A Submission by Idasa to the Portfolio Committee on Finance on the draft *Money Bills Amendment Procedure and Related Matters Bill, 2008*

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1. Introduction

Idasa welcomes this opportunity to make a written submission to the Portfolio Committee on Finance on the draft *Money Bills Amendment Procedure and Related Matters Bill, 2008*. This submission consists of four main sections: Section 2 sets out some general matters related to the question of legislative budgetary amendment power. Section 3 engages in detail with aspects of the bill that we feel require further deliberation. Section 4 evaluates the draft Bill against a set of criteria for effective legislative amendment engagement. The final section derives from the preceding ones and makes some recommendations that we feel would improve the Bill.

2. General Remarks

It is well-known that the South African Constitution requires Parliament to pass legislation setting out the procedure for the amendment of Money Bills, and that such legislation has not been passed to date. In a 2005 Idasa publication[1] concern was expressed at the lack of legislation "to regulate the powers of Parliament and provincial legislatures to amend budgets." In the same text, however, the views of some Treasury officials as well as a member of the Joint Budget Committee are noted as being that "Parliament's capacity and role in engaging with the Budget would need to be strengthened urgently before powers to amend the budget could even be contemplated." According to this view,

[1] *Budget Transparency and Participation: Nine African Case Studies,* Idasa, 2005

Parliament would have to acquire greater expertise in assessing, amongst others,

- Tax policy
- The Validity of Macroeconomic forecasts
- Adherence to spending forecasts
- Adherence to fiscal policy

Although the quotations speak in one breath of Parliament's 'role' and its 'capacity' in relation to budgetary amendment, there are good reasons for regarding the two separately. Questions around Parliament's *capacity* are a primary reason why the fiscal and budgetary *role* it has played to date has been limited to ex post scrutiny of budget implementation. It can, however, be argued that it is precisely the lack of a legislated budgetary amendment role for Parliament which has constrained its capacity, in two senses. Firstly, in the absence of such power Parliament has not invested adequately in, amongst others, budget research capacity. Secondly, the absence of such power has also meant that some civil society groups whose submissions and other contributions could have strengthened Parliament's capacity in this regard have declined to participate formally in the budget process.

Clearly, an appropriate Money Amendment Bill can contribute much to establishing a 'virtuous circle' in South African fiscal governance, where greater legislative budgetary power helps elicit greater capacity, and greater capacity leads to a better use of such expanded power and thus improved fiscal outcomes. Equally clearly, there are risks associated with the expansion of Parliament's role in the budget beyond its current one. These risks include amendment overload, fiscal profligacy, tokenism, and most fundamentally, a loss of credibility of the budget process, which would result if Parliament's interventions were of a poor quality.

In general, legislation which sets out issues pertaining to money bills should seek to be clear on how it understands the *scope* of that power and where it believes it should be constrained. Clarity needs to be obtained on the extent to which the amendments of the budget by Parliament may be permitted to have 'macro-implications,' where these are understood as amendments, which potentially mean one or more of the following:

- The budget balance (i.e. the budget surplus or deficit) is altered
- Aggregate expenditure is increased or decreased
- Aggregate tax revenue is increased or decreased

Budgetary amendment power could enable Parliament to re-allocate funds whilst requiring it to retain the budget balance and other aggregate measures proposed by the executive. Such re-allocation could be between departmental votes, between programmes within a vote, or between current and capital budget functions. Amendment legislation could also limit the scope of such re-allocation, establishing for example that no more than 10% of a particular allocation may be changed. Parliament might want to shift funds from one department to another if it felt that budgetary prioritisation did not sufficiently reflect government's plan of action, the State of the Nation Address, and other broad policy commitments. It might feel that more money should go to health infrastructure and less to economic infrastructure, for example. But it would have to grapple with the fundamental information asymmetry between its understanding of the operations and performance of departments and that of those departments themselves.

Amendment legislation might alternatively give Parliament *some* say over aggregates but only permit that aggregate amounts be adjusted *downwards* or kept the same. Parliament could essentially then effect an unaltered or a more austere fiscal policy stance through re-allocation of funds or reductions in allocations based on, amongst others, its interpretation of priorities as well as its sense of which departments have been using allocations well and which haven't.

The most unconstrained form of amendment power would place no restrictions on the impact of budgetary amendment on aggregate revenue and expenditure and on the budget balance.

3. Specific Concerns with the Draft Bill

This section provides a detailed discussion of specific aspects of the draft Bill. Section 4 evaluates the Bill in its entirety with reference to a set of key requirements that budgetary amendment legislation should possess in order to promote positive outcomes.

a. The 'fiscal framework'

Section 6 of the draft Bill provides that Parliament may amend a money bill in accordance with procedure established in this legislation after "considering and adopting the fiscal framework" (Sec. 6. (1)). Section 7 (3) (a) reiterates that any committee which proposes a money bill amendment must motivate this with reference to, amongst others, "the relevant fiscal framework adopted by Parliament."

In general, 'fiscal framework' may refer to a set of rules or guidelines relating to particular quantitative indicators of fiscal performance.[2] Thus, for example, two key aspects of the well-know European Union fiscal framework are the 'deficit rule,' requiring that the government deficit not exceed 3% of GDP, and the debt rule, requiring that gross government debt not exceed 60% of GDP. Clearly, such rules serve as a basic means of accountability of the executive to the legislature.

[2] Key conceptual distinctions, and many of the arguments, of this discussion derive from Calitz and Siebrits, 'Should South Africa Adopt Fiscal Rules?", South African Journal of Economics, Volume 72:4, September 2004

The notion of a ‘fiscal framework’ could also, however, be taken to refer less to a set of binding, quantitatively specified fiscal rules, and more to accountability for a broader set of social and economic objectives accompanied by enhanced transparency requirements. In such a system, the executive would have greater discretion and flexibility, which in turn would lead to enhanced credibility if it uses these well.

In South Africa currently there are no specific fiscal rules for which the executive is accountable. Both the Public Finance Management Act and the Municipal Finance Management Act seek to set out an appropriate institutional arrangement for transparent and accountable governance, rather than stipulating particular targets for fiscal policy. It is our opinion, consistent with the position of Calitz and Siebrits (2004), that the current discretionary-transparent approach to fiscal governance works well and works better than a rules-based system would. The question, however, is what this means for the phrase ‘fiscal framework’ in the Draft Bill.

What, in other words, is Parliament approving and adopting when it adopts a ‘fiscal framework’? We suggest that more clarity is needed here, specifically as to whether in fact the draft Bill envisages that the executive be required to articulate its fiscal framework in terms of fiscal indicators for which it can then be held accountable.

b. Constraints to Amendment

Section 7. (3) lists 11 factors which any committee, proposing an amendment to a money Bill, must refer to in motivating its proposal. One of these factors is the ‘relevant fiscal framework.’ The problem is that there are no guidelines for the extent to which this fiscal framework is a binding constraint.

If a committee proposed, say, an increased allocation of 5% for a given department, there is no indication in the Draft Bill of whether that committee, the budget committee or some other committee, is then required to identify where this money is to come from. Is the requirement that the budget balance remain unchanged, i.e. that the net impact of re-allocation on the total resource envelope remain unchanged? Clarity on the scope of amendment power is, we feel, essential if it is to be an effective document.

It may be useful to set out some different understandings of the meaning of 'amendment' in order to show that more rigourous specification is required here. Amendment may mean:

- Re-allocation between votes without constraint as along as aggregates are not affected;
- Aggregates are not affected and amendment may also not exceed or decrease, say, 10% of a particular vote;
- Amendment may affect the budget balance but it may only reduce the deficit or increase the surplus and it may do this only through changes in expenditure, not through changes in tax policy too (i.e. it cannot impact on the share of government in the economy);
- Allocations may be increased or decreased and may affect the balance positively or negatively but must net out to a balanced budget over the entire business cycle; or
- Amendment power is entirely unconstrained.

Taken together these arguments suggest that legislation engaging with the *procedure* for amendment nevertheless also needs to explicitly state its assumptions around key conceptual aspects of what is meant by 'amendment' and in what way amendment power is or is not to be constrained.

It is surely not appropriate to omit reference to such issues from the Bill, if only to provide an initial *guiding sense* of how the legislation envisages these questions.

c. Committee structure

Section 4. (1) states: Each house must establish a committee to engage with the national macro-economic and fiscal policy and to consider all amendments to money Bills. It is not clear, in the current articulation, whether it is imperative that a new committee for each house be established, or whether in fact existing committees (the Finance and Joint Budget Committees) could be reconfigured to incorporate this function into their strategic objectives. To establish a third committee, in addition to these committees, would be needlessly cumbersome and would create problems of coordination, delays, and other administrative challenges.

d. Information Required

Section 5 of the draft Bill requires the Minister to submit, at least three months before the budget proper, the following:

(1) statements on the national government's fiscal policy framework and macroeconomic policy;
(2) statements on the intergovernmental financial and fiscal relations; and
(3) the Medium-Term Budget Policy Statement (MTBPS) together with draft budget allocations for each programme within a vote as approved by Cabinet.

To a significant degree, however, the requirements of 5 (1) and 5 (2) are already met by the MTBPS, which is released some five months before the budget and which contains chapters on economic and fiscal policy, the division of revenue as well as shifts in expenditure prioritisation over the medium-term.

The aim of this requirement is thus unclear. If it aims at a greater transparency around how, for example, 'fiscal prudence' is understood by government, then this is also already available from the MTBPS as well as from broader articulations of economic and development policy, such as currently found in the ASGISA documents. In other words, the requirements stemming from 5. (1) and 5. (2) are covered by the subsequent requirement in section 5. (3) that an MTBPS be submitted to Parliament.

The second requirement stated in section 5. (3) is that draft budget allocations for each programme within a vote, as approved by Cabinet, be submitted to Parliament. This requirement may assist Parliament in preparing for the budget itself and is to be welcomed for this reason. Many of these allocations will of course be merely incremental adjustments to previous budget and MTBPS benchmark estimates. Thus, the information provided in the MTBPS, which essentially captures allocations to new priorities and allocations *in excess* of benchmark amounts, will in all likelihood remain the most useful in setting the parameters of Parliament's engagement.

4. Evaluating the draft Bill in terms of Factors making for Good Legislative Budgetary Engagement

Some years ago IDASA identified six factors which, when present, maximised Parliament's ability to play a significant positive budgetary amendment role.[3]

These still-relevant factors are:

1) Parliament does have some power of amendment;
2) Committees have the right to suggest amendments to the House;
3) There is sufficient committee time for Budget scrutiny;

[3] 'The Role of Parliament in the Budget Process,' Krafchik and Wehner, 1999.

4) A co-ordinating committee is able to combine finance and other specialist input;
5) Committees involved have access to sufficient independent research capacity; and
6) Committees involved have access to detailed, timeous departmental information.

In this section we briefly evaluate the draft Bill in the light of these requirements.

1) Parliament does have some power of amendment

This requirement is clearly met, but as argued above there are some vague areas which need to be clarified, specifically in relation to the meaning of a fiscal framework.

2) Committees have the right to suggest amendments to the house

This requirement is also met. Though the 'Budget Committee' may refer Money Bills to any committee and any committee may propose amendments, it is the Budget Committee which coordinates the process. Authority to effect amendments to Money Bills resides, in this draft Bill, with either of the Houses, that is the National Assembly or the National Council of Provinces (sec 7. (14)).

3) There is sufficient committee time for budget scrutiny

Section 7. (14) makes it clear that amendment power lapses if amendments are not passed four months into the fiscal year. This is similar to the time currently given for passing the budget without amendments. This issue is discussed further below in relation to making better use of the medium-term expenditure framework.

4) A co-ordinating committee is able to combine finance and other specialist input

This requirement is met, though it may be excessive to establish a new, separate committee rather than integrate these functions into those of the Finance and/or Joint Budget committees.

5) Committees involved have access to sufficient independent research capacity

As mentioned earlier, there is a need for a kind of 'virtuous circle' process to come into being following this legislation. The greater budgetary power bestowed on Parliament should create incentives for developing increased analytical capacity; this in turn should enhance the ability of Parliament to contribute to budget policy positively. The issue of 'capacity' however, is not as simple as merely establishing and adequately funding a Parliamentary Budget Office. The pertinent issues include:

- Adequacy of Parliament's budget allocation;
- Adequate prioritisation of research, and especially Budget Research; and
- Institutional performance (quality and motivation of staff, political independence of the research office, institutional memory etc.).

Whilst the first two bullets are related to resource questions, the third stresses that institutional performance is not entirely reducible to adequacy of funding.

6) Time frames and the Role of the Medium-Term Expenditure Framework

The draft Bill provides that the House must adopt proposed amendments "within four months of the start of the financial year to which the Bill relates" (Section 7. (14)), failing which it must adopt the original money Bill introduced by the Minister. This is clearly aligned with the stipulations of the Public Finance

Management Act, section 29, where four months is also set as a significant deadline.

It could be asked, however, whether this is not quite late into the year for any significant changes in departmental allocations to be made. If a department were to spend equal amounts of an initial allocation each month, and then had its initial allocation increased by 15%, it would have to spend more than 20% more per month in the remaining 8 months compared to its average spending for the first four months.[4] There would be good reasons to fear some productive as well as allocative inefficiency under such circumstances. There would also be opportunity for gamesmanship: a department, thinking it will receive a 15% increase based on initial debates in the relevant committees, may start spending accordingly or entering into future commitments based on such assumptions.

These problems are inherent to consideration of budgetary amendment and in fact suggest, in our opinion, that the medium-term expenditure framework be used more, and the annual budget less, as the 'platform' for budgetary amendment. This could mean one of two things:

- Parliament starts considering amendments to the draft budget which is presented some 4 months before the start of the fiscal year; or
- Parliament proposes amendments for the outer years rather than the year being tabled.

The problem with the former option is of course that the executive itself is, at this stage, still free to make changes to its draft budget. Going though the amendment procedure but applying it to a provisional, non-authoritative document is surely not worth the effort.

[4] Say for example the initial allocation was R 30 million and a 15% increase was voted by the house at the end of four months. In the first four months the department might have spent 1/3 of the initial allocation, or R 2 500 000 per month. Its new allocation means, with 8 months to go, it needs to spend R 34.5 million – R 10 million = R 24.5 million, in 8 months, or R 3 062 500 per month, 22.5% more per month than in the first four months.

The second option would not mean that Parliament cannot make minor adjustments or 'corrections' to the budget for a given year. What it suggests, however, is that larger changes should rather be proposed over the medium-term. Parliament might adopt a budget but formally indicate its intention to suggest amendments to it which need to be reflected in the next budget, and which the executive would have to address and engage with in its forthcoming MTBPS.

In effect this would give Parliament a limited but useful role in 'budget drafting', in the sense that its concerns with a given budget would (if the executive plays along) inform the drafting of the next budget. The executive would not necessarily be *obliged* to adopt such changes in its MTBPS, but might be required to formally engage with and comment on them, for example in an appendix to the *Budget Review* or the MTBPS. If Parliament felt its proposals were not being seriously considered, it would still have recourse to legislated budget amendment power.

5. Recommendations

Based on the preceding discussions, this submission concludes with the following two fundamental recommendations:

1) Clarity regarding 'amendment'

First and foremost, greater clarity is needed on the scope and limits of 'amendment' as the Bill understands it; amongst others this would include a more precise definition of what is meant by the 'fiscal framework' and to what extent it is envisaged that Parliament engage with this framework. Clarity in this regard would also include the clearer stipulation of the extent to which a departmental

allocation may be amended; whether say it can be increased or decreased by 5%, 10%, 20%, or in principle to an unlimited extent.

2) More focus on a medium-term approach to amendment

South Africa's medium-term approach to budgeting can enhance the quality of Parliament's budgetary amendment role. Instead of seeking primarily to effect changes in a given budget, Parliament should suggest what it might want coming budgets to look like and see the MTBPS as an opportunity for rigourous debate in this regard.