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Do the Anti-Money Laundering Laws in Zambia Work Well to Address Corruption in Public Procurement?

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Contents

Abstract III

Acknowledgement V

Glossary VI

1.0 Introduction..... 1

 1.1 **Background of this Study**..... 1

 1.2 **Corruption and Money Laundering**..... 4

 1.3 **Research Objectives**..... 10

 1.4 **Research Questions** 12

 1.4.1 **Specific Research Questions** 12

 1.5 **Theoretical Framework** 12

 1.6 **Research Outline**..... 17

2.0 Literature Review..... 19

 2.1 **Introduction** 19

 2.2 **General overview** 19

 2.3 **Literature Describing Money Laundering** 19

 2.4 **Conclusion** 23

3.0 Methodology..... 24

 3.1 **Introduction** 24

 3.2 **Research design**..... 24

 3.3 **Research Ethics** 25

 3.4 **Limitations of this study**..... 25

 3.5 **Conclusion** 26

4.0 **RESEARCH FINDINGS; Legal Framework and the Anti-Money Laundering Reports, and Interviews**..... 27

 4.1 **Introduction** 27

 4.3 **AML Legal Framework and Fighting Corruption in Public Procurement** 29

 4.4 **Anti-Money Laundering Reports** 44

 4.4.1 **FIC Reports**..... 44

 4.4.2 **AML/CFT Measures- National Risk Assessment Zambia 2017** 49

 4.4.4 **Procurement corruption in Zambia** 51

 4.5 **Utilisation of AML data in procurement to stem corruption** 56

 4.6 **Conclusion** 59

- 5.0 ANALYSIS 61
 - 5.1 Summary of Anti-Money Laundering laws and mechanisms for gathering AML data 61
 - 5.2 Anti- Money Laundering Reports 63
 - 5.3 Analysis from finding – Questionnaires and Interviews 64
 - 5.4 Conclusion 65
- 6.0 CONCLUSIONS AND RECOMMENDATIONS 66
 - 6.1 Introduction 66
 - 6.2 Findings 67
 - 6.3 Recommendations 71

Abstract

This study was inspired by the pursuit to strengthen existing legal frameworks and find new inventive ways of combating public procurement corruption in Zambia by leveraging on Zambia's existing Anti-Money laundering laws (AML) and enforcement mechanisms. This was achieved through evaluating and analysing the current Anti-Money laundering framework and Zambia's public procurement laws. The focus was to identify the forms of public procurement corruption, and to determine how effective the AML measures have been – and could be – to curb public procurement corruption. The measures evaluated included criminal enforcement efforts in anti-money laundering, and administrative measures in public procurement (including exclusions, suspensions and debarments of corrupt contractors and individuals). It is paramount to underscore that public procurement in Zambia and globally plays a significant role in the economic development of any country, and so using all available enforcement tools to reduce corruption in public procurement is essential to the welfare of any country; thus, the importance of the Zambian case study.

Zambia has enacted a robust wide range of AML laws to combat money laundering, including measures aimed at the financing of terrorism, the forfeiture and seizure of proceeds of crimes, and the prevention of corruption, among other measures. Although Zambia has a wide range of laws and enforcement mechanisms in anti-money laundering, Zambia has not used them to its full advantage. Some weaknesses include: poor enforcement of criminal measures, institutions prone to political interference, a lack of political will, and non- development of administrative measures – including, for example, poor enforcement of collateral measures such as debarment in procurement, and a lack of a coordinating AML policy to leverage the government's many resources against corruption in procurement.

The study concludes that Anti-Money laundering legal framework has not been used effectively to curb the public procurement corruption which is a deep challenge in Zambia. With robust laws available, Zambia needs to implement fully administrative measures such as debarment, and to put in place policies to strengthen joint coordination and operation amongst government institutions and collective action among stakeholders. In addition, the country needs a clear voice at the top, a strengthened anti-corruption culture, and a policy of allowing autonomous bodies to remain autonomous not just on paper. Furthermore, this study proposes new ways of doing things: to include a corruption and anti-money laundering clearance certificate and an obligatory anti-corruption and anti-money laundering clause in all government contracts, to promote self-cleansing (corporate compliance), and a

mechanism to ensure that foreign debarred entities are red-flagged as corruption risks in the Zambian procurement system.

Keywords

Compliance; corruption, combating corruption; Money laundering, Anti-Money laundering; Public procurement, forms public procurement corruption, transparency, accountability; administrative measures, criminal measures, corruption clearance certification, self-cleaning, anti-corruption and Anti-money laundering clauses in public contracts, debarment, Zambia.

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Glossary

ACC	Anti-Corruption Commission
AMLIU	Anti-Money Laundering Investigations Unit
AMLA	Anti-Money Laundering Authority
BOZ	Bank of Zambia
CDD	Customer Due Diligence
DEC	Drug Enforcement Commission
DPP	Director of Public Prosecutions
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
FIU	Financial Intelligence Unit
KYC	Know Your Customer
IMF	International Monetary Fund
ML/TF	Money Laundering and Terrorist Financing
MOH	Ministry of Health
PEP	Politically Exposed Person
PIP	Prominent Influential Person
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drug and Crime
ZRA	Zambia Revenue Authority

1.0 Introduction

The purpose of this chapter is to provide an introduction to the subject topic of this study, which is a review on how well the Anti-Money Laundering legal framework- a common framework being implemented worldwide – has worked to combat public procurement corruption in Zambia. The study focuses on establishing the effectiveness of the Anti-Money Laundering legal framework in the fight against public procurement corruption. Further, the study highlights Anti-Money laundering and administrative measures which can be taken to combat money laundering and so to check corruption in public procurement. This chapter begins with, first, an introduction to money laundering, a brief background of the study, anti-money laundering in public procurement corruption, and the definitions of highlighted terms and the challenges this study aims to address. This chapter further discusses the research objectives and questions. Finally, it offers a theoretical framework for this study.

1.1 Background of this Study

Globally most governments are confronted with the challenge of providing quality basic services for their citizens and creating favourable environments for business enhancement. Services such as health, transport, education and energy are procured by governments. Public procurement hinges on the purchase of such goods and services. Transparency International (TI) defines public procurement as “the acquisition by a government department or any government-owned institution of goods or services.” (Susanne Kühn & Laura B Sherman, 2014) .

The United Nations Economic Commission for Africa has estimated that in Africa alone, nearly US\$148 billion is lost annually due to public procurement corruption (UNECA, 2015). That figure is on the higher side because Africa is largely undeveloped, and anti-corruption systems are not well-established across the continent. These high losses due to corruption cast doubt on the anti-corruption fight, and suggest what is probably an ineffective legal framework.

Zambia has not been spared from severe public procurement challenges as this study will highlight. In an address to the press, the Chief Government Spokesperson was quoted by News Diggers (News Diggers Reporter, 2019) when she stated that President Edgar Lungu of Zambia had conceded that

there is a serious problem with the procurement system which is allowing inflated bids and thereby permitting “legal corruption” through the normal tender procedures. The spokesperson stated that the fight against corruption in this country has been linked to procurement in that the government was a big spender and as a result, it procures a large number of projects, including massive road projects, airports etc. Further, that the government is contemplating revising the composition of the procurement laws so that a senior official, rather than a junior procurement officer can be entrusted with the responsibility of rejecting overpriced bids for government tenders. We quote in, verbatim:

“That’s what the President is saying must be addressed immediately because government cannot be losing money because suppliers are colluding with procurement officials. Sometimes, it’s just suppliers colluding...they will tell each other ‘we are just three of us who are going to supply to government and because it’s just three of us, you make your price this, me I will make it this...: (News Diggers Reporter, 2019)

In addition, the spokesperson argued that “...Now, if as part of that procurement, a perception of corruption is being created, then government, especially the President, is extremely concerned because if we are going to procure a road and as part of procurement [and] people say it’s corruption, the President is asking that maybe there is something wrong,” Siliya said. In the coming section, the paper addresses on how anti-money laundering framework can aid in attending these forms of public procurement corruption.

The Financial Action Task Force (FATF) is an inter-governmental organisation founded in 1989 with the key objective to fight money laundering (Usman.W.Chohan, 2019). The FATF, in its review of the use of money laundering tools to fight corruption (FATF, 2013), argued that the methods adopted by countries to fight money laundering and terrorist financing (ML/TF) are powerful tools, useful in the fight against corruption. Further, FATF argued, the funds generated from criminal proceeds emanate from corruption offences.

Criminal proceeds are mostly generated from corrupt practices and other offences, that is both from public and private sources. It is a known fact that corruption is usually committed for the purpose of obtaining private gain by both parties involved. After the offences are actualised the proceeds of

corruption are often laundered in various ways to enable the perpetrators to distance themselves from the crime committed, because if the funds were not laundered, it would be easier to link the perpetrators to criminal acts in public prosecutions. Laundering is usually achieved by passing the funds through the financial system, through the purchase of assets and through investments in real estate.

The world community has long sought to address the corruption that is masked by money laundering. Another instrument that stresses the need to fight money laundering is the United Nations Convention against Corruption (UNCAC) which a legally binding universal anti-corruption instrument (UNCAC, 2005). The convention stresses the importance of combatting money laundering in the anti-corruption context by requiring State parties to criminalize money laundering, then to adopt measures to effectively prevent it, and by urging the recovery of the proceeds of corruption and the establishment of financial intelligence units (UNCAC, 2005).

Globally, it has been accepted that that the Anti-Money Laundering (AML) frameworks can provide instruments to deter various forms of corruption. This is due to the fact that AML policies can make large volumes of financial intelligence transparent to authorities, which can be a valuable source of information on potential corrupt activity (Sharman, 2011). Sharman in his book *Money Laundering: Regulating Criminal Finance in the Global Economy* raised a number of observations regarding AML policies which reinforce principles of anti-Corruption. Sharman noted, first,

“that AML policies have the potential to make a large volume of financial intelligence transparent to authorities. By making critical financial information – for example, financial information regarding transactions among elites – the AML policies can be useful as a source of information on potential corrupt activity.”

Sharman stressed that an effective anti-money laundering legal framework “requires, and thus potentially strengthens, international cooperation.” He pointed out that this international cooperation is “particularly necessary in cases of corruption involving large sums of money; as such, tend to be taken outside of the countries where they were generated.” As a result, anti-money laundering practices can center on corrupt transborder payments, which often follow from corruption in procurement. To track those payments, the anti-money laundering framework must be “applied equally to rich and poor

countries,” Sharman argued, “so it demands consistency of behavior on the part of rich countries.” In practice, he urged, this means that “developed countries also need to apply the standards they ask developing countries to adhere to.” (Sharman, 2011). In sum, increasing standardization of monitoring systems for anti-money laundering purposes is important for fighting corruption across borders, and reinforces this important tool for fighting corruption in procurement. To clarify how the frameworks can be drawn together internationally, the next section looks at the offences of corruption and money laundering in brief.

1.2 Corruption and Money Laundering

Two of the most widely used definitions of corruption were coined by the World Bank and Transparency International. The World Bank (Campos and Pradhan, 2007) defines corruption as the “misuse or abuse of public office for private gain”, whereas, TI (Transparency International, n.d.) defines corruption as the “abuse of entrusted power for private gain”. Private gain is common to both understandings of corruption. As stated earlier, money laundering is the process of concealing illicit gains that were generated from criminal activity. By successfully laundering the proceeds of a corruption offence, the illicit gains may be enjoyed without fear of being confiscated.

As the FATF has noted, “corruption and money laundering are intrinsically linked.” As with other serious crimes, corruption offences, such as bribery and theft of public funds, are generally committed for the purpose of obtaining private gain (FATF, 2013). Some common types of corruption include systemic corruption, grand corruption, state capture, petty corruption etc. Grand corruption mostly takes place at the highest level of government with the involvement of politically exposed persons (Transparency International, 2020). Systemic corruption happens when the governance systems embracing the three arms of government -- namely the judiciary, the executive and the legislature -- are overwhelmed by corruption, that is, the top political leadership, the economic system, the legislature, law enforcement and the judiciary are all perverted by corruption (Transparency International, 2020). While petty corruption merely involves corrupt acts done day-to-day within the public service at large, it too can have a profound impact on public procurement (Transparency International, 2020). An example would be the payment of a bribe to a public official to encourage the

official to favour an incompetent bidder in a contract award – a relatively petty offense which can have a serious impact on those affected by the corruption.

The forms of corruption are basically manifestations of the corrupt acts committed by the corruptor and the corruptee (simply put as the giver and the receiver). The corruptee is the recipient of the benefit, whether directly or otherwise. According to the World Bank (World Bank, 2006), the most prominent forms of corruption are embezzlement, bribery, fraud, extortion and nepotism. Hence, corruption is an activity that provides the funds, which are then laundered via formalized institutions and non-formalized channels. The link between corruption and money laundering is such that the proceeds of corruption are vulnerable to laundering. It follows that corruption facilitates money laundering (ML) and money laundering encourages public procurement corrupt acts (Sharman, 2009), in that money laundering is a path through which illicit assets move to be concealed. The following section examines corruption in the Zambian context.

In the Zambian context, corruption is understood as the abuse of public office for private gain and involves an activity where both the public and private sector participate. In Zambia, Section 3 of the Anti-Corruption Act No. 3 of 2012 (National Assembly of Zambia, 2012) provides that “corrupt” means the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for advantage or benefit for oneself or another person,” and “corruption” is to be construed accordingly.

Zambian law echoes a global reality, which is that corruption and money laundering are worldwide threats that disturb governmental and corporate credibility and economic sustainability, and increase individual risk. It is a known fact that the two vices globally impede economic development; diminish social services; and, deter investments in infrastructure and social services, which makes the vulnerable even more so. (Khrumkin, 2007). Most governments suffer from the risk of corruption and money laundering, which destroy human lives and impede the developmental agenda (Transparency International , 2013). In their best practices paper, the Financial Action Task

Force (as noted, an independent inter-governmental body) indicated that the measures taken by countries to combat money laundering and terrorist financing (ML/TF) are powerful tools that are useful in the fight against corruption (FATF, 2020). If corruption is related to public procurement, it connotes that public finances are misused, often by a few members of the elite, and in the long run governments' goals cannot be met (Soala.Warmate., 2018). This is typical in the case of Zambia. In this next section, the paper looks at the role of the Financial Action Task Force – a leading inter-governmental organisation which advances anti-money laundering protections – in the fight against corruption and money laundering.

- **FATF Role in the Fight against Corruption and Money Laundering**

Combatting money laundering is a keystone to the wider agenda to fight organized and serious crimes such as terrorism, weapons proliferation etc. The fight is achieved through depriving criminals of illicit funds and by subsequently prosecuting those who assist in the laundering of such funds. The Financial Action Task Force recognises the link between corruption and money laundering, including how AML/CFT measures help combat corruption. The Financial Action Task Force (on Money Laundering) (FATF) is an inter-governmental organisation founded in 1989 on the initiative of the G7 to develop policies to fight money laundering (Usman.W.Chohan, 2019). In 2001, the mandate of Financial Action Task Force was expanded to include anti-terrorism financing and latter proliferation financing in 2012.

Some of the objectives of the FATF include setting standards and promoting effective implementations of legal, regulatory and operational measures for combating money laundering. The Financial Action Task Force has written recommendations for combating money laundering and the financing of terrorism (FATF, 2012).

These Recommendations (FATF , 2021) thus, set an international standard, which countries are expected to implement through measures adapted to their specific situations. It is key to underscore that the Recommendations set out the essential measures that countries should have in place to: identify the risks, and develop necessary policies and domestic coordination; trail money laundering, terrorist financing and the financing of proliferation; and,

to enhance and make available beneficial ownership details, and furthermore, to apply mitigation measures for the financial sector and other sectors. Further, countries are expected to grant powers and responsibilities to law enforcement agencies. In an effort to have this implemented, countries are expected to have in place broader anti-money laundering legal frameworks that will ensure all areas are captured. This will be discussed more under chapter four.

Financial Action Task Force standards encompass preventive and enforcement measures and call for an effective and impartial sanctioning. The financial and other institutions are expected to report suspicious activities as per Recommendation 20 (FATF, 2012), that is, the financial and other institutions are obliged to report suspicious activity to a Financial Intelligence Unit. The primary focus is on customer due diligence - “know your customer” -- and private entities are required to adequately identify potential customers by requiring name, legal proof of existence, and addresses of individuals or entities with which they will be doing business. Customer due diligence is in line with FATF Recommendation 10 (FATF, 2012), and record keeping falls under Recommendation 11.

Recommendation 10 provides that financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names. The recommendation further provides that financial institutions should be required to undertake customer due diligence (CDD) measures when: (i) establishing business relations; (ii) carrying out occasional transactions above the applicable designated threshold (USD/EUR 15,000), wire transfers etc . It is key to underscore that the 40 recommendations -- standards set by the FATF -- are important tools in combatting corruption because they support the detection, tracing, confiscation and return, where appropriate, of corruption proceeds, and they promote international cooperation in the efforts to do so. For example, under the FATF recommendations, if a financial institution notes an irregular transaction on a customer account, the institution is to file a suspicious activity report with the country’s financial intelligence unit (FIU). After an inquiry by the FIU the matter may become one of apparent corruption. Another example would be where a real estate agent notes an activity where an individual suddenly purchases several properties

using cash without revealing source of huge funds, and a report is filed. As earlier alluded to above, the focus of the FATF Recommendations is on fighting money laundering and terrorist financing, and the recommended measures include specific steps to recognise and address corruption risks. Further, because the FATF recognises that corruption is often the predicate to offences involving money laundering, the FATF recommendations require financial institutions to take action to mitigate the risks posed by politically exposed persons (PEPs), among others (FATF, 2012).

These efforts quite naturally relate to the fight against corruption in public procurement. In its 2013 release (FATF, 2013) prepared by experts from both the AML/CFT and anti-corruption communities, the FATF acknowledged that even though AML/CFT and anti-corruption efforts are naturally and mutually linked, the two have not worked together. The AML/CFT and anti-corruption experts agreed that further tools were required to enhance the understanding of AML/CFT measures that can be effectively used to fight against money laundering and corruption. As part of that effort to link anti-money laundering strategies and anti-corruption efforts, the next section looks at procurement corruption in the public sector.

- **Procurement Corruption in the Public Sector** - In all functioning Government systems, public procurement holds a pivotal role in ensuring normalcy in the public operations due to the fact that substantial amounts of public funds are utilized. Those funds used in public procurement are a means through which services and infrastructure are delivered – means, however, which create serious risks of corruption.

As stated above, governments use public procurement to purchase goods and services required for the public welfare. Government spending in public procurement amounts to close to 20% of national gross domestic product (GDP) in many countries (OECD, 2018). It is against this backdrop that public procurement should be a transparent process that has integrity. The foregoing is supported by Walker and Brammer (Walker H & Brammer, 2007) who pointed out that public procurement must be guided by principles of transparency, accountability and achieving value for money for tax payers

(Schooner, 2011). Zambia has not been spared; as the statement by the Transparency International Zambia chapter president noted, the fight against corruption is predicated on finding corrupt individuals, but too often no interest is taken to seal the loopholes for corruption in order to prevent graft from occurring in the first place. Zambia lacks the needed procurement laws or strong ethical guidelines for controlling procurement officers, and as such, they do not see the value of being “professional” in the classic sense. (News Diggers, 2018).

Transparency International’s assessment of corruption in Zambia raises serious concerns. In 2018, Zambia scored 105 and was ranked 35th in the Transparency International CPI, meaning that the country had dropped by one on the rankings. Any ranking below 50 on the Corruption Perceptions Index indicates serious levels of public sector corruption, and thus a rank of 34th is a clear sign that public sector corruption in Zambia is perceived to be relatively high (TI, 2018).

In 2016, Zambia conducted a national risk assessment which revealed that corruption in Zambia was the most prevalent predicate offence for money laundering, and the resultant money laundering threat was rated very high (Zambia Cabinet Office, 2017,pg 13). The assessment report further indicated that the failure was due to “inadequate effectiveness in implementing legal and administrative measures by various law enforcement agencies and the engagement in and tolerance of corrupt practices by members of the public who should be reporting the crime.” (Zambia Cabinet Office, 2017,pg 13) . In a report released by the firm GAN Integrity, titled *Zambia Corruption Report*, GAN indicated that the most common form of corruption identified in Zambia was in public procurement (GAN Integrity, 2020).

The Zambian Financial Intelligence Centre in their ML/TF Trends Report, 2017 indicated that the “number of reports received on grounds of suspected corruption represented 39% of the total number of reports received in 2017.” (FIC Zambia , 2017). The value of transactions was significantly high and accounted for over ZMW 6.3 billion (US\$ 484 Million) of the total value of cases analyzed. Cases of corruption continued to be linked to public

procurement contracts and were often perpetrated by PEPs or their associates (FIC Zambia , 2017).

The perceived corruption has had serious impacts, both direct and indirect. In the recent past, due to corruption allegations, Britain, Finland, Sweden and Ireland withheld funds in excess of US\$34 Million from Zambia due to increased corruption in the country in 2018. This had severe ramifications for a nation where the median annual income per capita is US\$1,305 (World Bank , 2020). The British High Commissioner requested Zambia to be serious in the fight against corruption. (Reuters, 2019). In another incident, the Zambian government purchased 42 fire trucks at a cost of one million U.S. dollars each (Action Aid , 2018). Members of civil society argued that that the normal costs of purchased fire trucks was a quarter of the sum of the alleged costs; the civil society protesters, however, were arrested (Action Aid , 2018). In June 2020, Transparency International Zambia Chapter President Rueben Lifuka expressed concern because a non-registered company was awarded a public contract valued at US\$17 Million for procurement of health kits in 2019 (TIZ, 2021).

This history of corruption and failures in public procurement explains the growing interest in studies related to the Anti-Money Laundering legal framework's effectiveness in deterring corruption in public procurement, and hence makes this area relevant for further exploration.

1.3 Research Objectives

The objective of this study is to ascertain the effectiveness of Anti-Money Laundering laws in deterring public procurement corruption. This study will assess the legal framework for combating money laundering in Zambia. This study will review the AML legal framework and public procurement corruption in Zambia, to determine whether anti-money laundering strategies could help reduce corruption in public procurement in Zambia. Furthermore, this study will compare international best practices in fighting public procurement corruption through AML strategies, so Zambia can draw valuable lessons in fighting the scourge of corruption in public procurement.

In a brief synopsis the key objectives of this study include :

- i. To advance understanding of the effectiveness of AML legal structures in deterring procurement corruption. This study notes that there is little literature on how AML laws and policies could be utilised to fight corruption, hence the need bridge the gap.
- ii. To identify the methods of procurement corruption in the public sector in Zambia and how the proceeds generated from these activities are laundered. There is need to enhance knowledge on how corrupt funds are laundered and which sectors benefit. Through money laundering, the proceeds emanating from public procurement corruption are distanced from direct association with the initial corrupt act, either by placement in the financial system, purchase of properties or motor vehicles, or some other “cash intensive” business. Schemes are developed by the launderer to ensure that steps are taken to distance him/herself from the corrupt act; the challenge, then, is to pierce those layers meant to hide corruption.
- iii. To understand the relationship between public procurement, corruption and money laundering in Zambia, this study will enquire into public procurement corruption and its relationship with money laundering in Zambia. It is a known fact that public procurement corruption occurs at any point in the procurement process. There is need to ensure institutions coordinate to enhance inter-agency cooperation in the fight against corruption; there should be no organisational “silos”.
- iv. The study will seek to identify if any gaps within the AML laws in the fight against public procurement corruption; the study will further propose recommendations on the amendment of AML laws to make them more effective tools to be used to deter public procurement corruption.

In the next section, this study develops research questions as a result of the above objectives.

1.4 Research Questions

In an effort to attend to the objectives noted above, the main research question for this study is as follows: Do the Anti-Money Laundering laws in Zambia work well to address procurement corruption in the public sector? In the next section this paper derives specific research questions which follow from that main question.

1.4.1 Specific Research Questions

As a result of the above main question, this study is also guided by the following more specific research questions:

- a) What AML measures have been taken by the Zambian government to fight procurement corruption and the resultant money laundering?
- b) What are the challenges faced by stakeholders in fighting procurement corruption and money laundering?
- c) How effective is the anti-money laundering legal framework in Zambia in fighting procurement corruption?
- d) What are the major forms of public procurement corruption in the Zambian procurement sectors, and how will the AML measures mitigate those forms of corruption?

The questions raised above are critical as they play a key role in fully attending to the main research objective – assessing how anti-money laundering tools can be used to mitigate corruption in Zambian procurement – and they help set the theoretical framework for this paper.

1.5 Theoretical Framework

Anti-corruption (AC) experts have confirmed that the FATF Recommendations regarding money laundering can be a powerful tool in the fight against corruption (FATF, 2013). The FATF further indicates that when effectively implemented, the FATF Recommendations create an environment where it is difficult for corruption to thrive and remain undetected. In the FATF's Best Practices Paper, the FATF indicated that:

“The AML/CFT standards set by the FATF Recommendations are important tools in the fight against corruption because they support the detection, tracing, confiscation and return, where

appropriate, of corruption proceeds, and they promote international cooperation in the efforts to do so” (FATF, 2013).

However, in both the anti-money laundering/countering financing terrorism and anti-corruption communities, the experts advised the FATF that even though AML/CFT and anti-corruption efforts are mutually reinforcing, there was a recognition that they may not be fully effective in addressing corruption (FATF, 2013). The main aim of money laundering is to legalise “dirty money as clean”, and this is achieved through entry of tainted funds into the normal economy. To address this, it has been agreed to contain three stages: placement (entry level); layering (concealing and hiding of the trail); and integration (legitimisation of the funds). Observers note that the current anti-money laundering legal framework action is targeted at the first stage in the chain of money laundering, the point where the proceeds of crime enter the money laundering cycle (GIABA, 2010). An example is the Suspicious Transaction Reports (STRs), which are normally created when the funds are placed on bank accounts. Anti-money laundering strategies therefore put an emphasis on principles such as “Know Your Customer” (KYC) as presented earlier, “Customer Due Diligence” (CDD) etc. The stated principles target formal financial institutions.

While these measures are important, it is also necessary to find ways to trace the movement of funds sourced through procurement corruption where the financial system is by-passed and funds are instead passed through informal conduits such as bulk cash smuggling and the use of cash to purchase real estate, as highlighted in the FIC Trends report (FIC Zambia , 2017).

Because they can trace corrupt gains in both traditional financial channels and informal conduits, money laundering legal frameworks can play a critical role in combatting public procurement corruption, as can be seen in a number of cases involving public procurement corruption, and money laundering investigated by the Financial Intelligence Centre in Zambia and discussed below.

As it was highlighted above, although corruption has no definite definition, most hold an agreed position that corruption involves an abuse of power for private gain or an abuse of entrusted power. It follows that corruption is a complex phenomenon and hence no one theory explains it all; (Anon.,); instead corruption is best understood through a number of theoretical

prisms. Before concluding the theoretical framework, this study therefore discusses some of the leading theories used to establish the reasons why corruption occurs.

I. Principal-agent theory

The aspiration for private gain is often understood as the primary cause of public sector corruption, though this is normally referred as a complex set of relationships between individuals and the State (Anon.,). The 2019 study further stressed, though, that several theories aid to deconstruct these apparently complex factual links in corruption.

Two of the most popular theories on corruption in the economic literature are the principal-agent model and the related agency challenges, as discussed by Klitgaard, 1988; Shleifer and Vishny, 1993. These models assume that agents -- normally public officials -- serve to protect the interests of their principals, which are public entities. The models point out that agents often diverge from the interests of their principal and engage in corrupt activity. (Groenendijk, 1997) In this perspective, an “agency” issue arises (the agent deviates from the principal’s goals) where the agent chooses to engage in a corrupt transaction, in furtherance of his own interests and to the detriment of the interests of the principal.

Christopher Yukins(2010) in his article titled *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model*, stated that this theory, as applied to procurement, builds upon the classic principal-agent model. “A principal enlists an agent to carry out the principal’s goals, presumably because the agent enjoys some comparative advantage in performing the goals.” Inevitably, however, Yukins noted, the agent’s interests diverge from the principal’s; if the agent’s goals diverge sufficiently, the agent may be said to have a legally cognizable conflict of interest (Yukins, 2010).

One reason for an official to diverge from the principal’s (the government’s) legitimate goals is the payment, for example, of a bribe. This study undertakes to consider if the anti-money laundering laws could work well to address how such funds obtained corruptly could be traced, deterred and stopped.

II. Collective action theory

Collective action theory has emerged as an alternate explanation for why systemic corruption persists regardless of laws making it illegal, and why corruption survives various other anti-corruption efforts in some countries (Groenendijk, 1997). Further, Groenendijk argues that collective action theory goes beyond traditional principal-agent relationships and emphasizes the importance of factors such as trust and how individuals perceive the behaviour of others. In addition, Persson, Rothstein and Teorell (2013) regard systemic corruption as a collective problem, because people rationalize their own behaviour based on the perceptions of what others will do in the same situation. This is because once corruption becomes a social norm, everyone starts seeing it simply as the way to get things done; though aware of the negative consequences of widespread corruption, members of a corrupted society engage in corrupt actions as they believe that "it doesn't make sense to be the only honest person in a corrupt system" as per Marquette and Peiffer (Marquette, 2015). Klitgaard, 2004 and Persson, Rothstein and Teorell, 2013 state that in such a corrupted environment, anti-corruption measures based on the principal-agent model will not be effective, as there are no "principled principals" who will enforce anti-corruption norms. Thus an institutional or organizational culture of corruption leads to the normalization of corrupt practices at societal as well as individual levels, and to prevent impunity for violating or ignoring formal anti-corruption rules (Appolloni, 2014). In an effort to effectively combat corruption in these settings, there is a need for collective and coordinated approaches, such as reform coalitions or proactive alliances of like-minded organizations.

Because corruption in procurement is endemic in corrupted societies, this study undertakes to consider if anti-money laundering could address how such funds obtained corruptly through systemic corruption could be traced and recovered.

III. Institutional theory

Institutional theory, at times referred to as institutionalism, utilizes government institutional characteristics, such as already existing rule of law, well-defined anti-corruption norms, and law enforcement agencies with enforcement powers, to enlighten corruption in the public sector (Scott, 2004). Scott argued that institutional theory "examines the processes and

mechanisms by which structures, schemas, rules, and routines become established as authoritative guidelines for social behaviour" .

This theory is key as it can be used to explain behaviours among AML and anti-procurement institutions, and could predict how those institutions might be coordinated to check corruption.

IV. Game theory

This is another theory that explains the occurrence of corruption in the public sector with reliance on the economic literature. (Macrae, 1982) In an article on game theory, Macrae argued that corruption is part of a rational calculus and an integral and often deeply rooted method by which people take decisions. That, taken in context, individuals face a "prisoner's dilemma", which "illustrates a conflict between individual and group rationality" as noted by Kuhn (Kuhn, 2019). The person fears a disadvantage if he or she refuses to engage in corrupt practices while other individuals do not refuse to do so in the same situation. As a result all individuals obtain some sort of benefit which, however, is always less than the benefit that each other would have obtained if they refused to engage in corrupt practices.

Trust reciprocity and intrinsic motivation thus play a key role in the economics of corruption. It is a known fact that societies are made up of high levels of trust among their people, though exceptions also exist. It has been argued that trust is a key prerequisite for economic exchange. Companies tend to trust employees who contribute to growth, just like a patient trust a doctor for their health. From the government perspective, departments are mostly built on the confidence that officials respect public interest. Hence, trust is built on the premise that persons do not only care about short-term benefits as they have sense of duty and link their job to an intrinsic motivation (Knack, 1997) (Zak and Knack, 2001) . This means in turn that anti-money laundering laws change the "prisoner's calculus" for corruption in procurement, because individuals are less likely to engage in corrupt behaviour if anti-money laundering laws and procedures raise the risks of exposure.

This paper takes a holistic approach to these various theories of corruption, and discusses how anti-money laundering laws can work to reduce public procurement corruption under any of the highlighted theories above.

1.6 Research Outline

Chapter 1 provides an introductory overview of other chapters. It outlines the background for this study, objectives, raises research questions and a theoretical framework.

Chapter 2 reviews relevant literature on the topic under study. In this chapter, a systematic review approach was adopted. To identify the main literature on the subject area, specific search terms such as “public procurement”, “anti-money laundering”, and “corruption” were used to narrow down the scope of review of the pertinent literature. Furthermore, widespread reading focusing on how well the AML laws work in addressing public procurement corruption was done.

Chapter 3 outlines the research methodology to be used in conducting this research. The chapter reviews the research methodology to be utilised in this paper. namely the research design adopted, research methods used, sources of information, selection of sample, data collection, data processing and analysis and research ethics.

Chapter 4 on research findings contains three parts; Legal Framework and the Anti Money Laundering Reports, and Interviews. This chapter will examine the finding on the Anti-Money Laundering legal framework in combatting public procurement corruption and interviews. Further, the chapter will attend to the aspects of effectiveness of laws in the fight against public procurement corruption. This chapter provides brief descriptions of the institutions which have some roles and/or mandate in the fight against corruption in the country. In addition, it reviews the Anti-Money Laundering reports released from 2015. This chapter also reviews information collected from respondents from institutions that are mandated to enforce AML legal framework and procurement. Finally, it integrates findings from questionnaires and interviews with officials working in anti-corruption and procurement in Zambia.

Chapter 5 discusses and analyses the findings under chapter 4. The focus in this chapter is to provide an analysis of the AML Legal Framework, Anti-Money Laundering Reports and Interviews. Thereafter, the chapter will draw an initial conclusion.

Chapter 6 concludes with recommendations. It makes conclusions of the study, provides recommendations and possible areas for further research, in the context of the AML legal framework and public procurement corruption in Zambia. Furthermore, the chapter compares international best practices to AML usages in Zambia, to identify strategies to fight public procurement corruption so that Zambia can draw valuable lessons in the fight against that scourge.

2.0 Literature Review

2.1 Introduction

In conducting the literature review, a systematic review approach was adopted. To identify the important literature on the subject area, specific search terms such as “public procurement”, “anti-money laundering”, and “corruption” were used to narrow down the scope of review of the pertinent literature. Furthermore, extensive reading focusing on how well the AML laws work in addressing public procurement corruption was done, in addition to examining the available literature on AML legal framework and public procurement corruption.

2.2 General overview

Even though there is literature on the nexus between anti-money laundering and corruption in emerging and developed countries, there appears to be limited academic research on how the anti-money laundering legal structures have worked to address procurement corruption. Academic literature on how the anti-money laundering legal structures specifically work in addressing procurement corruption in the public sector was not available; instead, the literature addresses how anti-money laundering strategies can expose illicit wealth, which is an important step towards addressing corruption in procurement. By building on the existing literature regarding money laundering and corruption in general, this paper seeks to fill that gap in the literature regarding corruption in procurement.

2.3 Literature Describing Money Laundering

Unger Bridgette in his book *the Scale and Impacts of Money Laundering* (Unger, 2007), defines money laundering as the route through which criminal money goes through in order for its true origin, nature, and ownership to be concealed. That the foregoing is achieved through hiding the illegitimate source of the funds and permitting their owners to benefit therefrom without drawing the attention of law enforcement authorities.

Michael Levi in a journal of financial crimes argues that public procurement corruption makes available the funds, which are then laundered through prescribed channels, as well as informal routes such as real estate and motor

vehicle dealerships (Levi, 2010). Levi further argues that there is a strong link between procurement fraud and money laundering, as the funds generated from procurement fraud are mostly laundered.

While there has been little literature on corruption in procurement and anti-money laws, much of the focus in the literature on anti-money laundering and corruption has been the transnational and international aspects of combating corruption through asset recovery processes (Stephenson et al., 2011). The recommendations coming from this literature are mainly focused on asset recovery.

The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), in a research report on money laundering related to fraud in public procurement in West Africa (a case study focused on Nigeria), argued that there existed a connection between the lack of adherence to good governance standards and the proliferation of frauds in public and private sectors of Nigeria (Inter-Governmental Action Group against Money Laundering in West Africa, 2014). The study included money laundering related to fraud in public procurement. The findings revealed a direct connection between the lack of adherence to good governance standards and the proliferation of frauds in the public and private sectors of Nigeria. The findings further revealed that corruption in the public procurement process was endemic in Nigeria and this was because Politically Exposed Persons (PEPs) and the officials in the public service who controlled and managed the levers of resource distribution continued to embezzle and re-direct public funds for private gain. However, the paper did not attend to the issue of how well anti-money laundering laws have worked to cure public procurement corruption.

A 2012 report from inter-governmental organization FATF (FATF and OECD, 2012), stressed that effective implementation of the FATF Recommendations: (i) assists in safeguarding the integrity of the public sector by adequately resourcing agencies involved in AML/CFT, and (ii) establishes a legal framework and mechanisms to alert the authorities of suspicious activities in the financial system and to provide them with sufficient powers to investigate and prosecute such activities, as well as to recover stolen assets.

Nuhu Ribadu, in his book *Show Me the Money: Leveraging Anti-Money Laundering Tools to Fight Corruption in Nigeria* (Ribadu, 2010), argues that if anti-money laundering efforts are effectively utilised, they can be used to fight corruption. Further, he explains how he and his team used international money-laundering laws, especially the Financial Action Task Force, to fight corruption in Nigeria (Ribadu, 2010).

Edwin Reuter and Peter Truman similarly argued that the fight against money laundering can effectively reduce other crimes. In their book *Chasing Dirty Money: The Fight Against Money Laundering* (E. M. Truman & Reuter, 2004), the authors noted that national and international efforts to reduce money laundering were originally developed to reduce drug trafficking, but have expanded over the years to address many other crimes and, most recently, terrorism.

In a paper done by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) (ESAAMLG, 2019), *Procurement Corruption in the Public Sector and Associated Money Laundering*, the group concluded that procurement corruption exists in the eastern and southern African region; most responding member states in the region cited a number of cases. Further, the group also concluded that the region faces a serious challenge when it comes to public procurement corruption. Furthermore, this study was able, through making reference to finalized cases, to confirm that there was a link between money laundering and public procurement corruption.

FATF (FATF, 2013) itemised AML/CFT methods which are critical for anti-corruption experts to effectively fight corruption. The AML/CFT requirements in the FATF Recommendations provide critical means for anti-corruption experts, approaches which include corruption prevention and deterrence efforts, corruption detection, investigations and prosecutions, domestic and international cooperation, and recovery of the proceeds of corruption. The paper further argues that anti-corruption efforts could be assisted by all of the AML/CFT measures set forth in the FATF Recommendations, or a combination of those measures; of particular usefulness are the Recommendations related to: (i) understanding national risks and

coordination; (ii) preventive measures and record keeping, including customer due diligence; (iii) detection, investigation, prosecution, and confiscation; and (iv) international coordination (FATF, 2013).

Under Recommendation 1 (FATF, 2013), the FATF Recommendations require countries to identify, assess, and understand the money laundering risks for the country and take action which is proportionate to those risks. To enable this risk-based approach, a risk assessment should include consideration of the risks posed by the laundering of the proceeds of corruption offences. Secondly, with respect to FATF Recommendation 2, it is requirement that countries have in place national co-ordination and cooperation mechanisms for AML/CFT purposes. Many countries have standing committees or multi-agency bodies that have been established for this purpose. The proposal further argues that preventive measures protecting the private sector and increasing transparency can play a key role in anti-corruption strategies. Corrupt officials and individuals require access to the financial system to be able to access and use their proceeds derived from corruption to purchase assets and fund their lifestyles. Informal channels can be particularly valuable in corruption investigations in advance of formal MLA requests given the potential speed for the sharing of information between competent authorities.

From the above literature it can be noted that none talks about how AML standards, analysis or the outcomes of investigations – red-flagged transactions, for example – can be used directly in procurement. Anti-money laundering information might be used, for example, in qualification of vendors for contract awards under section 90 of Zambia’s Public Procurement Act No. 8 of 2020 (National Assembly Zambia, 2020), or anti-money laundering information might be used as part of a debarment proceeding under Article 97 of the law. These topics will be addressed in more detail below.

The research proposed here will contribute towards filling the gap in academic research on the effectiveness of anti-money laundering legal structures in addressing procurement corruption. Further, the research will underscore the methods of procurement corruption in the public sector in Zambia, and how the proceeds generated from these activities are laundered.

The research also aims to propose measures and strategies that could enhance effectiveness of AML legal frameworks in addressing procurement corruption. Additionally, the research seeks to apprehend the relationship between public procurement, corruption and money laundering in Zambia.

In terms of utilisation, the research could be used by the Zambian government, to aid efforts to deploy the existing Zambian AML legal framework to develop guidelines, policies, procedures and training focused on using AML legal structures as a tool to fight procurement corruption in the public sector. The literature reviewed will involve the AML legal framework, and the nexus between money laundering and corruption, with a specific focus on the need to expose the wealth being accumulated by political and economic elites as a result of corruption in public procurement.

2.4 Conclusion

The chapter reviewed literature on anti-money laundering and public procurement corruption. The chapter looked at literature describing money laundering and further, a link between money laundering and corruption. Furthermore, the chapter reviewed a Nigerian case study which found a direct connection between the lack of adherence to good governance standards and the proliferation of frauds in the public and private sectors of Nigeria. The findings further revealed that corruption in the public procurement process was endemic in Nigeria and this was because Politically Exposed Persons (PEPs) and the officials in the public service who controlled and managed the levers of resource distribution continued to embezzle and re-direct public funds for private gain. However, the paper did not attend to the issue how well anti-money laundering laws have worked to cure public procurement corruption. Most studies have not attended to how effective AML laws are in the fight against corruption. This is an area the paper will seek to explore. The next chapter looks at this paper's methodology.

3.0 Methodology

3.1 Introduction

The chapter reviews the research methodology used in this paper, namely the research design adopted, research methods used, sources of information, selection of sample, data collection, data processing and analysis and research ethics.

3.2 Research design

This study will be based on qualitative research methods and will adopt a descriptive approach. Creswell defines qualitative research as an “inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The researcher builds a complex, holistic picture, analyses words, reports detailed views of informants, and conducts this study in a natural setting” (Creswell.J.W, 2003). Researchers have advanced the principle that corruption is linked with social policy and human behaviour, and so corruption can be researched in line with social research methods (Zikmund, 2013).

This study will be based on both primary and secondary data sources. Primary data sources will include legislation, case law on procurement corruption and money laundering, semi-structured interviews and open-ended questionnaires from the target population. Secondary sources such as books, journals, literary works, recommendations and guiding principles of various organisations such as the Financial Intelligence Centre, the Eastern and Southern Africa Anti Money Laundering Group, FATF, UNODC, the World Bank and UNCAC will also be considered.

The target population for the primary data will be the investigators at the Anti-Corruption Commission Zambia, the Drug Enforcement Commission - Anti- Money Laundering Unit (DEC-AMLIU), and the National Prosecution Authority. The target population also includes officers at the Financial Intelligence Centre, and resource persons at the United Office Drug and Crime (UNODC). The FIC, DEC,- AMLIU, the National Prosecution Authority and

the Anti-Corruption Commission have presence in all the ten provinces of Zambia.

The research targeted the officers at the Financial Intelligence Centre because they are accountable for assembly of intelligence, conducting preliminary inquiries and release of ML Trends Report into suspected cases of procurement corruption. Then the investigators at the Anti-Corruption Commission and DEC- AMLIU are responsible for conducting further investigations, whilst the National Prosecution Authority takes matters for prosecution in the Courts of law.

Focused sampling was used in determining the data analysis. The data analysis will be based on the interviewees' roles in the institutions, and interviews have been done randomly. The interviews are semi-structured and anonymous in some cases. The paper will also use data surveys.

3.3 Research Ethics

With regard to research ethics, the author of this paper referred to the Master Thesis/Final Project Guiding Notes IMACC, 2017 of the International Anti-Corruption Academy (IACA). The author ensured that ethical considerations were paramount in steering this study and in compliance with the requirements listed under Section 3 of the guiding notes. Prior to requesting any information, the author of this study undertook to formally notify the respondents for relevant institutions under scope. Participation in interviews was voluntary and there was no coercion. The data used in the study was upon consent of concerned or relevant parties or respondents. The respondents were alerted of issues related to data privacy and that also they held the right to decline to respond. Finally, that data regarding respondents was collected on grounds of impartiality.

3.4 Limitations of this study

The author of this study experienced some limitations with limited access to certain information. This was with respect to some of the government reports and documents, which were not available to the public and were not available

on request. In addition, efforts to obtain data on investigations done by selected law enforcement agencies with respect to certain cases on the topic under *casu* proved futile. Furthermore, there were challenges with obtaining timely feedback from respondents, while others failed to respond.

3.5 Conclusion

This chapter has discussed the methods and methodology used in this study, which comprise the research design, sample and sampling techniques, sources of data, data collection, analysis, research ethics and limitations of this study. Overall this was primarily a qualitative study. The next chapter discusses the institutional and legal framework for fighting money laundering in Zambia, with a particular focus on the role of the Financial Intelligence Centre and the law enforcement agencies.

4.0 RESEARCH FINDINGS; Legal Framework and the Anti-Money Laundering Reports, and Interviews

4.1 Introduction

This Chapter examines findings on the Anti-Money Laundering legal framework in combatting public procurement corruption. Further, to attend to the aspects of effectiveness of laws in the fight against public procurement corruption, this chapter provides brief descriptions of the institutions which have some roles and/or mandate in the fight against corruption in the country. In addition, this chapter reviews the Anti-Money Laundering reports released from 2015. This chapter also reviews information collected from respondents from institutions that are mandated to enforce AML legal framework and procurement. Finally, this chapter integrates findings from questionnaires and interviews conducted with officials working in anti-corruption and procurement in Zambia.

4.2 Legal framework

- Evolution of Money Laundering Laws in Zambia

This section describes the evolution of anti-money laundering laws in Zambia. The United Nations 2000 Convention Against Transnational Organized Crimes (United Nations Convention Against Transnational Organisations, 2004) also known as the Palermo Convention defines money laundering as: “the conversion or transfer of property knowing it is derived from a criminal offence for the purpose of concealing or disguising its illicit origin or assisting any person who is involved in the commission of the crime to evade the legal consequences, the concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that it is derived from a criminal offence [and] the acquisition, possession, or use of property knowing at the time of its receipt that it is derived from a criminal offence or participation in a crime.” In light of this broad definition, this paper outlines how anti-money laundering legislation developed in Zambia.

In 1989 Zambia enacted the Dangerous Drugs (Forfeiture of Property) Act, with the aim of ratifying and domesticating the United Nations 1988 Vienna Convention. Additionally, Zambia enacted the Narcotic Drugs and Psychotropic Substances Act, 1993 (CAP 96) to align with the Vienna Convention. The two laws targeted the instruments and the earnings of drug trafficking for seizure and forfeiture. It is important to note that the two laws did not define money laundering. Nonetheless, Section 3 of the Dangerous Drugs Act provided for promoting, managing, establishing or carrying on a scheduled offense. Further, the act outlawed facilitating or assisting in the promotion, management, establishment or continuation of a scheduled offense, whether or not that offense had been committed, or if any person had been charged with or convicted of that offense. This made a broader range of persons – including, potentially, those involved in money laundering tied to a drug offense – subject to criminal prosecution.

In 2001, the Prohibition and Prevention of Money Laundering Act (PPMLA) was enacted, and it was amended in 2010. This act was introduced in order to amend some provisions of the already existing Money Laundering Act of 2001. Among the amendments introduced, the title of the act was shortened by deleting the words, “to provide for the disclosure of information on suspicion of money laundering activities by supervisory authorities and reporting entities.” (Section 2) The Money Laundering Unit, when it receives reports from the Centre in accordance with the Financial Intelligence Centre Act, 2010, will commence investigations. Further, the act provides protections to a whistle blower. The Financial Intelligence Centre Act was also enacted in 2010. The Financial Intelligence Centre was established following the Mutual Evaluation in 2007 (ESAAMLG, 2008), in which major deficiencies were identified in Zambia’s then-inadequate legal and regulatory frameworks around AML/CFT, including weak and ineffective institutional arrangements for combating ML and TF. One of the key recommendations was for Zambia to establish an FIU (now the Financial Information Centre) that meets the FATF standards.

Although the original intent of anti-money laundering laws was to fight drug trafficking and the financing of terrorism, the 2010 amendments and the enforcement institutions put in place by Zambia helped open the doors for

the anti-money laws to have broader effect, beyond drugs; those laws could, for example, be used to address corruption in procurement. Because of the links between corruption and money laundering, the Zambian laws can be extended to fight public procurement corruption. The next section will address this possible reach of the laws, by reviewing the Zambian money laundering legal framework.

4.3 AML Legal Framework and Fighting Corruption in Public Procurement

The FIC (Financial Intelligence Centre, 2020) stresses that, in the Zambian context, the AML legal structures and frameworks are relatively well-developed. The AML regime was developed to fight both crime and terrorism, and it offers important tools to fight corruption in public procurement.

Further, the Financial Intelligence Centre argues that the “fight against money laundering and terrorist financing in Zambia and around the world is important to protect our citizens and to ensure the integrity of financial institutions and national security. Strong and effective Anti-Money Laundering and Financing of Terrorism (AML/CFT) framework[s] promote financial integrity by making it difficult to conceal illegal activities.” (Financial Intelligence Centre, 2020). The Zambian AML/CFT institutional framework includes the Anti-Money Laundering Authority, the task force of senior officials on AML/CFT matters, the Financial Intelligence Centre, law enforcement agencies, the Supervisory Authority, reporting entities, the National Prosecution Authority and the judiciary, among others (Financial Intelligence Centre, 2020).

The FIC states that the Zambian Government has enacted AML/CFT legislation to deal with money laundering, the financing of terrorism, forfeitures and seizures of proceeds of crimes, the prevention of corruption, fraud, and financial crime, among other forms of crime and corruption (Financial Intelligence Centre, 2020). The statutory framework for these anti-money laundering laws (some of which was touched on earlier) is as follows:

- i. Prohibition and Prevention of Money Laundering Act No. 14 of 2001, amended Act No. 44 of 2010:

Muna Ndulo in his review of the laws indicated that the Prohibition and Prevention of Money Laundering Law (Amendment) repealed provisions that related to the disclosure of information of suspicious transactions of money laundering by reporting entities and supervisory authorities, and further redefined the functions of the Anti-Money Laundering Investigations Unit (Ndulo, 2014), because that function was to fall under the Financial Intelligence Centre. The 2010 amendment has to be read as one with the Prohibition and Prevention of Money Laundering Act, 2001. Section 3 of the amended PPMLA defines money laundering as:

“where a reasonable inference may be drawn, having regard to the objective factual circumstances, any activity by a person (a) who knows or has reason to believe that the property is the proceeds of a crime; or (b) without reasonable excuse, fails to take reasonable steps to ascertain whether or realized directly or indirectly, by any person from the commission of a crime; where the person (i) engages, directly or indirectly, in a transaction that involves proceeds of a crime; (ii) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Zambia proceeds of a crime; or (iii) conceals, disguises, or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any illegal activity...”

(National Assembly of Zambia, 2010). Under this very broad definition of prohibited conduct, a crime covered by the anti-money laundering laws could include a crime related to corruption in procurement.

With regard to the prohibition against obtaining funds as a result of a corrupt act – a critical extension of the reach of the anti-money laundering laws – the PPMLA defines proceeds of crime as: property or benefit that is wholly or partly derived or realized from a disposal or other dealing with proceeds of a crime; wholly or partly acquired proceeds of a crime; also, on a proportional basis, property into which any property derived or realized directly from

the illegal activity is later converted, transformed, or intermingled, and any income, capital or other economic gains derived or realized from the property at any time after the crime; or any property that is derived or realized, directly or indirectly, by any person from any act or omission that occurred outside Zambia and would if the act or omission had occurred in Zambia, have constituted a crime (National Assembly of Zambia, 2010). Under this broad definition, proceeds of corruption in the procurement process, whether - for example- cash or property, would be included.

Under Section 13 of the PPMLA for 2010, the role of receiving suspicious transaction reports was moved to the Financial Intelligence Centre (Zambia National Assembly, 2020), as provided under the FIC Act (discussed further below). The Centre, having made an analysis of such reports, is to disseminate to the Anti-Money Laundering Unit information regarding investigations of a possible money laundering offence when it is an associated predicate offence (National Assembly of Zambia, 2010). Section 14 of the PPMLA of 2001 (amendment) provides for whistleblower protection; it states that a disclosure made by a person in compliance with the Prohibition and Prevention of Money Laundering (Amendment) Act is protected under the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010.

Thus, the problem of corruptly obtained funds through public procurement can be well handled by this framework of laws. For example, if an official (a person covered by the law) is alleged to have purchased property using corrupt funds, this system of anti-money laundering laws can apply. However, the law does not provide for sharing of such determinations among agencies or enforcement officials, although that sharing of information could help in decision making regarding corruption in procurement, and regarding the award of contracts to potentially corrupt contractors.

ii. Financial Intelligence Centre Act No. 46 of 2010 (as amended).

The Financial Intelligence Centre Act established the Financial Intelligence Centre (a national centre to gather and disseminate

intelligence on money laundering and terrorist financing), and provided for the duties of supervisory authorities and reporting entities. The Financial Intelligence Centre is the sole designated National Agency responsible for the receipt, requesting, analysis and dissemination of the disclosure of suspicious transactions reports concerning ML, TF and other serious offences. The Financial Intelligence Centre holds a pivotal role in Zambia's AML/CFT operation and further provides support to the work of other competent authorities (Financial Intelligence Centre, 2020).

The Financial Intelligence Centre Act was enacted in 2010. Because Section 5 of FIC Act 2010 (as amended); provides that the FIC is the sole designated agency responsible for receiving, requesting, analyzing, and disseminating disclosures of suspicious transaction reports, the FIC could play a central role in coordinating information regarding corruption in procurement. Muna Ndulo in his analysis of the FIC functions noted that the functions include: to receive, request, and analyze suspicious transaction reports required to be made under the Act or any other written law. Additionally, information from any foreign designated authority; to analyze and evaluate suspicious transaction reports and information so as to determine whether there is sufficient basis to transmit reports for investigation by the law enforcement agencies or a foreign designated authority; to disseminate information to law enforcement agencies, where there are reasonable grounds to suspect money laundering or financing of terrorism; and to provide information relating to suspicious transactions in accordance with the Act to any foreign designated authority, subject to such conditions as the Director General may determine; to provide information, advice, and assistance to law enforcement agencies in furtherance of an investigation; to enter into any agreement or arrangement, in writing, with a foreign designated authority which the Board considers necessary or desirable for the discharge or performance of its functions; to conduct inquiries on behalf of foreign designated authorities and notify them of the outcome; to inform the public and reporting entities of their obligation and measures that have been or might have taken to detect, prevent,

and deter money laundering and financing of terrorism; and to access directly or indirectly, on a timely basis financial, administrative, or law enforcement information, required for the betterment of carrying out of its functions under this Act (Ndulo, 2014). This very broad set of authorities puts the FIC at the heart of any coordinated effort to use information on perceived money laundering to fight corruption in procurement.

It can be noted that the FIC is not mandated to undertake criminal investigations; however, the Centre works closely and coordinates with the other law enforcement agencies. When the FIC collects and analyses the data collected from reporting entities which include financial institutions, entities in the real estate sector, Designated Non-Financial and Business Professions (DNFBPs) etc., the Centre disseminates outcomes to law enforcement agencies such as the Anti-Corruption Commission in cases where corrupt acts are noted, and the Anti-Money Laundering Unit in cases where money laundering is potentially linked to a predicate crime; those cases are noted for criminal investigation and possible prosecution by the National Prosecution Authority.

The Centre is also required, under this Act, to educate the public and reporting entities of their role with respect to the fight against money laundering and other serious crimes.

In order for the AML laws to work well in attending to public procurement corruption, Section 16 of the Financial Intelligence Centre Act 46 of 2010 (as amended) makes provision for the prevention of money laundering and other crimes by delineating procedures of due diligence to be complied by the reporting entities. Some due diligence measures include those prohibiting reporting entities from establishing or maintaining anonymous accounts in fictitious names. This would make it more difficult, for example, for corrupt officials to hide corrupt proceeds (such as bribes) in anonymous bank accounts. Additionally, the Act requires reporting entities to identify their customers through the Know Your Customer (KYC) measures. All in all, these measures are intended to prevent money laundering from persons who conceal or

disguise their identity and source of funds. Section 16 of the FIC Act No.46 of 2010 (as amended) further requires that the reporting entities identify their customers by name on reliable and independent source documents to ascertain their identities.

Section 23 of FIC Act No.46 of 2010 (as amended) provides for a number of internal programmes to be followed by reporting entities in preventing money laundering and other associated predicate offences in Zambia. The measures include maintenance of internal policies, procedures and controls by reporting agencies to fulfil the obligations of the Act. These compliance measures reinforce the anti-corruption framework established by the anti-money laundering; in essence, with the compliance measures in place, the reporting entities become another line of defense against corruption.

Under the law, there is no provision which calls upon the Centre to share money-laundering red flags with government procuring entities to ensure money-laundering risk is attended at the time of contractor qualification, and subsequently utilised to suspend or debar entities. As is discussed above, the Centre disseminated processed intelligence reports to Law Enforcement Agencies and releases typology/ trends reports on AML/CFT.

iii. The Anti-Corruption Act, No. 3 of 2012

The Anti-Corruption Act provides powers to investigate corruption offences. Muna Ndulo in providing a brief background on corruption submitted that prior to 1980, there was no specific agency dealing with corrupt practices offences in Zambia (Ndulo, 2014). The fight against corruption was led by the Zambia Police Force and prosecution was based on the Chapter 87 Penal code of the laws of Zambia. The first Anti-Corruption Commission Act was passed in 1980 (National Assembly of Zambia , 1980). That Act created an Anti-Corruption Commission and repealed selected provisions in the Penal Code related to corruption. An autonomous Anti-corruption Commission was created in 1996 following the

repeal of the 1980 Act. Subsequent amendment was made in 2010, and again a total repeal which led to the Anti-Corruption Commission Act No. 3 of 2012.

Under the current Act, the Anti-Corruption Commission's functions are to: Prevent and take necessary and effective measures for the prevention of corruption in public and private bodies, including, in particular, measures for: (a) Examining the practices and procedures of public and private bodies in order to facilitate the discovery of opportunities of corrupt practices and secure the revision of methods of work or procedures which, in the opinion of the Commission, may be prone or conducive to corrupt practices; (b) advising both public and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt (National Assembly of Zambia, 2012). The Act calls upon the Anti-Corruption Commission to initiate, receive, and investigate complaints of alleged or suspected corrupt practices, and, (b) subject to the directions of the Director of Public Prosecutions, prosecute offences under the Anti-Corruption Commission Act, and such other offences under any other written law as may have come to the notice of the commission during the investigation of an offence under the Act. The Anti-Corruption Commission thus is expected to help coordinate the fight against corruption, and could play an important role in helping Zambia use anti-money laundering information to fight corruption in procurement.

The Anti-Corruption Commission also has important investigative powers, which are vital to efforts in the fight against corruption. The Commission has the authority to search any person or dwelling for the purpose of removing any record, return, report, document or article which is alleged to be in the possession of the suspect. Further, the Act empowers the Commission to seize or restrict any property reasonably believed of having been acquired corruptly.

Finally, the Commission is by law empowered to restrict dealing in suspicious bank accounts and freeze assets suspected to have been obtained through corrupt practices.

The Anti-Corruption Commission has powers to investigate, search, and arrest suspects found to be engaged in criminal activity. However, to effectively combat public procurement, there is a need for information to be fed into government procuring entities. As is discussed further below, the information can be utilised at qualification and at debarment (a more permanent form of exclusion) (National Assembly Zambia, 2020) as provided under Zambia Public Procurement Act No.8 of 2020.

iv. Forfeiture of Proceeds of Crime Act No. 19 of 2010

The Forfeiture of Proceeds of Crime Act provides for civil and criminal forfeitures, and for seizures of proceeds of crimes. The Act provides for the confiscation of the proceeds of crime; dispossession of any person or any proceeds, benefits, or property derived from the commission of any serious offence; and facilitates the tracing of any proceeds, benefit, and property derived from the commission of any serious offence (National Assembly Zambia, 2010). The Act is intended to domesticate provisions of the United Nations Convention against Corruption relating to the forfeiture of proceeds of crime. In doing so, the Act makes it easier to trace and seize the proceeds of corruption in procurement, which can send a powerful signal in society that corruption will not be tolerated.

In section 4(1), the Forfeiture of Proceeds of Crime Act No. 19 of 2010 provides that where a person is convicted of a serious offence, a public prosecutor may apply to the court for a forfeiture order against property that is tainted property in respect of the offence and/or a confiscation order against the person in respect of benefits derived by the person from the commission of the offence. Further, the Act provides where an application under section 4 (1) is finally determined, no further application for a forfeiture order or a confiscation order may be made in respect of the offence for which the person was convicted unless the court grants leave for

making of a new application on being satisfied: (a) that the property or benefit to which the new application relates was identified after the previous application was determined; (b) that necessary evidence became available only after the previous application was determined; or (c) that it is in the interests of justice that the new application be made. These procedural protections reinforce the public legitimacy of the forfeiture process, which is another important government goal in any anti-corruption effort.

Section 71 (1) of the Forfeiture of Proceeds of Crime Act No. 19 of 2010 has a bearing on illicit acquisition of assets, in that it criminalises the possession of unexplained wealth that may have been obtained from commission of a crime (National Assembly Zambia, 2010). It is important to state that this provision is also in line with the FATF recommendations as stated in the earlier chapter. The Act makes it possible to address corrupt gains from the procurement system, and creates legal risk for those who might collude to hide those gains.

With respect to its effectiveness in addressing corruption in public procurement, the Act provides for measures for to seiz and forfeit tainted property. There is need for such measures – and information on such measures – to be shared effectively among relevant mandated government institutions charged with overseeing the fight against corruption in public procurement.

V. The Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010

The Public Interest Disclosure (Protection of Whistleblowers) Act provides for (and protects) disclosures of conduct inimical to the public interest. Its key objective is to encourage the disclosure of conduct adverse to the public interest. The backdrop to this Act is that under Article 32 of the UNCAC (UNCAC, 2005), signatory nations under the Convention are encouraged to take measures in accordance with their domestic legal systems, to protect witnesses, experts and victims from retaliation. In addition, article 33 of the

UNCAC requires members to consider incorporating into their legal systems deliberate measures to provide protection against victimisation and retaliation on persons that report alleged corruption to competent authorities. In response to the aforementioned Articles 32 and 33, Zambia enacted the Public Interest Disclosure Act number 4 of 2010. The Act empowers law enforcement agencies to provide protection to whistle-blowers and witnesses. Further, the Act provides for protection of whistle-blowers who make public interest disclosures to investigating authorities or heads of agencies which, in accordance with Section 23 of the Public Interest Disclosure Act, includes a public interest disclosure concerning a government agency's conduct or the conduct of a public officer in relation to a government agency, or a public interest disclosure that a person has engaged in such conduct. The key features of the Act are that if a whistleblower is to be protected under the law, the report of an unlawful act has to be lodged with law enforcement agencies and the report has to be without frivolity. It can be noted that the procedures aim to provide the terms under which employees in the private and the public sectors are protected in case they disclose unlawful or irregular conduct at their work place.

These whistleblower disclosures may play a key role in attending to irregular activity in public procurement. For a whistleblower to be protected, as noted, the whistleblower must report to law enforcement agencies. That requirement, however, may raise challenges in times of systemic corruption or state capture, as in such times there is no regular functioning of all government systems. At times when corruption puts the most stress on a public procurement system, therefore – at times when the government apparatus has been captured or collapsed – the Act's protections for whistleblowers may not be effective in aiding the fight against corruption in public procurement.

VI. The Plea Negotiations and Agreements Act No.20 of 2010

A brief overview of the Plea Negotiations and Agreement Act No.20 of 2010 (National Assembly Zambia , 2010) is that it introduces the idea of plea bargaining to the Zambian criminal justice system. A plea bargain is an agreement between a public prosecutor and an accused. It is offered by a prosecutor as an incentive for a defendant to plead guilty. Therefore, an accused is made to plead to a lesser charge which almost invariably attracts a lighter sentence.

This piece of legislation does not feed information into government institutions mandated to regulate public procurement. . If those results were fed into procurement institutions, it could enrich such institutions to ensure better results, for example by allowing those institutions to make better decisions regarding contractor qualification or debarment.

VII. The National Prosecution Authority Act, No. 34 of 2010

The National Prosecution Authority Act, 2010 establishes the National Prosecution Authority (NPA) and stipulates its authorities and functions. The Centre was set up in accordance with international conventions to which Zambia is party and require members to establish independent prosecutorial agencies as provided under Section 6 of the said Act (National Assembly of Zambia , 2010). This is to ensure that prosecutorial resolutions in individual cases are fair and justifiable in accordance with constitutional and legal requirements. Muna Ndulo states that the prosecutorial resolutions should not be a product of partisan political, private or special influence or pressure or corruption (Ndulo, 2014). Ndulo further added that the Authority has the task of implementing an effective prosecution mechanism to maintain the rule of law. The Authority is tasked with implementing an effective prosecution mechanism so as to maintain the rule of law and contribute to fair and equitable criminal justice and the effective protection of citizens against.....

There is no express statement in the Act on how certain crimes involving public corruption in procurement could be handled effectively. To ensure there is fair and equitable criminal justice, and to advance the rule of law, the Authority could play an important role in ensuring that those found wanting with respect to public procurement corruption are held accountable, and that information regarding investigations and prosecutions involving public procurement is shared with relevant institutions.

VIII. Anti-Terrorism and Non-Proliferation Act No. 6 of 2018

As noted in the earlier chapters, in 2001 there was an enhancement of Zambia's money-laundering standards to combat terrorism financing. Section 2 of the National Anti-Terrorism and Proliferation Act No.6 of 2018 (National Assembly of Zambia, 2018) now defines financing of terrorism as an act by any person who, irrespective of whether a terrorist act occurs, by any means, directly or indirectly, wilfully provides or collects funds or attempts to do so with the intention that the funds should be used or knowing that the funds are to be used in full or in part— (i) to carry out a terrorist act; (ii) by a terrorist; (iii) by a terrorist organisation; or (iv) for the travel of a person to a State other than the person's State of residence or nationality for the purpose of perpetration, planning or preparation of, or participation in, terrorist act or the providing or receiving of terrorist training.

As with any other area of criminal activity, it is difficult to predict how and when terrorist activity may touch public procurement. As with other crimes, however, it is important that systems are in place to combat that corruption, which might come - for example - in terrorist attempts to undermine information systems used to track and detect their activities.

The institutions discussed above gather and assess information which if utilized effectively can aid in deterring and combatting public procurement corruption. On the prevention side, the Financial Intelligence Centre should ensure that all sectors under its sphere are well regulated and ensure adherence to the requisite

laws. Resultantly, this will ensure entities or subjects that engage in public procurement corruption are identified timely and suspicious activity reports are filed. As earlier discussed, once funds are accrued through illicit gain from corruption, a criminal subject's first intention is often to conceal it as no one would want to be associated with deals completed behind a closed door. The discussion above has shown that probable targets of investment for such moneys are financial institutions, real estate and usage of designated non-financial business professionals (DNFBPs). Notably, all these institutions report to the Financial Intelligence Centre and are expected to lodge suspicious activity reports in line with Section 29 of the Financial Intelligence Centre Act where suspicious activities are noted.

The Centre's main products include dissemination of reports shared with law enforcement agencies for further action, and typology and trends reports shared for public consumption which highlights red flags on various sectors as per cases proceeded yearly. On the deterrent side, under the laws described above, Zambian law enforcement agencies hold information that relates to public procurement corruption, and the government agencies have the authority to act on those crimes as part of a broader effort to fight corruption in public procurement.

IX Public Procurement Act No.8 of 2020

Public Procurement Act No.8 of 2020 (National Assembly of Zambia, 2020) regulates public procurement in Zambia. The act can play a key role on how procurement can be administered, and can aid in combatting public procurement corruption by drawing on the resources of the anti-money laundering legal framework in Zambia.

One important area in which public procurement law can benefit from information drawn from anti-money laundering enforcement is qualification of bidders. In Zambia, as in all public procurement systems, in order to be awarded a contract, a bidder must be deemed qualified by the procuring authority. Section 90 of

Zambia's Public Procurement Act provides for the qualification of a bidder: (1) A procuring entity may require a bidder to meet qualification criteria that the procuring entity considers appropriate to the particular procurement requirement, to demonstrate that the bidder has the capability and resources to effectively carry out the contract. (2) The qualification criteria must be specified in the solicitation document and may relate to — (a) professional and technical qualifications; (b) financial resources and condition; (c) equipment and other physical facilities; (d) personnel and managerial capability; (e) a record of past performance of similar contracts; and (f) registration or licensing with the relevant professional body in the Republic or in the bidder's country of origin where so required by law.

Each of these points of qualification can relate to the corruption risk that a contractor presents. If, for example, a vendor lacks technical qualifications, financial resources, equipment or qualified managers, its internal controls may present a higher risk of failure, and so that vendor may pose a higher risk of corruption. Similarly, if a vendor has a history of corruption on past contracts, or has not been allowed to register with a professional body, it may again pose a higher risk of corruption. Qualification is thus tied closely to issues of both reputational and performance risks, and incriminating information generated by the anti-money laundering authorities can shed light on those same risks.

The anti-money laundering authorities also can affect suspension or debarment of a vendor, more permanent types of exclusion which are closely aligned with a finding of non-qualification on a particular procurement. Section 95. (1) of the Public Procurement Act provides for suspension of a bidder or supplier. Specifically, the Act provides that the Authority may, on its own motion or on the recommendation of an investigative agency, procuring entity or institution, suspend a bidder or supplier from participating in public procurement on the grounds specified in the Act.

The Act includes procedural protections which, as noted, help to secure the public legitimacy of a suspension or debarment. Under Section 96 of the Act, a bidder or supplier is not to be suspended except where: (a) a written notice is given of the grounds for the proposed action, including details of the alleged grounds; (b) an opportunity is given to the bidder or supplier to respond to the alleged grounds; and (c) an investigation of the facts of the case is undertaken by the Authority. A suspension imposed under the Act shall not be less than one year and shall not exceed five years.

While Section 97 of the Act provides for a permanent bar, it states that the Authority may, on its own motion or on recommendation of a law enforcement agency, procuring entity or institution, permanently prohibit a bidder or supplier from participating in public procurement on the following grounds: (a) committing an offence relating to procurement under any law; (b) giving false information about the bidder's or supplier's qualifications; (c) misconduct relating to the submission, evaluation and awarding of bids, including corrupt, fraudulent, collusive or coercive practices, price fixing, a pattern of underpricing of bids and breach of confidentiality; (d) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; (e) conviction of a crime related to business or professional activities; or (f) any other grounds as prescribed. These very comprehensive grounds for permanent exclusion give Zambian authorities strong tools for addressing corruption among prospective contractors.

Section 98 of the Act provides that a procuring entity shall reject a bid, proposal, offer or quotation of a bidder or supplier if the bidder or supplier offers, gives or agrees to give, directly or indirectly an inducement or anything of value to an office holder to influence an act, decision or proceeding of a procuring entity. The Act thus ties procurement decisions directly to the fight against corruption.

In case of a permanent bar of bidder or supplier, or rejection of bid proposal, offer or quotation, the Public Procurement Act under Section 100 provides for an appeal process, in case of a bidder or supplier being dissatisfied with the decision made. These protections again help preserve the public legitimacy of actions taken under the Procurement Act to combat corruption.

The provisions noted above if utilized well can work in fighting public procurement corruption. In a case of law enforcement agencies, they hold vital information which, if shared with procurement authorities in Zambia, could prevent corrupt entities from being awarded more contracts. This action would also send a message to would-be offenders that corruption does not pay. Secondly, information such as red flags and typologies emanating from the Financial Intelligence Centre and other regulatory agencies – means to identify risk based on anti-money laundering laws and enforcement -- could play a key role in preventative measures in the procurement system.

Much of the usefulness of anti-money laundering information stems from the reports that could be shared with procurement authorities. In the next section, the study reveals reports emanating from the anti-money laundering regulatory authorities and law enforcement agencies.

4.4 Anti-Money Laundering Reports

Anti-money laundering reports are generated by a number of Zambian and regional agencies and authorities, including the Zambian Financial Information Centre. This section reviews the types of reports and information generated by these agencies and authorities, with a view towards how those reports could be useful to the procurement authorities in Zambia.

4.4.1 FIC Reports

The Financial Information Centre (FIC) in Zambia has issued regular summaries of the reports issued regarding money laundering and terrorism funding. Those summaries provide important insights on the

information on corrupt funding potentially available to procurement authorities.

I. Money Laundering / Terrorism Funding TF Trends Report 2016

The 2016 FIC Report revealed that although reports disseminated on the grounds of suspected corruption represented only 6% of the total number of reports received in 2016, the value of transactions was high, and accounted for 76% (over ZMW 3 billion or USD 300 Million) of the total value of cases analyzed. The summary report thus showed that while suspected cases of corruption represented only a small portion of the reports issued by the FIC, those cases were economically quite important to the nation. The 2016 summary report indicated that cases of corruption continued to be linked to public procurement contracts and were often perpetrated by politically exposed persons (PEPs) or their associates.

This trend continued in the 2017 summary report, which again confirmed that corruption cases were often linked to public procurement.

II. ML/TF Trends Report 2017

In 2017, the Centre reported cases related to corruption which accounted for ZMW 6.3 Billion (USD 450 Million). As in the year 2016, the Centre pointed to corruption cases related to public procurement contracts which were often perpetrated by politically exposed persons (PEPs) or their associates. The FIC noted that cases connected to PEPs involved in suspected corruption and money laundering had continued. Additionally, it was noted that PEPs were behind a number of shell companies. Furthermore, the FIC stated that analysis revealed that suspected procurement corruption mostly occurred in government and quasi-governmental institutions when the private sector was contracted to do works. The main methods of procurement corruption involved single-sourcing and subsequent changes to contract sums which undermined the value of tendered works.

In an effort to bring context to these reports, the Centre presented some case studies. In the first case study, the Centre indicated that Company 'X' was awarded a contract to purchase utility trucks by a Government Ministry 'AY'. The Centre had previously disseminated the matter on Company 'X' to appropriate competent authorities. Hence, this was the second case to be disseminated. The 2017 report indicated that Company 'X' was a newly incorporated company and had no proven financial capacity and experience to deliver. The major suspicion was that the price at which the utility vehicles were bought was highly inflated. Some of the findings included: Company 'X' tendered suspected forged documents to be awarded the Contract, and that Company 'X' held no relevant past performance record. The 2017 report noted that there was a strong link between Company 'X' and a number of PEPs who held strategic offices. In some instance, the FIC noted that vehicles were purchased for the PEPs. The FIC therefore focused on payments for the supply of the utility vehicles from Ministry 'AZ'. It was noted that for the period June to August 2017, Ministry 'AZ' paid Company 'X' ZMW 200 Million. The payments given to the company were depleted on utilisation within the country through huge cash withdrawals, purchases of properties, and transfers to sister companies and law firms. The FIC noted that the actual cost of the vehicles was 30% of the price that they were purported to cost in the tender. The matter had been referred to law enforcement agencies for investigation and prosecution.

In another case, the FIC indicated that it had processed a case which related to public procurement corruption, in reference to over 350 contracts awarded by quasi-governmental institutions. The key findings were that nearly 50% of the entities that were awarded contracts were not registered for tax purposes while some were non-tax compliant. Being tax compliant is a pre-requisite to be awarded a public contract, as a matter of qualification under Zambian law. Secondly, the FIC reported that in 50% of the cases analysed, the vendor had no capacity to contract, in that contracts were awarded to companies that had been operational for less than 12 months on the market; unregistered companies; and companies with no financial base to execute the

works. The FIC noted that ownership of some of the entities was opaque, and that the persons registered at the national company registry PACRA were not always the beneficial owners. At times the owners were politically exposed persons (PEPs) and their associates. The reports that entities were awarded contracts without being registered or being tax compliant suggested the existence of corrupt practices on the part of those responsible for the awarding of tenders; these reports also linked the FIC review directly to the factors that would normally be considered part of contractor qualification. Further, it was noted that awarding of contracts to entities with no capacity to perform has resulted in substandard projects and at times abandonment of projects; this illustrated how another aspect of contractor qualification, performance risk, relates directly to information that is generated through the anti-money laundering enforcement process.

III. Money Laundering / Terrorism Funding Trends Report 2018

The 2018 summary report from the Financial Information Centre noted that in 2018 the Centre disseminated cases related to corruption which accounted for ZMW 4.9 Billion (USD 407 Million). Public procurement activities were significantly vulnerable to corruption. The report noted that public procurement corruption had led to the crowding out of legitimate businesses, which resulted in increased costs in public projects.

In a reported case in which the Centre had to shield the identity of the actual persons and entities, the Centre indicated that a Mr. 'S', a foreign national resident in Zambia, received USD 3 million on his personal account from a European company 'AS'. Upon that receipt of the funds, Mr. 'S' withdrew ZMW 5 million in cash and then transferred USD 400,000 to his country of origin. He further transferred USD600,000.00 to a local company 'CH', where he is a shareholder. Company 'CH' is a Zambian company that was awarded a contract to provide public services. The shareholders were company 'B' based in Zambia, company 'AS' based in Europe and Mr. 'S', (as noted) a foreign national resident in Zambia. Company 'CH' was awarded a contract

despite being in operation for only three (3) months. This was apparently contrary to Public Procurement Act number 12 of 2008, which calls for public contracts to be awarded only to qualified, established firms. Mr. 'S's' personal accounts further revealed substantial inward transfers between 2016 and 2018 from company 'CH' which were followed by transfers totaling USD 3.5 million to various individuals, including public officials. Mr. 'S' further received USD 5 million from company 'CH'. 'CH's' bank account revealed that there are two signatories, Mr. 'S' and Mr. 'M', a partner at an audit firm. It was observed that there were monthly transfers from 'CH' account to the account of the audit firm with the reference stating that the funds were meant for salaries. The movement of funds among the procuring entity, Company 'CH' and Company 'AS' raised a red flag. The funds transferred to public officials in strategic institutions by Mr. 'S' had no economic rationale. The funds were used to purchase property by the public officials. The matter was disseminated to competent authorities for suspected money laundering and corruption.

Analysis of the other two case studies showcased by the Centre revealed that there, too, there were issues with entities that obtained contracts. The entities reportedly had upon award of contracts paid PEPs located in strategic institutions.

IV. ML/TF Trends Report 2019

In the FIC summary report for 2019, the Centre reported on several cases which involved apparent corruption in public procurement, revealed through anti-money laundering enforcement efforts. In one case, a head of a public institution 'H' manipulated a tender process and influenced the awarding of a contract to company 'Y' for the supply of equipment at an inflated price. He received a percentage of this inflated price in return.

In another case, Companies 'MC' and 'PM', foreign owned, were awarded contracts by a public institution headed by 'P' who acquired unexplained wealth after his appointment in the public sector.

Company 'MC' transferred ZMW 10 million to a law firm. The funds were then used for the purchase of properties on behalf of 'P'. Company 'V', another foreign-owned company, subcontracted by Company 'MC', purchased properties on behalf of 'P'. These properties were registered in the names of third parties associated to 'P'. He was subsequently accused of concealing property reasonably suspected to be proceeds of Crime.

V Typology Report on Corruption, Tax Evasion and ML 2020

The 2020 FIC summary report noted an increase of anti-money laundering reports linked to corruption compared to the previous year, 2019. The techniques noted in the 2020 report included: prominent influential persons (PIPs) using their positions in public institutions to influence the awarding of contracts to companies with a return of bribes which mostly took the form of cash, real estate and motor vehicles; contracts awarded to entities with no capacity to execute them; contracts awarded to companies which had close associates of PIPs to conceal ultimate beneficial owners; and lastly, overpricing of contracts.

4.4.2 AML/CFT Measures- National Risk Assessment Zambia 2017

A different perspective on the intersection between public procurement corruption and money laundering in Zambia was provided by the National Risk Assessment published in 2017. The National Risk Assessment on AML measures revealed that the five highest proceeds-generating predicate offences in Zambia were (i) corruption; (ii) tax evasion; (iii) theft; (iv) fraud; and (v) drug trafficking. The assessment further reported that corruption generated the largest amounts of criminal proceeds. The report further made the revelation that the institutions most vulnerable to money-laundering activity were banks, based on materiality, because the banks occupy 78 percent of the financial sector assets, the range and types of products they offer, the transaction volumes they handle, and the connections of the

banking sector with the international financial system. Further, the assessment reported that the legal profession in Zambia was vulnerable to misuse for money laundering; these risks were due in part to the legal profession's interaction with the real estate sector.

4.4.3 ESAAMLG Report on Procurement Corruption in the Public Sector and Associated Money Laundering A report on procurement corruption from the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) (a governmental coordinating group for anti-money laundering entities) provided some of the clearest information linking anti-money laundering and public procurement. In one of the cases highlighted by the ESAAMLG, it was revealed that a Member of Parliament in one of the constituencies of the jurisdiction, using a Constituency Development Fund (CDF), influenced a District Council to procure hammer mills, a seven-tonne truck and solar panels for the benefit of club members of the constituency. The procurement was single-sourced from one supplier who was paid accordingly by the District Council using the CDF. The goods were not delivered to the District Council; instead, they were delivered to the premises of the area Member of Parliament (MP) who distributed the hammer mills to his relatives and associates. The MP also registered the truck in his name and kept the solar panels at his premises. The MP was subsequently investigated, arrested and charged for the offences of corruption, abuse of authority of office and theft by a public servant. He was convicted and sentenced to imprisonment with hard labour for five years in respect of theft by public servant. In addition, he was convicted and sentenced to two years in respect of corruption and abuse of authority of office and the hammer mills truck and solar panels were forfeited to the state.

In another case study highlighted in the report, a syndicate of more than ten Ministry of Health Officials engaged in a scheme of procuring goods and services which were either not supplied or under supplied or paid for twice. The sources of the funds were various donors for programs and activities of the Ministry. During the period the syndicate engaged in bogus procurements and members of the syndicate amassed wealth in the form of high value motor vehicles and real estate. The syndicate was investigated by a joint team of law enforcement agencies. At the conclusion of the investigations, members of the syndicate were arrested and charged for various offences of

corruption, abuse of authority of office, theft by public servant and money laundering in connection with either goods and services not supplied, supply of substandard goods and double payments for single supply. The syndicate was prosecuted and the leader of the syndicate, along with three others, were convicted and sentenced to 18 years imprisonment with hard labour. The amount involved was about US\$3,125,000 and the value of the property forfeited to the state was US\$2,288,750.

4.4.4 Procurement corruption in Zambia

In a 2020 report, Transparency International noted that Zambia had significant corruption challenges and that public procurement and the justice sector were much affected (Kaunain Rahman, 2020). Maurice K Nyambe, an Executive Director at Transparency International in Zambia wrote that with a score of 33, Zambia had declined significantly in the Transparency International 2020 Corruption Perceptions Index (CPI), by dropping 5 points since 2013 (Maurice K nyembe, 2021). He further stated that corruption was endemic in Zambia and affected people's access to essential public services. He also referred to the Global Corruption Barometer – Africa 2019, which indicated that nearly one in five Zambian citizens paid bribes to receive services such as health care or education.

Further, Maurice Nyambe, writing for Transparency International, highlighted a case in which Zambian investigative journalists broke a story about alleged irregularities in a US\$17 million procurement of health kits in 2019. The key findings were that the winning company, Honey Bee Pharmacy Limited, was not registered at the time of contract's award. The supplied items proved to be unfit for human consumption. In a speech read at the launch of the National Risk Assessment on ML, the then-Secretary to the Cabinet, the late Dr. Roland Msiska, stated that although the country had Comprehensive Anti-Money Laundering/Countering the Financing Of Terrorism Legal Framework, the assessment noted some deficiencies (Zambia Cabinet Office, 2017). Among those deficiencies were ineffective monitoring of suspicious transaction activities, ineffective compliance functions in reporting entities, and inadequate anti-money laundering/countering. Thus, while observers have confirmed that Zambia has robust framework in place for addressing money-laundering, those same observers have made it clear that Zambia, in practice, cannot always rely on that framework.

4.4.5 Findings- Questionnaire and Interviews

This section covers findings with regards to interviews and questionnaires shared with the target group. Experts' interviews were also conducted with experts in Anti-Money Laundering, Public Procurement and corruption. There were 48 participants drawn from the FIC, Law Enforcement Agency and a regulatory agency.

Question 1: Which Anti-Money Laundering Measures are used in the fight against Public Procurement Corruption?

The respondents identified the following measures:

- Risk-based customer due diligence requirements when establishing business relationship with financial institutions
- Monitoring, detection and reporting of suspicious transactions by financial institutions
- Currency transaction reporting requirements
- Criminalisation of money laundering arising out of corruption
- Requirements for parties to any transaction to take reasonable steps to ascertain whether the property used is one of the proceeds of crime
- Seizure of any property that is reasonably suspected to be a proceed of crime (corruption)
- Forfeiture of proceeds of crime

Question 2: Are AML measures in the fight against Public Procurement Corruption adequate?

A majority of the respondents indicated that the AML measures were adequate. However, the minority had the view that though the measures were adequate they were not effective as evidenced from the number of undetected corrupt acts.

Question 3 : Challenges in the fight against public procurement corruption

The respondents cited the following challenges, listed in order of frequency:

- Political interference
- Lack of political will
- Lack of competent/skilled investigators or specialised skills
- Lack of up-to-date information for tender evaluation e.g. National Council Construction, Zambia Revenue Authority, Patent and Company Registration Agency
- Lack of AML information to enable procurement committees to identify flagged entities, e.g. financial information
- Lack of AML knowledge by the Procurement Officers/Evaluation Committees
- Weakness in the procurement laws
- Lack of specialized skills by investigators and prosecutors

Question 5: Challenges in the fight against money laundering

The respondents cited the following challenges listed in order of frequency;

- Lack sharing of information of high-profile nature by other law enforcement agencies with the Anti-Money Laundering Investigations Unit
- Inadequate resources to investigate and (multiple responses) prosecute money laundering
- Political interference by previous government in investigations and prosecutions

Question 6: Possible solutions in addressing the highlighted challenges in the fight against procurement corruption

The respondents provided the following possible solutions, listed in order of frequency;

- Incorporation of AML in the procurement system
- Educating the Procurement Departments and Entities on AML
- Sharing of updated AML information
- Review and amend the procurement laws including the Public-Private Partnership law
- Recruitment of multi-skilled investigations officers

- Increasing employment opportunities by training the unemployed in technical skills
- Establishment of Integrity Committees in the spending agencies so as to domesticate the fight against public procurement corruption
- Create transparency and fairness in the procurement process

Question 7: Possible solutions in addressing the highlighted challenges in the fight against money laundering

The respondents provided the following solutions, listed in order of frequency:

- Publishing of AML Policy with clear guidelines on sharing information
- Increased funding to enable recruitment of highly skilled investigations officers
- Establishment of an autonomous investigations agency as per constitutional provisions

Question 8 : Main forms of Public Procurement Corruption

The respondents provided the following main forms of public procurement corruption, listed in order of frequency:

- Fictitious supplies
- Inflated procurement prices
- Delivery of substandard goods and services
- Involvement of PEPs in procurement process to aid in contract award
- Hidden beneficial owners of entities who are mostly PEPs
- Bribery during the evaluation process
- Involvement of technocrats in procurements
- Removal of important documents by procurement officers so as to disadvantage the said bid document
- Abuse of authority of office by the controlling officers
- Unprecedented variations
- Giving of the specifications to the prospective bidder in exchange of money

- Submitting of fake tender documents
- Collusion of bidders so that they can disadvantage other bidders
- Uttering of false documents during bid submission
- Willful failure to follow laid down procurement procedures

Question 9 : Can AML measures mitigate the highlighted forms of public procurement corruption?

Nearly all responded in the affirmative; however, some made indications to the extent that, to reach corruption in public procurement, it is important that financial institutions and other reporting entities do not merely tick the box when conducting the customer due diligence and are vigilant in monitoring, detecting and reporting suspicious activity reports. Secondly, success will turn on the extent to which the investigative agencies are well equipped and target the proceeds of corruption. Thirdly, success will again depend on the extent to which there is political will to deal with corruption with the appropriate tone from the highest office. Fourthly, some noted that there should not be interference.

The other response was that AML measures may not entirely mitigate public procurement corruption. Some transactions associated with public procurement corruption do not necessarily involve the movement of funds between bank accounts in the financial system or purchases of assets. Some transactions may involve payments in kind and favors e.g. a bidder paying for university tuition of a child of a procurement official, or a bidder facilitating a job placement or internship for a child of the procurement official. Such transactions may never be picked through AML measures

Question 10 : How best can information gathered through the AML mechanisms be used in identification of unqualified entities in public procurement?

The respondents were of the view that there must be deliberate and coordinated effort to share information among law-enforcement agencies and the FIC, with set meeting times in the year at operational level that should come up with a black list for Government departments. The other submission

was that there must be a link between the law enforcement agencies and the Zambia Public Procurement Authority.

Interviews: The researcher also held interviews following the IACA prescribed procedure and discussed the subject topic. It was noted that there is a lack of framework that would enable joint interagency cooperation. The tone at the top had negatively affected the operations coupled with interference. Interviewees also noted that there was involvement of prominent influential persons in procurement corruption cases, that the trend of using proxies was high. There was also less AML knowledge among procurement officials.

To address some challenges, the interviewees suggested the following;

- Stop political interference
- Need for political will
- Enhance procurement officers' skills with AML knowledge
- Restrict entities found wanting
- Awareness among procuring entities on AML/CFT /PF
- Anti-Corruption Certification
- AML Certification for procuring entities

4.5 Utilisation of AML data in procurement to stem corruption

Public procurement corruption is not fixed as it keeps changing. This can be deduced from the trends topology released by the Financial Information Centre for the past five years. It has been noted from the new trend, involvement of usage of PEPs to obtain awards. This study has noted that public procurement in Zambia is affected by many situations, among them, individual instances of procuring officials' interference; interference by politicians; political transition or change of government and economic transition.

FATF principles include recommended preventive and enforcement measures and call for an effective and equal sanctioning regime. Prevention is usually a

chore to be implemented by private sector actors, that is, the financial and other institutions that are obliged to report suspicious activity to a supervisory agency. The primary focus is on customer due diligence and subsequent notifications of suspicious activity. These measures include “know your customer”. Private actors are required to adequately identify potential customers by requiring name, legal proof of existence, and address of individuals or entities they will be doing business with. With regard to customer due diligence, the United Nations Convention Against Corruption (2005), recognises and reinforces the strong link between corruption and money laundering. The Convention encourages state parties to create effective financial intelligence units (FIUs), and to use anti-money laundering tools, as part of the efforts to prevent, detect, investigate and prosecute corruption.

In light of the above analysis, other inventive public procurement corruption measures must be considered in order to enhance public procurement principle, which must also be marked by equity. Such measures include prevention, detection and enforcement measures. The Financial Intelligence Centre and the supervisory authorities play a key role in preventive measures which are critical in combatting corruption. If these preventive measures are successfully done, they can and should provide regular access to relevant information on politically exposed persons (PEPs), entities, shell entities etc. This makes it easier to understand unexplained changes in the patterns of those persons’ financial activity - for example, if transactions that pass through bank accounts owned by PEPs and their associates unexpectedly start receiving large amounts, inconsistent with the account profile. These transactions are flagged by the AML monitoring system for the financial institution in question. Such transactions linked to public procurement corruption are reported to regulators for scrutiny.

The reviews summarized above show that AML measures include some mechanisms which can be utilised to prevent, deter and combat public procurement corruption. The AML measures contain preventive measures such as customer due diligence, reporting of suspicious activities by regulated entities, protected and incentivised whistleblowing and identification of beneficial ownerships. If the aforementioned are ensured, the

AML framework can act as preventative measure in the engagement and award of public contracts. As a deterrent, AML measures cause the criminalization of money laundering, so that persons found committing such offences can be arrested. The foregoing tools can be utilised quite well at the time of contractor qualification. The laws further provide for seizure and confiscation, and so will act as deterrent to the predicate offence.

All in all, after such inquiries and investigation are concluded, erring parties can be identified and it is critical that such entities are not allowed to enter the market. This can be achieved through debarment, suspension – “blacklisting,” as it is sometimes known.

With respect to suspension, Section 95.(1) of the PPA provides for suspension of a bidder or supplier, and the Act provides that the Authority may, on its own motion or on the recommendation of an investigative agency, procuring entity or institution, suspend a bidder or supplier from participating in public procurement on the grounds specified in section. Under Section 96.(2), a bidder or supplier shall not be suspended except where written notice has been given to the bidder or supplier of the grounds for the proposed suspension, the bidder has been given an opportunity to respond to the alleged grounds, and an investigation of the facts of the case is undertaken by the Authority. A suspension shall not be less than one year and shall not exceed five years.

These suspension and debarment measures are said to be administrative measures which can be used for combating public procurement corruption. These measures can be said to be raised by approved procurement officials or regulators against acts of private suppliers, with the main target being erring parties (individuals or legal entities). With the aforesaid, a main aim of debarment is to exclude private suppliers involved in corrupt acts which such as fraud and other offences.

Debarments differ among jurisdictions. In some countries, debarment is imposed if the private supplier committed corruption; in others, the focus is on performance failures.

The laws also provide provisions to challenge such debarment and suspension decisions, which lends legitimacy to a sweeping anti-corruption

remedy. In Zambia, Section 97 of the Act provides for a permanent bar, and it states that procurement authority may, on its own motion or on recommendation of a law enforcement agency, procuring entity or institution, permanently prohibit a bidder or supplier from participating in public procurement on the following grounds: (a) committing an offence relating to procurement (whether under Zambian procurement law or any other law); (b) giving false information about the bidder's or supplier's qualifications; (c) misconduct relating to the submission, evaluation and awarding of bids, including corrupt, fraudulent, collusive or coercive practices, price fixing, a pattern of underpricing of bids or a breach of confidentiality; (d) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; (e) conviction of a crime related to business or professional activities; or (f) any other grounds as prescribed.

It is important to stress the procurement principles that are meant to promote clean public procurement. The main principles per international and regional instruments include: integrity, equity, transparency, equality and competitiveness. These principles are meant to realize economic efficacy by allowing participation of key players, and to reinforce the legitimacy of the procurement system.

To make debarment workable, it is also important to ensure that the affected vendor can "cure" debarment. Punder, Prieß and Arrowsmith stated that in order to cure debarment, the concept of self-cleaning is mostly accepted as a practical remedy. That opens the possibility for "re-entry" for a firm that might otherwise be barred from a public procurement for a wrongful act, on the basis that it has taken all necessary measures to ensure that the wrongdoing of the past will not occur again in the future. The use of debarment remains one of the most popular ways of combating public procurement corruption. Self-cleaning as a concept, though it is progressive, should be used carefully by developing countries, in order to protect the legitimacy of the public procurement sector.

4.6 Conclusion

This study has revealed that several institutions have been created for purposes of combating money laundering in Zambia. The Financial

Intelligence Centre was created for the sole purpose of receiving reports, undertaking analyses and disseminating information regarding potential money laundering. The Anti-Money Laundering Investigations Unit was created for the purpose of unearthing money laundering in Zambia. The Anti-Corruption Commission was created to investigate and respond to corruption, in line with UNCAC. In addition, the NPA was created as an independent unit to ensure fair and impartial prosecution. This study notes that these institutions can and should play a key role in attending to irregular activity in public procurement. In this chapter, this study noted, though, that nothing in the AML framework calls for information to be used for contractor qualification or debarment – the core anti-corruption decisions in any procurement system.

Secondly, the study looked at AML reports generated by various regulatory agencies. The paper noted various forms of information generated by the institutions. Finally, this study looked at the responses generated from the interviews and questionnaires, and surveyed the anti-corruption strategies available to the Zambian government in procurement. The next chapter, analyses the findings from this chapter.

5.0 ANALYSIS

This chapter presents an analysis of the previous chapters. The focus in this chapter is to provide an analysis of the Legal Framework and the Anti-Money Laundering Reports and Interviews. Thereafter, the chapter will draw a conclusion.

5.1 Summary of Anti-Money Laundering laws and mechanisms for gathering AML data

As discussed above, Zambia has enacted various anti-money laundering and anti-terrorism laws. These laws create an institutional framework for using anti-money laundering enforcement as a tool against corruption in procurement. The interviews and questionnaire responses described above show that this institutional framework could be used quite effectively in addressing corruption in Zambian public procurement.

- **The Prohibition and Prevention of Money Laundering Act criminalises money laundering in Zambia.** The law created an Anti-Money Laundering Unit (AMLIU), a unit part of the Drug Enforcement Commission, and created Anti-Money Laundering Authority (AMLA) mandated to provide general or specific policy directives and to advise Government on measures required to prevent and detect money laundering in the Republic of Zambia. AMLIU's role includes collection, evaluation, processing and investigations of financial information from the Financial Information Centre, public and private institutions and others. Another key feature to note from this law is that it changed the money laundering fight from drug trafficking to any illegal activity, and hence includes public procurement corruption. A key output from this authority are lists of entities and individuals involved in money laundering and various crimes. As the reports from the Financial Information Centre show, matters relating to corruptly obtained funds through public procurement can be well attended by PPMLA. However, the law does not explicitly provide for sharing of such outcomes, which could be helpful to other government agencies doing procurement; for example, in contractor qualification or debarment. The responses to questionnaires emphasized this last point, that while

the anti-money laundering information might be useful in fighting corruption in procurement, there may not be sufficient coordination amongst agencies to assure that such information is brought to bear.....

- **The Financial Intelligence Centre Act** establishes the Financial Intelligence Centre, and provides for duties of supervisory authorities and reporting entities. The Financial Intelligence Centre is the body mandated to receive, request, analyse and disseminate suspicious transaction reports. The FIC has a broader role regarding financial crimes, which are mostly based on the commission of corrupt acts and other offences. The FIC plays a key role in the fight against corruption because one of its primary roles is the receipt of information from reporting entities, at times supervisory authorities and additionally, other sources regarding unusual transactions or activities. The key outputs of the Centre include dissemination of actionable reports to law enforcement agencies; those reports do sometimes address public procurement corruption. The FIC also produces AML/CFT/PF financial trends reports for the public. The latter reports detail completed financial crimes and common trends noted in a specific year. Further, the reports showcase such activity in the form of case studies and charts. However, on analysis of the law, this study noted that there was no provision which requires the Centre to share ML information (for example, red flags) to government procuring entities to ensure AML risk is attended at the time of contractor qualification, or is utilised to suspend or debar entities.
- **The Anti-Corruption Act** gives powers to the Anti- Corruption Commission to investigate corruption and other offences. The act mandates ACC to fight corruption and other associated offences. The ACC's key functions include providing for the prevention, detection, investigation, prosecution and punishment of corrupt practices and linked offences. A key output from the ACC is a list of corrupt entities, which could be used in the fight against corruption in public procurement.

- **The Forfeiture of Proceeds of Crime Act** provides for civil and criminal forfeiture and seizure of proceeds of crimes. In its preamble, that Act states that, it is envisioned to domesticate provisions of the United Nations Convention against Corruption with respect to the forfeiture of proceeds of crime. The key outcome is a list of forfeited assets, which could serve as an important deterrent to those who would corruptly misappropriate public assets.

- Section 6 of the **National Prosecution Authority Act** provides that international conventions to which Zambia is a member require state parties to establish independent prosecutorial agencies. The main reason is to ensure fairness and unbiased decisions free from partisan political or pressure or corruption. The main outputs are judgements and also statistics with respect to prosecuted crime – potentially important sources of information on those who could corrupt the public procurement system.

- The **Plea Negotiations and Agreement Act** presents the model of plea bargaining in the Zambian criminal justice system. A plea bargain is an agreement between a public prosecutor and an accused. In an effort to avoid repeat offenders or abusing these pleas there is need to ensure such agreements are publicised. In practice, plea agreements allow governments to address corruption risk in a coordinated way, leverage prosecutions of higher-ranking individuals, and limit the economic impact of measures taken against firms for corruption.

Our findings indicate that Zambia has an adequate AML framework, though more needs to be done to leverage that framework in the fight against corruption in public procurement. The next section attends to the effectiveness of the AML framework. This will be done through analysis of published AML reports.

5.2 Anti- Money Laundering Reports

Upon analysis of **FIC Anti-Money Laundering reports** for the period 2016 to 2020, it is clear that public procurement corruption in Zambia is very high.

It follows that Zambia potentially loses huge sums through corruption in public procurement. The trends noted included PEPs or PIPs registering companies in proxies at company registry PACRA, companies awarded contracts through tendering forged documents, companies with adverse news awarded contracts etc. Further, our analysis revealed that contract prices are sometimes inflated, for example, so that the members of political elite who can steer the contract awards take the mark-up and reinvest those amounts abroad or have lavish lifestyles.

It was noted from the National Risk Assessment on AML measures that the five highest proceeds-generating predicate offences in Zambia were (i) corruption; (ii) tax evasion; (iii) theft; (iv) fraud; and (iv) drug trafficking. Corruption generated the most. The study noted that the **Eastern and Southern Africa region** is also met with huge challenges bordering on public procurement corruption associated with money laundering – challenges which, the survey done for this thesis suggested, could be reduced through training and coordination among agencies and officials, to ensure that AML information can be used in the fight against corruption.

5.3 Analysis from finding – Questionnaires and Interviews

We noted that Zambia lacks a framework that would enable joint interagency cooperation. The lack of good tone at the top had negatively affected the operations coupled with interference on many government wings. This study also noted that there was involvement of prominent influential persons in procurement corruption cases, that the trend of using proxies was similarly high. There was also less AML knowledge among procurement officials. Possible solutions for the challenges raised included:

- Stop political interference from political elites
- Need for political will
- Enhance procurement officers' skills with AML knowledge
- Restrict entities found wanting
- Awareness among procuring entities on AML/CFT /PF
- Anti- Corruption Certification
- AML Certification for procuring entities

5.4 Conclusion

The influence of AML institutions created for anti-corruption work takes place at the corrective stage, after the offence of corruption has taken place. The AML institutions are designed to recognize a case of a person benefiting from a corrupt act who decides to place funds in a bank or financial institution, or if the person purchases vehicles, invests in a real estate, securities etc. The reporting entities in these sectors may file suspicious activity reports. Such reports also bring to light the giver of such bribes. In an effort to avoid repeat offenses such entities are expected to be debarred. Additional measures include seizure of goods purchased and the funds in banks, if any.

6.0 CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

The current chapter makes conclusions of the study, provides recommendations and offers possible areas for further research.

This study discussed the AML legal framework and public procurement corruption in Zambia. Furthermore, this study examined the international best practices used to employ AML tools to fight public procurement corruption – best practices from which Zambia can draw valuable lessons in the fight against corruption.

In a brief synopsis, the key objectives of this study included :

- i. To advance understanding of the effectiveness of AML legal structures in deterring procurement corruption. This study notes that there is little literature on how AML laws and policies could be utilised to fight corruption hence the need bridge the gap.
- ii. To identify the methods of procurement corruption in the public sector in Zambia and how the proceeds generated from these activities are laundered. There is need to enhance knowledge on how corrupt funds are laundered and which sectors benefit. The proceeds emanating from public procurement corruption are distanced from direct association with the initial corrupt act, either by placement in the financial system, purchase of properties, motor vehicles or some other cash intensive business. The schemes are developed by the launderer ensure that layers of protection are put in place to distance him/herself from the corrupt act.
- iii. To understand the relationship between public procurement, corruption and money laundering in Zambia, the study inquired into public procurement corruption and its relationship with money laundering in Zambia. It is a known fact that public

procurement corruption occurs at any point in the procurement process. There is need to ensure institutions coordinate to enhance inter-agency efforts against corruption, and to ensure no “silos”.

- iv. To identify if any gaps exist within the AML legal framework, which might hinder the fight against public procurement corruption; the study also proposes recommendations on the amendment of AML laws if they are to be used to deter public procurement corruption.

The following section draws some findings and conclusions.

6.2 Findings

The primary purpose of this study was to ascertain the effectiveness of AML laws in deterring public procurement corruption. This study showed less than full effectiveness of the current AML legal framework in the fight against public procurement corruption in Zambia. This was inspired by the thought that despite having broad AML laws, the current national government in Zambia continues to face serious problems with corruption in procurement. The foregoing could connote that some preventative measure may not have worked well. The current study takes cognisance of the international AML standards, from which Zambia has drawn its laws. The Forty Recommendations by FATF have played a pivotal role in establishing compliance and standards to effectively combat ML/TF. Money laundering arises when the origin of illegitimate funds is being concealed or disguised. The subject involved in this vice often use legal persons who are natural or artificial, and proxies to conceal the origin of the funds. These forty Recommendations provide counter-measures against ML/TF.

As advanced by Sharman (Sharman, 2011), that AML legal framework holds the ability to make high volumes of financial information known to authorities. Sharman argued that the source of information on probable corrupt activities orchestrated resonated on four principles of anti-corruption. Among those is that AML requires, and hence likely strengthens, international cooperation. International cooperation is paramount in cases of corruption involving large sums, as there is high likelihood that funds could have been

wired outside the country where they were generated. This study has highlighted instances of such large-scale corruption and the need for international cooperation, through case studies. The other principle stems from the recovery of proceeds of crime, such as the proceeds of corruption.

These lessons align with FATF's forty recommendations for effective anti-corruption strategies using anti-money laundering techniques, and apply globally and across all nations. The AML legal framework offers a broad spectrum of approaches to handle various crimes, such as public procurement corruption.

In summary, internationally recognized AML strategies could provide good measures for prevention, detection and enforcement in public procurement corruption action; however, coordination between anti-money laundering and anti-corruption authorities is required for effectiveness. This study notes a few challenges to creating smooth interchanges between the two communities.

This study notes **involvement of politically influential persons (PEPs) in procurement matters**. Further, it was noted that the involvement of PEPs was still high when the matter was under inquiry. The involvement of those who are politically influential in procurement, and potentially in corruption stemming from corruption, means that the institutions used to combat corruption must be well-established and independent.

The study concluded that AML output – the data and reports generated by anti-money laundering enforcement activities – does not effectively speak to government procurement officials. Surveys for this study indicated that this lack of effectiveness is due, in part, to a lack of coordination between the anti-money laundering community and the procurement community. This study noted a **lack of formal methods** for interactions amongst AML institutions and procurement authorities. This study noted the lack of such mechanisms for cooperation often leads to entities operating in silos. This lack of cooperation is worsened if there is no tone at the top to fight money laundering and corruption. This study noted a **lack of a framework in Zambia** that enables joint interagency cooperation.

Uncoordinated approaches in handling public procurement corruption matters can subsequently result in a lack of clarity on who is to handle what. The foregoing leads to delays in investigative procedures, giving corrupt subjects an opportunity to conceal funds and even to engage PEPs to influence the investigations.

Local laundering and externalization of illicit funds were noted by this study, which found from the AML reports some unusual findings in the real estates and motor vehicle traders sectors. This study noted an imbalance between the funds that passed through the financial institutions and investments that went into the real estate sector and the vehicles purchased, mostly by persons who held positions of influence. The study found, further, that financial profiles of subjects differed considerably with their investments put up in the sector. This paper noted that this could be linked to few suspicious activity reports raised in the real estate sector. Though most AML measures focus on laundered cross-border funds, the paper can conclude significant funds have been retained, and a portion were wired to mostly tax haven jurisdictions. Interviews conducted and reports indicated that many of these funds had an original source in public procurement.

Non-appreciation of AML legal framework by officers charged with procurement, procuring entities and some institutions. Zambia has a broad spectrum of anti-money laundering laws. It follows that what lacks is an ability to effectively tap into the vast AML resources, which require substantial expertise, inclusive of coordination among key players such as the private sector and the public sector. There is a need to build capacity in the public procurement sector and procuring entities such that it will allow the appreciation of the AML laws and tools.

Relatedly, there is a **lack of skilled human resources and capacity**. Zambia faces human and financial resource constraints in its AML institutions. In an effort to fully utilize AML laws to combat corruption in public procurement, there is a need for skilled officers to address the complex nature of anti-money laundering efforts. This study noted that there was a **variance with respect to compliance by reporting entities filing reports in the case of Designated Non-Financial Business Professionals (DNFBPs)** illustrated

earlier. This study noted that real estate properties and motor vehicle transactions are lightly regulated, which affected compliance rates.

Often the main antecedent to the prevention of money-laundering crime and corruption is the capability to gather statistical data. The need for data cannot be over-emphasized as data allows a country to assess risks, identify predicate offences, aid in conducting a risk-based approach which can allow public authorities to assign resources (either human or funds) to sectors that are more vulnerable. This study noted that AML information-sharing can play a critical role in the combatting of corruption. This study noted that there is often no coordinated way of AML information-sharing among anti-money laundering and procurement institutions. In such a scenario, a centralized data base could play a critical role. In the effort to fight corruption there is need for the Zambia Public Procurement Authority to have an intelligent link to the information resources offered by the anti-money laundering institutions in Zambia and abroad.

These problems are worsened by common practices; for example, **this study noted a high usage of cash in commerce**, which makes tracking and enforcement much more difficult. In a recent report, Zambia reported a shortage of cash. This study noted countries with cash-based economies have a particular challenge to execute AML policies, in that cash distorts the audit trail. AML enforcement is founded on the premise that regulators or authorities can gain access to information passing through formal channels, for example, the financial institutions, DNFBPs etc. When that does not occur, AML systems may not be effective as most transactions may go undetected. This may work negatively with regard to public procurement corruption, as certain corrupt activities may go uncaptured in a cash-based economy.

Lack of trust among institutions is another barrier to effective use of anti-money laundering tools in the fight against public procurement corruption. FATF in its 2008 release indicated that developing countries shared a number of organizational features that hinder their capacity to fully apply AML standards. Trust is an essential part in the good performance of institutions and in their capacity to relate and cooperate with each other, as is highlighted in the economics of corruption game theory - where there is a lack of

institutional cooperation, corruption gains. The absence of trust creates a challenge as institutions may not relate to each other effectively. AML requires high levels of trust among its actors and institutions. A lack of trust between institutions breeds ineffectiveness.

The question is, what needs to be done to strengthen use of AML to combat corruption in public procurement in Zambia.

6.3 Recommendations

In all these recommendations, this study notes that political will plays a critical role to ensure the AML legal framework will work well in Zambia in the fight against corruption in public procurement. Further, the right tone at the top can send a clear message that this vice -public procurement corruption - has to be combatted.

- 1) This study notes challenges with respect to effective links among AML institutions and government entities, including public procurement authorities. There is need for AML outcomes to be fed into the Zambian Public Procurement Authority, as this will aid in ensuring entities found wanting are debarred/suspended from participating in public procurement. Further, there is need for an AML policy directed specifically to corruption in public procurement.
- 2) The lack of formal methods on interactions amongst AML institutions can be attended to by formulating a AML policy. This will ultimately enhance the role of AML measures in the fight against Public Procurement Corruption.
- 3) A clear AML policy must be codified to help cure a lack of cooperation between bureaucracies and agencies playing a part in anti-money laundering and anti-corruption initiatives.
- 4) In an effort to effectively attend to the issues stemming from local laundering and the externalization of illicit funds, there is a need to strengthen oversight institutions, and failing institutions should be sanctioned.

- 5) With respect to the lack of appreciation of the AML legal framework and mechanisms by persons charged with public procurement, procuring entities and some institutions, there is a need for the AML policy to encompass the relevant officials. Taking cognizance that public procurement is a major source of corrupt proceeds, exposing procurement to AML resources will be key. Further, there is need for companies to have compliance personnel, or persons who can double in the role of compliance, to ensure that companies are not exposed to corrupt acts.
- 6) This study notes the need to strengthen the skills and human resources charged with the AML and public procurement corruption fight.
- 7) In an effort to cure challenges regarding variances in compliance, there is need to strengthen supervisory authorities with regard to monitoring compliance. Priority should be given to sectors most vulnerable to money laundering, for example real estate, lawyers and motor vehicle dealers.
- 8) Because of a lack of statistical data and centralised databases for Information sharing, appropriate agencies should prioritize routines to collect and analyse data, and to provide various outputs to the sourcing team to aid in addressing public procurement corruption.
- 9) Because of the challenges of a high usage of cash in the Zambian economy, there is need to promote more financial inclusion so that more persons start using banks. Further, this may mean capping limits on cash transaction, and calling for purchases of real estate and motor vehicles to pass through the bank.
- 10) In an effort to promote trust among government institutions, there is a need to ensure there is constant dialogue among authorities and government agencies. It is a known fact that dialogue, cooperation, and information help to build trust and hence lead to a more effective fight against corruption.

Other recommendations include –

- Stop political interference
- Need for political will and ensuring the right tone to fight public procurement corruption
- Enhance procurement officers' skills with AML knowledge
- Restrict entities found wanting
- Awareness among procuring entities on AML/CFT /PF
- Anti-Corruption Certification
- AML Certification for procuring entities

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