important that Parliament and other relevant sectors consider these amendments carefully and resist any reforms that would reduce accountability, allow for budget indiscipline, or increase opportunities for corruption.

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