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LEGAL CHALLENGES TO THE ZAMBIAN PUBLIC PROCUREMENT SYSTEM

SUBMITTED IN PARTIAL FULFILMENT OF THE LL.M. IN
INTERNATIONAL TRADE & INVESTMENT LAW IN AFRICA

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Declaration

I, Jane Lucky Sipalo, declare that **The Legal Challenges to the Zambian Public Procurement System** is my work. All references to sources and any quotations cited have been indicated and acknowledged herein.

Signed:

Jane Lucky Sipalo

September 2021

Certification

I declare that this mini-dissertation which is hereby submitted for the award of Legum Magister (LL.M) in International Trade and Investment Law in Africa at International Development Law Unit, Centre for Human Rights, Faculty of Law, University of Pretoria, is my original work and it has not been previously submitted for the award of a degree at this or any other tertiary institution.

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List of acronyms

ACC – Anti-Corruption Commission

ADB – Africa Development Bank

AfCFTA – African Continental Free Trade Area

AG – Auditor General

COMESA – Common Market for East and Southern Africa

CTC – Central Tender Committee

CPAR – Country Procurement Assessment Report

FIC – Financial Intelligence Center

EC – European Commission

EAC – East African Community

EU – European Union

GATT – General Agreement on Tariffs and Trade

GPA – Agreement on General Procurement

IDA – International Development Association

INDECO – Industrial Development Corporation

MAPS - Methods for Assessing Procurement Systems

MDBs – Multilateral Development Banks

MoF- Ministry of Finance

MoH- Ministry of Health

OECD – Organisation for Economic Co-Operation and Development

PPA – Public Procurement Act

PPRP – Public Procurement Reform Project

PPP – Private Public Partnership

SADC – Southern African Development Community

SACU – Southern African Custom Union

SDR – Special Drawing Rights

SIDA – Swedish International Development Cooperation Agency

UNIP – United National Independence Party

UNCITRAL – United Nations Commission on International Trade Law

WAEMU - West African Economic and Monetary Union

WB – World Bank

WHO -World Health Organisation

WTO – World Trade Organisation

ZNTB – Zambia National Tender Board

ZPPA- Zambia Public Procurement Authority

ZAMRA – Zambia Medicine Regulatory Authority

ZCCM – Zambia Consolidated Copper Mines

ZESCO – Zambia Electricity Corporation Limited

ZSIC – Zambia State Insurance Corporation

ZIMCO – Zambia Industrial and Mining Corporation

ZPBF - Zambia Pharmaceutical Business forum

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1.0. Chapter One – Introduction

1.1 Background to the research

In many organisations, procurement can be seen as a meticulous balancing act of obtaining goods and services while ensuring quality, cost effectiveness, and cost efficiency.¹ In the public sector, this balancing act becomes even more delicate as it is at the intersection of successfully securing goods and services, effectively using public funds, and maintaining accountability and equity.² This study interrogates public procurement in Zambia with specific reference to the challenges faced in the country as they pertain to the implementation of the Public Procurement Act 2020 with primary focus around the health sector.

Public procurement, or government procurement, is defined as an important government process for the “acquisition of goods, works, and services needed for public programs and projects.”³ Government procurement involves the wide range of goods and services purchased by governments as well as public entities on the central and sub-central levels⁴. Fundamentally, principles of public procurement assume that (1) the government is unable to produce everything “it needs to carry out its core functions and (2) that it often resorts to buying essential goods and services from private suppliers such as corporations”, profit, and not-for-profit organizations to fulfil its functions.⁵ The scope of what government institutions purchase covers simple stationery and extends to more complex items such as utilities, defence equipment, or the construction of public facilities.⁶ The United Nations viewed public procurement as

“An overall process of acquiring goods, civil works, and services which includes all functions from the identification of needs, selection and solicitation of sources, preparation

¹ KV. Thai, *International Handbook of Public Procurement* (2008)

²C.Fong ‘Goals of Public Procurement: A Fine Balancing Act for Malaysia’ (2011) *Journal of Malaysian and Comparative Law*.

³Khan, Naushad ‘*Public Procurement Fundamentals: Lessons from and for the Field*’ (2018)

⁴Asako, Ueno ‘Multilateralising Regionalism on Government Procurement’ OECD Policy Papers No. 151 Page 8

⁵ S.N Nyeck ‘Public Reform and Governance in Africa’ *Contemporary African Political Economy Series*, Clarkson University Potsdam, NY, USA

⁶ S.N Nyeck (n 5)

and awarding of contract and all phases of contract administration through the end of services contract or the useful life of an asset.”⁷

Public procurement by the government is done through its ministries and agencies on behalf of its citizens using the best methods that fall in line with laid down rules and regulations.⁸ Governmental agencies make public calls for tenders from the private sector to bid for the supply of goods and services, using various tender methods such as open or restrictive bidding.⁹

Over the past twenty years, public procurement has developed from being seen as the basic acquiring of “goods, works, and services to be handled by store clerks and purchasing officers, to an intricate government activity, inclusive of multiple stakeholders, to be conducted, managed, and supervised by qualified and competent public procurement professionals.”¹⁰

Since government accounts for a considerable part of any country’s economy, the financial costs concerned with public procurement are substantial. It is said that governments use around 70% of its budgetary allocations to provide basic goods and services.¹¹ Public procurement activities are executed with taxpayer money, which makes it a sensitive activity that must be handled in an efficient manner and to a high standard to safeguard the public interest.¹² As such, “it is every government’s responsibility to ensure that resources are utilised in the most efficient, transparent, and ethical way to promote sustainable development of both the economy and standards of living.”¹³ This mandate has compelled the need to create laws and regulations that ensure strict compliance and adherence for public procurement in all sectors of the economy.¹⁴ For this reason, several countries have established complex procurement methods, which are in tandem with “the universal fundamentals of public procurement.”¹⁵

⁷ K.V Thai (n 1)

⁸A.O Scott, E.O Julius ‘Public Procurement, Governance and Economic Growth: Some Policy Recommendations for Africa’s Growth and Development’ *University of Benin*

⁹Carpinetti, Piga, Guszanza, Matteo ‘The Variety of Procurement Practice: Evidence from Public Procurement’ (2006) *Research Gate Journals*

¹⁰ Khan, Naushad (n 3 above)

¹¹R.K Komakech ‘Public Procurement in Developing Countries: Objectives, Principles and Required Professional Skills’ *Public Policy and Administration Research*, Vol. 6 No.8 of 2016

¹² Organisation for Economic Co-Operation and Development (OECD), System Change in Slovenia: Making Public Procurement More Effective

¹³Dzuke ‘Public Procurement: Panacea or fallacy – A Case of Public service Delivery in Zimbabwe’ *University of KwaZulu Natal*

¹⁴ Z.B Awino, P.N Marende-Getuno ‘Public Procurement Legal Framework Implementation Challenges and Organisational Performance’ (2014) *DBA Africa Management Review*, Vol.4 No.2 Pp 103-117

¹⁵ El-Gayed ‘The Influencing Factors of Public Procurement Policy Development: The Case study for Libya’ *University of Salford*

These regimes are aimed at ensuring that governments guarantee “value for money,” maximise efficiency and effectiveness, enhance transparency, ensure due process, promote accountability, and prevent corrupt practices and/or collusion from bidders.¹⁶ As such, the core feature of the public procurement process is to mimic the market by encouraging competition through open calls for bids.¹⁷

Public procurement, at global, continental, and national levels, continues to face challenges which often extend to more than procurement regulations to include procurement procedures, procurement methods as well as procurement organisational structure and personnel.¹⁸ Public procurement practitioners have encountered difficulties as a result of a variety of environmental factors including political, environmental, social, technological, economic, and legal factors.¹⁹ For this reason, public procurement has received increased public attention and scrutiny thus prompting the reformation and restructuring of the procurement process.²⁰

“Many countries such as Zambia have reformed procurement laws and regulations to improve transparency and accountability. The major challenge has been around the failure by agents to comply with these regulations.”²¹ Lack of transparency remains one of the core issues surrounding the inefficiencies of a sound procurement system world over, particularly in Africa. The spill over effects owing to this lack of transparency and disclosure of information around the public procurement process result in cases of mismanagement, fraud, and corruption.²²

Several African countries have been or currently are, plagued by inadequate procurement systems. For example, Kenya, has had its procurement system undergo significant developments and institutional strengthening in the past years.²³ The system in the East African country,

“has moved from lack of a legal framework and regulations in the 1960s, to a system regulated by Treasury Circulars in the 1970s, 1980s and 1990s, to the introduction of the Public Procurement and Disposal Act of 2005, the Public Procurement and Disposal Regulations of 2006, the Public

¹⁶Hoekman *et al* ‘COVID-19, Public Procurement Regimes and Trade Policy’ Policy Research Working Paper, World Bank Group

¹⁷Hoekman *et al* (n 16)

¹⁸K.V Thai (n 1)

¹⁹ K.V Thai (n 1)

²⁰Dzuke (n 13)

²¹Dzuke (n 13)

²²The Organisation for Economic Co-Operation and Development (OECD) ‘Public Procurement Principals, A Policy Briefing Note Fair Market Conditions for Competitiveness in the Adriatic Region’ *OECD Publishing*

²³Amemba *et al* ‘Challenges Affecting Public Procurement Performance Process in Kenya’ (2015) *European Journal of Business Management*

Procurement and Disposal (Amendment) Regulations 2009, The Public Procurement and Disposal (Public Private Partnerships) Regulations of 2009, The Public Procurement and Disposal (Preference and Reservations) Regulations of 2011, and the Public Procurement and Disposal (County Governments) Regulations of 2013.”²⁴

Collectively, these provisions have brought about new standards to guide public procurement process in Kenya. Notwithstanding, studies on public procurement such as the survey conducted by the Kenyan Ethics and Anti-Corruption Commission (EACC) (2007), reveal that even after regulations, public procurement still lacks efficiency and transparency.²⁵

Zimbabwe is another country that continues to face challenges under its public procurement system. Despite the existing legal framework, the identifiable challenges included the “lack of strategic recognition of the procurement function, the lack of professional, managerial, and leadership skills, the lack of funds from treasury, the lack of understanding of procurement policy and regulations,” as well as “the lack of accountability in the procurement process.”²⁶ In real practice, it would appear, the guidance and regulations present opportunities for exploitation and misconduct to government officials.²⁷

Zambia has not been exempted from a similar narrative to that of Kenya and Zimbabwe. Despite the existing legal framework such as the newly enacted Public Procurement Act 2020 which embodies internationally recognized best practices, the country is still witnessing poor regard of the basic principles of public procurement. To demonstrate the gravity of the inadequacies of the procurement system, this research will focus mainly on procurement within the Zambian context with the aid of examples from the health sector. COVID-19 has highlighted the various challenges that afflict the procurement system in Zambia. The extent of malpractice includes, among others, a lack of transparency, corruption, unfair competition, supply of sub-standard and/or defective resources, and secrecy around the bidding processes. This study will delve into the current shortcomings of public procurement using the health care procurement system as an example with the aid of practical examples.

²⁴Amemba *et al* (n 23)

²⁵Amemba *et al* (n 23)

²⁶Dzuke (n 13)

²⁷Chigudu ‘Public Procurement in Zimbabwe: Issues and Challenges’ (2014) *Journal for Governance and Regulation*, Volume 3, Issue 4

1.2 Problem statement

The Zambian procurement system has gone through various legal and institutional reforms post-independence in 1964. The newly enacted Public Procurement Act of 2020 boasts a richness in progressive international principles. It highlights the stringent need to protect and promote transparency, integrity, fairness, and competitiveness, and emphasises the need to desist from corrupt and collusive practices. The Zambia Public Procurement Authority (ZPPA) is designated with the core function of ensuring that all government ministries and parastatal companies are compliant with the provisions of the Act when procuring goods and services. Above all, it has been tasked with a monitoring and oversight function to ensure compliance and alignment with the Act.

However, despite having a progressive legal framework, there have been reported incidents of procurement malpractice in the public sector mostly due to poor implementation, non-compliance, and insufficient enforcement. The health sector has been particularly affected by these eventualities. Many reports of poor procurement processes originate in the health sector and suggest that procurement in that arm of government has been heavily compromised. Accounts show that there has been procurement of sub-standard and defective medicines, suspicious contract allocations, delaying or non-completion of contracts for supply of goods and services, inflated tender amounts, as well as failure to follow laid down rules and regulations for the invitation and allocation of tenders.

Amidst the Coronavirus pandemic, reports show that there has been derogation of the standard laid down procedures when procuring health sector resources. The case of Honey Bee Pharmacy in June 2020, in which the Ministry of Health negligently procured health kits that contained defective condoms and medicines, it depicts the reality of the unfortunate circumstances that occur in the health sector. Additionally, the COVID-19 Utilisation of Funds report shows the high level of disregard for the Act that procurement officers exhibit. Furthermore, the Zambia Medicine Authority (ZAMRA) issued a report that found that defective COVID-19 vaccines were supplied to the Ministry. These and many more cases form the basis of this research. The research will aim to show the discrepancies that exist in public procurement using examples from the health sector. Owing to the sensitivity of the health sector and the number of lives placed at risk through negligence, more emphasis should be put on ensuring that the officials under the respective

institutions adhere to and comply with procurement guidelines, both under general procurement and tailored frameworks under health sector procurement.

1.3 Research questions

In an effort to outline and interrogate the challenges faced in the Zambian public procurement system through the lens of the Public Procurement Act of 2020, the overarching question of this research is whether the Act adequately provides scope for best practice public procurement using the health sector as basis for the assessment. Further to this, the researcher aims to answer the following sub-questions:

- a. What are the challenges in the public procurement process that affect the implementation and execution of the Public Procurement Act 2020?
- b. How does health sector procurement operate in Zambia?
- c. To what extent do the challenges affect the health sector?
- d. How can the challenges faced under the public procurement system be addressed to ?
- e. What can be done to improve the public procurement system to align with international best practices?

1.4 Thesis statement

The aim of this research is to test the Zambian legal framework against international best practices. Therefore, it will review past and current legal regimes to arrive at a conclusion. It will further aim to delve into health sector procurement in Zambia and weigh it against the present legal framework. Few studies have probed the legal implications of negligence in health sector procurement. For this reason, this dissertation will aim to identify the weaknesses and shortcomings within the system and offer solutions and recommendations to curb the challenges faced in public procurement with a focus on the health sector.

1.5 Objectives of the study

The core objective of this research is to identify the challenges in the procurement process in Zambia with greater emphasis on the health sector. The researcher seeks to achieve the following:

- a. To provide insight into the public procurement system of Zambia.
- b. To identify the challenges that exist in the procurement process under the current legal framework.
- c. To establish the challenges that exist under the health sector procurement as an example of the derogation to the Public Procurement Act.
- d. To echo on how these challenges can be addressed.
- e. To offer recommendations that will help curb the identified challenges to ensure steady compliance of the rules and regulations enshrined under the Public Procurement Act 2020.

1.6 Literature review

1.6.1 General public procurement

The Zambian public procurement system has undergone various reforms over the years and has equally come under scrutiny from international organisations. With reference to the Zambian context, inadequate legal academic literature exists to point out the challenges of public procurement. However, this research will rely on the aid of reports from international institutions and local authorities that have focused on the public procurement system in Zambia.

The World Bank²⁸ recently published a report on the assessment of the Zambian procurement system which predicted that there was a great deal of potential to improve the public procurement procedures in the country. It suggested that whilst Zambia had made progressive strides and achieved modernisation in its legal and institutional framework, the system placed

²⁸ Ali *et al* 'Assessment of the Public Procurement System of Zambia' The World Bank at <https://thedocs.worldbank.org/en/doc/155311584023270547-0090022020/original/MAPSZAMBIAFINAL.pdf> (Accessed 14 September 2021)

“barriers to foreign participation for bid submissions, engagement with civil society and private sector, and contract management practices.”²⁹ It observed that contracts were not implemented on time due to lack of government funds and delay in payments. This resulted in reduced competition and higher costings on subsequent contracts.

The World Bank further added that there was a need to promote the development of the local industry, encourage foreign participants for heightened competition, and collaborate with the private sector. It pointed out that the ZPPA, who is mandated to hear grievances from the public against public entities, also heard appeal matters leading to a potential conflict of interest when handling complaints. Additionally, it indicated that the Auditor General did not conduct procurement audits to ensure efficiency and value for money. Lastly it declared that despite there being a legal framework against fraud and corruption, there was no dedicated, organised system to detect, prevent, and enforce cases relating to procurement.

In 2005 the Organisation for Economic Co-operation and Development (OECD), in a report titled “*Fighting Corruption and Promoting Integrity in Public Procurement*,”³⁰ lamented a lack of adherence to sound procurement principles. It guided that transparency, integrity, and zero corruption formed the bedrock of an effective and efficient procurement system. It stated that “public procurement has been identified as the government activity most vulnerable to corruption.”³¹ Following the 2005 report, the OECD published a report in 2007³² about the Zambian procurement system and posited that Zambia had a lot of work to do to align its procurement laws with international best practices to align them with international best practices.

The OECD observed that while the Zambian procurement system was properly detailed, showing clear responsibilities and procedures, it had inherent flaws outlining that open bidding is not clearly defined as the standard procurement method, the system for lodging complaints was non-existent or, at most, vague, and that standardised documentation for the acquiring goods,

²⁹Ali *et al* (n 28)

³⁰Organisation for Economic Development (OECD) ‘Fighting Corruption and Promoting Integrity in Public Procurement’ (2005) at [file:///C:/Users/JANELU~1/AppData/Local/Temp/Fighting%20Corruption%20and%20Promoting%20Integrity%20in%20Public%20Procurement%20by%20OECD%20Organisation%20for%20Economic%20Co-operation%20and%20Development%20\(z-lib.org\).pdf](file:///C:/Users/JANELU~1/AppData/Local/Temp/Fighting%20Corruption%20and%20Promoting%20Integrity%20in%20Public%20Procurement%20by%20OECD%20Organisation%20for%20Economic%20Co-operation%20and%20Development%20(z-lib.org).pdf)

³¹Organisation for Economic development (OECD) ‘Integrity in Public Procurement, Good Practice from AtoZ’ at <https://www.oecd.org/development/effectiveness/38588964.pdf>

³²Assessment of the Public Procurement System, OECD-DAV JV Country Pilot Program Zambia (2007) at <https://www.oecd.org/dac/effectiveness/41050387.pdf>

services, and work, was not available. It also noted that selective tendering was used in place of open competitive tendering due to time constraints which were not provided for under the regulations.³³ Against the backdrop of the OECD report of 2007, Zambia ushered in new legislation in 2008, the Public Procurement Act.

S.N Nyeck³⁴ argued that the challenges faced in public procurement are an African problem. The author adds that since the 1990s, “there has been a growing international consensus over public procurement reform in the developing and poor countries.”³⁵ There is a need to harmonise and reform public procurement systems in developing states. The author argues that there are implementation gaps that are cause for inefficiency of public procurement in Africa. With economies of varying scales, the approach to curbing the challenges facing some African states cannot be a uniform one. Corruption, government monopoly, lack of transparency, and competitiveness continue to be the issues that plague African States such as Nigeria, Botswana, and Uganda. A key challenge identified by Nyeck are the expectations for procurement officers to perform optimally without proper training that provides an understanding of a market-based approach to delivering goods and services in Africa.

In respect to having few skilled and trained public procurement officials, a problem that ravages Zambia and other states alike, Fylnn, Buffington, and Pennington³⁶ argue that at the centre of every public procurement professional’s responsibility is a contract: the document that creates legally binding obligations for the seller to deliver the goods and for the buyer to pay for them. They argue that procurement officials should be able to adequately draft and understand procurement documents such as purchase orders and contracts. They maintain that at the core of the procurement professional’s responsibility is the ability to know and understand the importance of contracts within the context of public procurement. Procurement officials need not be lawyers; however, it is imperative that the procurement official has a sense of contract law and the legal consequences of their actions.

³³ OECD-DAC JV (n 31)

³⁴S.Nyeck (n 34)

³⁵S.Nyeck (n 34)

³⁶Fylnn *et al* ‘Legal Aspects of Public Procurement’ (2020) Third Edition *National Institute of Public Procurement USA*

Eunice³⁷ argued that one of the key challenges facing the Zambian public procurement system is bureaucracy in the institutional framework. The author claims that the Zambia Public Procurement Authority causes delay in the way that tenders are handed. Despite their being guidelines under the ZPPA Act, approval takes a significant amount of time that opens doors for corruption. Arguably so, the “public procurement process highlights the trade-off between avoiding corruption and giving officials the flexibility to make decisions in the light of their own knowledge.”³⁸

The arguments forwarded by the above authors align with the main arguments that this research wishes to address in respect to public procurement in Zambia. It will argue that there is a greater need for capacity building of public procurement officials not only in areas of public procurement law but also in aspects of contractual law as they pertain to the tender supply process.

K.V. Thai³⁹ argues that “public procurement is continuing to evolve both conceptually and organizationally. That evolution has accelerated since the 1990s as governments at all levels came under increasing pressures to “do more with less.”” The author points out that public entities in both the developed and developing world are facing the struggles of “unrelenting budget constraints, government downsizing, public demand for increased transparency in public procurement, as well as greater concerns about efficiency, fairness, and equity.” The author further supplements that “public procurement professionals have faced a constantly changing environment typified by rapidly emerging technologies, increasing product choice, environmental concerns, and the complexities of international and regional trading agreements.”⁴⁰

1.6.2 Health sector procurement

The delicacies that surround procurement in the health sector, do not exclude it from facing challenges even on a global scale. The World Health Organisation (WHO) and the European Union (EU)⁴¹ posited that there are challenges around health care procurement in the EU. It was argued

³⁷ E. Maposa ‘Developing an Ideal Turn Around – A Case for the Zambia Public Procurement Authority’ *University of Lusaka*

³⁸ M. Plaček *et al* ‘Factors Affecting the Length of Procedure in Public Procurement: The Case of the Czech Republic’ (2009) *Prague Economic Papers*

³⁹ K.V Thai ‘International Public Procurement: Innovation and Knowledge Sharing’ 2015, Volume 14

⁴⁰ K.V Thai (n 39)

⁴¹ World Health Organisation (WHO) ‘Challenges and Opportunities in improving access to Medicines through efficient public procurement in WHO European Region’

that there was need to harmonise health procurement laws and have uniform frameworks. The EU member states have, in the past, come together to create mechanisms to procure medicines under a common framework.⁴² The problems surrounding procurement in the health sector are not only unique to Europe but spread across the globe as

*“public-sector entities responsible for procurement of essential medicines and health commodities in developing countries often lack the technical capacity to efficiently ensure supply security. Under strict public scrutiny and pressures to be transparent, many agencies continue to use archaic procurement methods and depend on inflexible forecasts and cumbersome tendering processes.”*⁴³

The WHO in Zambia observed⁴⁴ that there was widespread corruption in the procurement of pharmaceutical products in the country and that there was an urgent need to usher in structures that would echo integrity and good governance in the procurement of pharmaceutical products. The sentiments reiterated by the World Bank are reflected in the Auditor General report on the utilisation of COVID-19 funds, it brought to light the grave mismanagement of funds as well as the disregard of procurement regulations. Corruption remains a challenge in health sector procurement.

Arney, Yadav, Mille, Wilkinson⁴⁵ observed that indeed developing countries have applied many different national procurement models. They further remarked that government organisations rarely possess the technical aptitude required to perform the procurement process efficiently and strategically. “Inadequate planning and forecasting, use of archaic procurement methods, and tendering yearly or multiple times a year contribute to high commodity costs, long lead times, stock imbalances, and, overall, commodity insecurity.”⁴⁶ In the case of entities in the public sector that handle medical procurement, there is often a gap in their technical ability ensure supply security. They alluded to the fact that until date, “government's use of strategic contracting practices in public procurement of health commodities, has not received much attention in most

⁴² 24 EU member states consolidated under a framework to procure vaccines.

⁴³L.Arney *et al* ‘Strategic Contracting Practices to Improve Procurement of Health Commodities, Global Health: Science and Practice’

⁴⁴ https://www.who.int/medicines/areas/policy/goodgovernance/zambia_s19892en.pdf

⁴⁵L.Arney *et al* (n 43)

⁴⁶ L. Arney *et al* (n 43)

developing countries.”⁴⁷ They argue that governments should see this as a basis to make significant improvements to the efficiency of their systems. “Enabling legislation and strengthened technical capacity to develop and manage long-term contracts could facilitate the use of framework contracts in sub-Saharan Africa, with improved supply security and cost savings likely to result.”⁴⁸

In 2002, WHO issued pharmaceutical procurement guidelines⁴⁹ for developing countries that have small procurement agencies. Although the guidelines are slightly outdated, they are instrumental to this research. Most importantly, the guidelines discuss the tendering process and allude to the fact that, “in some countries, existing laws and regulations need to be amended to more adequately address important issues that include the following:

- a. whether the tender should be open or restricted to prequalified suppliers,
- b. the tender period, and
- c. how the quantities to be purchased are estimated.”⁵⁰

The guidelines of the WHO would serve as a panacea to the challenges that are currently being faced in the Zambia health sector. An interrogation of the Honey Bee Pharmacy Case will show that the tendering process was flawed and falls short of the recommended guidelines.

1.7 Research methodology

The aim of this research, in tandem with the objectives highlighted, is to identify the challenges that exist under the Zambian procurement system in respect to the legal and regulatory framework. The study will also aim to explore on the factors that impede on the effective implementation of the Public Procurement Act. To achieve this, the study will be descriptive and exploratory. The core objectives shall be addressed in chapters three and four as they will explore the Zambian legal framework and its challenges whilst assessing the eminent challenges of health sector procurement.

⁴⁷L.Arney *et al* (n 43)

⁴⁸L. Arney *et al* (n 43)

⁴⁹ World Health Organisation (WHO) ‘Practical Guidelines on Pharmaceutical Procurement for Countries with Small Procurement Agencies’ (2002)

⁵⁰ World Health Organisation (WHO) (n 49)

For this undertaking, the dissertation will be completed by desktop work; no interviews will be conducted. The research will analyse and review of Acts of parliament, public reports, journals, and books on the subject matter.

1.8 Limitations of study

Limited information by way of legal academic writings exists around the area of public procurement in Zambia. The same is true for health sector procurement. For this reason, the research will be an opportunity to identify the legal gaps in prior literature and to present the need for further development in the area of public procurement as a whole and particularly around health sector procurement. With COVID-19 procedures unfolding it is still a problem to get accurate data because of the state of emergency.

1.9 Structure of chapters

Chapter One – Introduction

This chapter provides a foundational overview of the research work. It explores the challenges and questions that prompt the research and details the relevant literature on the research subject. Chapter one also addresses the significance of the study, its aims, the methodology employed, and limitations of the research in response to the answers the research topic pursues.

Chapter Two – Global guidelines on Public Procurement

This chapter will review the global perspectives on public procurement in terms of multilateral agreements, institutional frameworks, and policies aimed at improving global public procurement commitments. It will assess all internationally recognized best practices around health sector procurement.

Chapter Three – An overview of the past and current Zambian public procurement framework

This chapter will look at the history of public procurement in Zambia from independence until date. It will also review the institutional reforms and identify the legal challenges that have existed through the various legislative stages.

Chapter Four – Challenges of public procurement in Zambia: a health sector study

This chapter will investigate the challenges that are currently being faced under the health sector by will reviewing and dissecting the case that appeared before the Public Accounts Committee (PAC) from the Auditor General’s Report.

Chapter Five – Summary, conclusions, and recommendations

This concluding chapter will give a summary of all the chapters and give recommendations of areas of possible improvement in the public procurement process based on the research conducted.

1.0 Chapter two – Global guidelines on public procurement

2.1 Introduction

The function of public procurement is one that is necessary in any country. Since it is a function that requires substantial amounts of taxpayer's money, governments need to be prudent in how they conduct the acquisition of goods and services. The previous chapter provided a background and introduction to this research and laid out the key objectives that underpin this study. It identifies the challenges faced under public procurement with a specific focus on health sector procurement. In order to build on this research, it is imperative that a brief synopsis is given as a foundation in order to provide context for the study.

This chapter will illustrate the global framework of public procurement and showcase internationally accepted best practices that govern this discipline. It will provide an African perspective on the existing legal frameworks in the field of public procurement. Ultimately, the purpose of this chapter is to be a segue into the next chapter that will narrow down to the Zambian public procurement system.

2.2 International guidelines on public procurement

2.2.1 The impact of World Trade Organisation Agreement on Government Procurement

The challenges faced under public procurement have seen efforts by international institutions and states to bring into force frameworks that are aimed at curbing the problems. At a global level, “the most important international agreement with the highest number of signatories in this regard is the Agreement on Government Procurement (GPA) concluded under the auspices of the World Trade Organization (WTO).”⁵¹ Two previous version of the GPA were used to formulate the

⁵¹ The Agreement on Government Procurement, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization

revised 2012 Agreement: “the initial one forged in the course of the Tokyo Round of multilateral trade negotiations and the second negotiated in parallel to the Uruguay Round.”⁵²

Government procurement is fast becoming a component of world trade, and part of the work of the WTO.⁵³ Pascal Lamy, in respect to public procurement lamented the fact that there was a need to liberalise all trade, including public procurement. He further added that the concept of “buy national” and other restrictive government procurement measures tend to disregard foreign suppliers by placing emphasis on the selection of domestic suppliers or by creating complex administrative procedures that prove difficult for suppliers from outside procuring countries. He added that:

*... paradoxically, in some cases they may even raise the cost or impede the operations of domestic companies in the countries implementing relevant measures if such companies experience difficulties in sourcing domestically and cannot easily obtain waivers for purchases abroad. Third, as in other economic sectors, the implementation of discriminatory government procurement measures in one country may endanger pressures for the adoption of similar measures by other countries.*⁵⁴

The GPA was premised on the recognition to establish a comprehensive international framework outlining methods, laws, and regulations that enable free trade while enhancing the international structures that govern the way trade is carried out.⁵⁵ As a trade opening instrument, the GPA does acknowledge the importance of robust government instruments that ensure fairness as well as transparency in public procurement.⁵⁶

Paramount to the GPA was the need to enhance market expansion for all members based on reciprocity.⁵⁷ Additionally, the GPA and its negotiations aimed to ensure procedural and “transparency rules setting out minimum standards for public procurement in each of the GPA parties’ internal procurement markets, were modernized and their governance elements

⁵²Anderson, Muller ‘The Revised Agreement on Government Procurement (GPA): Key Design Features and significance for Global Trade and Development’ *International Law Journal*

⁵³ Arrowsmith, Anderson quoting (Pascal Lamy -Former Director-General of the World Trade Organisation) ‘The WTO Regime on Government Procurement: Challenge and Reform’ (2011)

⁵⁴ World Trade Organisation (WTO) ‘Overview of Developments in the International Trading Environment: Annual Report by the Director-General’ (WT/TPR/OV/12 of 18 November 2009), paragraph 140.

⁵⁵ *Preamble*, Agreement on Government Procurement (GPA) (n 51)

⁵⁶ Arrowsmith, Anderson (n 53)

⁵⁷ Anderson, Muller (n 53)

strengthened in important ways.”⁵⁸ The amended GPA text is in alignment with other relevant international instruments.⁵⁹ Finally, the GPA established a committee on government procurement that would foresee the implementation of “Work Programs”. The GPA is administered by the Committee on Government Procurement which comprises representatives of all its parties. The Agreement is enforced through domestic reviews on a national level and WTO dispute settlement mechanisms internationally.⁶⁰

“The Work Programs were the subject of specific proposed committee decisions that were appended to the Protocol of Amendment adopted on 30 March 2012.”⁶¹ They include:

- a. A Work Program to consider best practices with respect to measures and policies that the parties use to support the participation of small and medium-size enterprises (SMEs) in government procurement*
- b. A Work Program to enable parties to improve procedures followed in the collection and reporting of statistical data relating to the Agreement*
- c. A Work Program to promote the use of sustainable procurement practices, consistent with the Agreement*
- d. A Work Program to address restrictions and exclusions in parties' coverage commitments under the Agreement*
- e. A Work Program on safety standards in international procurement.”⁶²*

Ideally, members that accede to the GPA are required to liberalise all trade with exception to the scope of applicability which sets a threshold. It provides that the GPA will not apply to any procurement contract of a value of Special Drawing Rights (SDR) 150,000 or more.⁶³ “For contracts below the threshold, the parties shall consider, in accordance with paragraph 6 of Article IX, the application in whole or in part of this Agreement. In particular, they shall review the

⁵⁸Anderson, Muller (n 53)

⁵⁹Anderson, Muller (n 53)

⁶⁰ World Trade Organisation (WTO) https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm (Accessed 14 September 2021)

⁶¹Anderson *et al* ‘The revised WTO Agreement on Government Procurement (GPA): Key design features and significance for global trade and development (2017) WTO Staff Working Paper, No. ERSD-2017-04, World Trade Organization (WTO), Geneva

⁶² Anderson *et al* (n 61)

⁶³ Article 1(b) Agreement on Government Procurement (GPA) (n51)

procurement practices and procedures utilised and the application of non-discrimination and transparency for contracts of this nature in connection with the possible inclusion of contracts below the threshold in this Agreement.”⁶⁴

In a similar vein, the GPA is premised on the National Treatment and Non-discrimination⁶⁵ principals when it comes to dealing with foreign suppliers. Members are required to adhere to the guidelines concerned with public procurement enshrined in the Agreement. Additionally, the Parties must unconditionally provide equal treatment to the products and suppliers of foreign Parties defined as:

- a. treatment no less favourable than that accorded to domestic products and suppliers and
- b. treatment no less favourable than that accorded to products and suppliers of any other Party.⁶⁶

Despite originating from the WTO, the GPA “is a plurilateral agreement meaning only a subset of the full membership of the WTO” are parties. “There have already been efforts to deal with government procurement within the WTO at a multilateral level and some of these efforts are continuing.”⁶⁷“However, in contrast with many other areas of WTO work, there has been relatively little progress in addressing the issue at the multilateral level.”⁶⁸ For this reason, the current members of the WTO GPA include Armenia, Australia, Canada, “28 EU Member States (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden And the United Kingdom), Hong Kong China, Iceland, Israel, Japan, The Republic of Korea, Liechtenstein, The Republic of Moldova, Montenegro, New Zealand, Norway, Singapore, Switzerland, Taiwan (Chinese Taipei), Ukraine, and the United States.”

The GPA contains a national security exception, in line with Article 20 of the General Agreement on Tariffs and Trade (GATT),⁶⁹ which states that a party is allowed to take,

⁶⁴ Interpretation of Article 1(b) (n 51)

⁶⁵ Article 2 The Agreement on Government Procurement (n 51)

⁶⁶ Article 2(1) The Agreement on Government Procurement (n 51)

⁶⁷ Arrowsmith, Anderson (n 53)

⁶⁸Arrowsmith, Anderson (n 53)

⁶⁹ Article 20 ‘General Agreement on Tariffs and Trade (GATT) (1994)

“Any action or not [disclose] any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.”

Additionally, the GPA includes general exceptions modelled after GATT’s Article XX, outlined as, safety, human, animal, or plant life, or health and philanthropic institutions among others.⁷⁰

2.2.2 The European Directives on Public Procurement

The European Union and the European parliament implemented two directives on 26 February 2014 which set out to simplify the public procurement procedures and make them more flexible.⁷¹ The new rules on public procurement were aimed at promoting the single market while boosting jobs, economic “growth, and investment by introducing more transparent, fair and competitive rules that were to create increased business opportunities and greater competition.”⁷²

The first directive is on public procurement.⁷³ Ultimately, this directive is aimed at creating uniform procurement regulation of public contracts by or on behalf of member states’ authorities who are required to comply with the principles of the Treaty on the Functioning of the European Union (TFEU). The free movement of commodities, freedom of establishment, freedom to supply services, equal treatment, non-discrimination, mutual recognition, proportionality, and openness are among the principles mentioned. However, regulations should be written up, in accordance with national procurement processes, for public contracts over a particular value, to guarantee that those principles are put into practice and public procurement is opened up to competition.⁷⁴

The second directive covers “procurement by entities operating in the water, energy, transport, and postal services sectors.”⁷⁵ In light of the findings of the Commission staff working

⁷⁰ WTO Agreement on Government Procurement, 2021, Congressional Research Service at <https://crsreports.congress.gov/product/pdf/IF/IF11651> (Accessed 14 September 2021)

⁷¹ European Union Public Procurement Directives at https://ec.europa.eu/environment/gpp/eu_public_directives_en.htm (Accessed 14 September 2021)

⁷² Valenza *et al* ‘Assessing the Implementation of the 2014 Directives on Public Procurement: Challenges and Opportunities at Regional and Local Level’ (2019) *Commission for Economic Policy*

⁷³ Directive 2014/24/EU ‘European Parliament and of the Council on Public Procurement and Repealing Directive 2004/18/EC’

⁷⁴ Directive 2014/24/EU (n 73 above)

⁷⁵ Directive 2014/25/EU ‘European Parliament and of the Council on Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC’

paper titled "Evaluation Report — Impact and Effectiveness of EU Public Procurement Legislation," published on June 27, 2011, it appears appropriate to maintain procurement rules for entities operating in the aforementioned sectors, because national authorities continue to have the ability to influence their behaviour, including participation. Another reason to keep regulating procurement in those sectors is the closed nature of the markets in which those entities operate, due to the existence of special or exclusive rights granted by member states relating to the supply of, provision of, or operation of networks for providing the service in question.⁷⁶

One of the hurdles to the implementation of the directives has been the difficulty in transposing these Directives into local regulation.⁷⁷ This is primarily because different member states have divergent procurement laws and it is a mammoth task to align them with the directives. For example, Italy has had challenges in fully bringing the directives to form the basis of its national laws. The following interview was given by an Italian official:

*“One of the main difficulties is that Local and Regional Authorities work at a multi-level framework. Therefore, even if a member state has transposed the directive into national legislation, regional- local ‘declination’ is also needed for both administrative and regulatory aspects. For instance, Italy has transposed the directive, but the autonomous regions and provinces have their own competence in public procurement. So, to have full operationality of the directive it is necessary that also the local and regional ‘step’ is accomplished. In our case, the difficulties arise because of incomplete transposition of the directive at local level. Now we need to use part of the national legislation and part of the provincial one, and this is burdensome,”*⁷⁸

As a result, EU public procurement policy reflects two opposing dynamics. On the one hand, member states tend to prioritize national interests and promote protectionism, while the Commission works for more harmonisation at the Community level in order to strengthen the EU internal market.⁷⁹ The case of the EU procurement directive begs the question on whether it is

⁷⁶ Directive 2014/25/EU (n 75)

⁷⁷Valenza *et al* (n 72)

⁷⁸Valenza *et al* (n 72)

⁷⁹Pircher 'EU public procurement policy: the economic crisis as trigger for enhanced harmonization' (2020) *Journal of European Integration*

possible to attain uniformity when it comes to public procurement. The idea behind the directives is tilted more towards integration than disintegration. Despite increasing market integration, Pircher claims that the new criteria may be utilized at the state level to favour local suppliers and enable protectionism. These ideas must be investigated more in the future.⁸⁰

Non-compliance has become a serious barrier to the guidelines' efficacy as a result of the identified problems.⁸¹ The impact and efficacy of EU directives have been significantly questioned since their implementation. Suppliers must, after all, be permitted to the tendering system if member states impose fines for non-compliance. The public agency is compelled to re-tender the contract and/or award the contract to the claimant. "Ultimately, if the aggrieved supplier makes a reasonable case for wrongfully not being awarded the contract, he can put in a claim for damages and demand compensation."⁸²

2.2.3 The European Commission's Communication on Public Procurement Strategy

Following the directives issued in 2014 and the notable challenges experienced in terms of compliance, adoption, and implementation, it was observed that it has been a slow process of converting the directives into national law. However, most member states had implemented the directives. Many areas where changes in the national public procurement environment might contribute significantly to competitiveness and efficiency gains were highlighted during the European Semester process.⁸³

In 2017, the European Commission (EC) issued a Communication on Public Procurement, which emphasized the need of broad collaboration with member states.⁸⁴ This message introduces a public procurement strategy that lays out the overarching regulatory framework and identifies clear goals for improving procurement in practice and supporting EU investment.⁸⁵ The communication was set to focus on Six (6) key priorities namely;

⁸⁰Pircher (n 79)

⁸¹Gelderman *et al* 'Explaining Non-Compliance with European Union Directives: A Multidisciplinary Perspective' (2010) *Journal of Common Markets*

⁸² Directive 2014/24/EU (n 73)

⁸³Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions '*Making Public Procurement work in and for Europe*' Strasbourg

⁸⁴(n 83 above)

⁸⁵(n 83 above)

1. *“Greater incorporation of innovative, green, and social criteria in awarding public contracts, through publishing specific guidance such as the Buying Green Handbook “Guidance on innovation procurement”⁸⁶ and the upcoming guide on taking account of social considerations in public procurement aspects.⁸⁷*
2. *Professionalisation of public buyers with the 2017 recommendation on the EU Member States, highlighting the steps they should take to ensure that public buyers have the skills, technical knowledge, and procedural understanding needed to comply with the rules as well as develop a more strategic approach to procurement.⁸⁸*
3. *To encourage business, industries’, and associations’ participation in the market beyond their national borders by drawing up evaluation models for comparing different solutions on an objective basis and emphasising the need to involve SMEs.⁸⁹*
4. *To increase transparency, integrity, and quality of procurement data by promoting national contract registries*
5. *Digitisation of procurement processes with the development of e-procurement tools.*
6. *More co-operation among public buyers across the EU, such as high-level training for central purchasing bodies.”⁹⁰*

Despite the EC developing a procurement strategy aimed at improving the public procurement systems in member states, many of the countries are still plagued by inefficiencies due to corruption and unethical practices such as eastern European states.⁹¹ This is a clear indication that the problems that affect developed nations when it comes to procurement are more than likely multiplied when it comes to developing nations such as Zambia, which this study is concerned with.

⁸⁶ Buying Green! A Handbook On Green Procurement (2016) at <https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf> (Accessed 15 September 2021)

⁸⁷ OECD Public Governance Reviews, Reforming *Public Procurement: Progress in Implementing the 2015 OECD Recommendations* 2019 (OECD Publishing)

⁸⁸(n 86)

⁸⁹ (n 86)

⁹⁰ (n 86)

⁹¹Ada-Iuliana Popescu ‘Public Procurement Corruption in the European Union’ *Journal of Public Administration , Finance and Law*

2.2.4 Organisation for Economic Co-operation and Development on public procurement

Because of the enormous level of spending involved, the Organisation for Economic Co-operation and Development (OECD) recognizes public procurement as a critical pillar of government service delivery. Public procurement that is well-managed may and must play a key role in improving public sector efficiency and gaining citizens' trust. Public procurement systems that are well-designed also help to achieve important policy goals including environmental preservation, innovation, job creation, and SME growth.⁹² It also “recognises that public procurement is a key economic activity of governments that is particularly vulnerable to mismanagement, fraud, and corruption.”⁹³ The OECD Recommendation on Public Procurement is the overall OECD guiding concept that supports the strategic and comprehensive use of public procurement, and it is based on these values.

The OECD's proposals include twelve (12) comprehensive principles for modernizing procurement processes that may be used at all levels of government and state-owned businesses. The suggestions cover the whole procurement cycle while also combining public procurement with other aspects of strategic governance such as budgeting, financial management, and alternative service delivery methods.⁹⁴

- a. **“Transparency** – ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle.
- b. **Integrity** – preserve the integrity of the public procurement system through general standards and procurement specific safeguards.
- c. **Access** – facilitate access to procurement opportunities for potential competitors of all sizes.
- d. **Balance** – recognise that any use of the public procurement system to pursue secondary policy should be balanced against the primary procurement objective.
- e. **Participation** - foster transparent and effective stakeholder participation.
- f. **Efficiency** – Develop processes to drive efficiency throughout the public procurement cycle in satisfying the needs of the needs of the government and its citizens.

⁹²Public procurement is the cornerstone of strategic governance at <https://www.oecd.org/gov/publicprocurement/recommendation/> (Accessed 15 September 2021)

⁹³ Organisation for Economic Co-Operation and Development (OECD) ‘Recommendation of the Council on Public Procurement’ (2015)

⁹⁴ Organisation for Economic Co-Operation and Development (OECD) (n 93)

- g. **e-procurement** – improve the public procurement system by harnessing the use of digital technologies to support appropriate e-procurement innovation throughout the procurement cycle.
- h. **Capacity** – develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively.
- i. **Evaluation** – drive performance improvements through evaluation of the effectiveness of the public procurement system from individual transactions to the system as a whole, at all levels of government, where feasible and appropriate.
- j. **Risk Management** – integrate risk management strategies for mapping, detection, and mitigation throughout the public procurement cycle.
- k. **Accountability** – apply oversight and control mechanisms to support accountability throughout the public procurement cycle, including the appropriate complaints and sanctions process.
- l. **Integration** – support integration of public procurement into overall public finance management.”

In 2018, the OECD carried out a survey on the implementation of the recommendations in 34 countries, spanning from a range of topics relevant to the 12 integrated principles of the recommendation.⁹⁵ The report found that the recommendation had made a significant impact in the public policy arena. One of the key findings in line with the recommendation was that survey respondents are increasingly transforming their public procurement systems to support national and subnational strategic orientations.⁹⁶ An example of one such country is Sweden, that has developed a National Procurement Strategy in response to the challenges faced by its public sector.⁹⁷

2.2.5 The United Nations Commission on International Trade Law: Model Law on Public Procurement

The United Nations Commission on International Trade Legislation (UNCITRAL) has been working to revise the model law on procurement of goods, construction, and services. The model is a critical tool for harmonising and improving procurement processes in developing countries.⁹⁸

⁹⁵Organisation for Economic Co-Operation and Development (OECD) (n 93)

⁹⁶ Organisation for Economic Co-Operation and Development (OECD) (n 93)

⁹⁷ Organisation for Economic Co-Operation and Development (OECD) (n 93)

⁹⁸Yukins ‘Integrating Integrity and Procurement: The United Nations Convention Against Corruption and the UNCITRAL Model on Procurement Law’ (2007) *Public Contract Law Journal*, Vol 36, No.3, The George Washington University Law School.

In 1994, the first model legislation was published, and it quickly became a major international benchmark for procurement law reform. It established processes to ensure that the procurement process is competitive, transparent, fair, economical, and efficient.⁹⁹ The 1994 model law was later updated to reflect new practices, particularly those resulting from the use of electronic communications in public procurement, as well as experience gained in using the 1994 Model Law as a basis for law reform, while remaining true to the basic principles underlying it and not changing provisions whose usefulness had been demonstrated.¹⁰⁰

The 1994 model law was updated into the model of 2011. With this revision, it “was expected to contribute significantly to the establishment of a modern legal framework for public procurement that promotes economy, efficiency, and competition in procurement and, at the same time, fosters integrity, confidence, fairness, and transparency.”¹⁰¹ The modified UNCITRAL model law was expected to help all States, particularly developing and transitioning economies, improve their existing procurement laws and create new procurement laws where none currently exist, resulting in the development of more harmonious international economic relations and increased economic development.¹⁰²

Despite the fact that both UNCITRAL and the WTO have mandates dealing with international trade laws, their scopes are somewhat different. The WTO deals with inter-state interactions, whereas UNCITRAL's texts are primarily concerned with private law business transactions in individual nations (including tangential aspects of administrative or constitutional law).¹⁰³ UNCITRAL aims to enhance international commerce by harmonizing national procurement laws based on the basic principles of openness and competition.¹⁰⁴ However, it is arguably less rigorous in terms of international competition and more flexible in terms of national supplier protection.¹⁰⁵

Furthermore, “it supports the harmonisation of international standards and takes into account the provisions of the WTO GPA, the EU Directives (on procurement and remedies), the

⁹⁹ United Nations Commission on International Trade Law ‘UNCITRAL Model Law on Public Procurement’ (2014)

¹⁰⁰ UNCITRAL Model Law on Procurement (n 99)

¹⁰¹ UNCITRAL Model Law on Procurement (n 99)

¹⁰² UNCITRAL Model Law on Procurement (n 99)

¹⁰³ Arrowsmith, Anderson (n 53)

¹⁰⁴ Arrowsmith, Anderson (n 53)

¹⁰⁵ Arrowsmith, Anderson (n 53)

UN Convention against corruption, the Procurement Guidelines and Consultant Guidelines of the World Bank, as well as equivalent documents or provisions of other international financial institutions.”¹⁰⁶ It's worth noting that, while being negotiated through an intergovernmental organization, the UNCITRAL is not an international treaty.¹⁰⁷ As a result, governments or states that incorporate the UNCITRAL into their public procurement processes are not required to inform the UN when the UNCITRAL language is employed. This means that no monitoring and/or auditing will be carried out to require governments to review their public procurement systems' degree of conformity with the UNCITRAL.¹⁰⁸

Post 2011, various states have adopted the UNCITRAL Model into their national legislation. “Eleven countries in Africa, namely Gambia, Ghana, Kenya, Madagascar, Malawi, Mauritius, Nigeria, Rwanda, Uganda, Tanzania and Zambia based their public procurement reforms on the model law.”¹⁰⁹ Moreover, “the following organizations use the Model Law and accompanying Guide to act as a benchmark for public procurement law reform in countries of their operation: the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, Organization for Economic Cooperation and Development, and the World Bank.”¹¹⁰

2.2.6 Multilateral Development Banks on government procurement

Multilateral Development Banks (MDBs) have made significant progress in coordinating the way they buy goods and services in recent years. They are currently utilizing comparable rules and processes in many situations, albeit the interpretation of these techniques may still differ depending on the institution.¹¹¹ As seen under the UNCITRAL model, various MDBs such as the Africa Development Bank, The Asia Development Bank, the Inter-American Development Bank, the OECD, and the World Bank use the Model as a guide for reform in countries where they have on-

¹⁰⁶Hlope, Bimha ‘An Analysis of Impediments to Procurement in Selected Public Procurement Entities in the Kingdom of Eswatini’ (2020) *OSR Journal of Business and Management*

¹⁰⁷Hlope, Bihma quoting De La Harpe ‘Procurement under the Uncitral Model Law: A Southern Africa perspective’ (2015) *Potchefstroom Electronic Law Journal*

¹⁰⁸De La Harpe (n 107)

¹⁰⁹De La Harpe (n 107)

¹¹⁰ UNCITRAL https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement/status

¹¹¹Knowledge Kit: Multilateral Development Banks User’s Manual, Federation of the Indian Chamber of Commerce and Industry (FICCI)

going projects. These institutions cumulatively channel billions of dollars annually in loans and grants for infrastructure projects, development, and technical assistance to developing and member countries, which spend this money through processes that incorporate the public procurement regulations of these lenders/funders.¹¹²

Although the procurement process is subject to the rules of the lending institution, the process is managed by the borrower, usually a developing country public agency, with the funder merely taking a supervisory role to ensure that the process is properly conducted.¹¹³ The main reason why MDBs have procurement rules is, firstly, to ensure that loan proceeds are properly spent when the borrower conducts the procurement process and, secondly, to safeguard the method and process for identifying projects that require MDB financing.¹¹⁴

The majority of possibilities for procurement of products, equipment, civil works, and non-consulting services such as transportation and maintenance come during the project's execution stage. Most MDBs require the borrower to create a procurement strategy that outlines what items and services will be required, when they will be required, their estimated prices, and the procurement techniques to be utilized in broad terms.¹¹⁵

For example, the World Bank's Procurement Framework, which was adopted in July 2015 and has been in effect since July 2016, encourages adapted procurement practices that prioritize choice, quality, and value for public expenditure while allowing for country-specific adaptation. The procurement section of the World Bank assists partner nations in making effective use of public resources in bank-financed projects and by reforming their procurement ecosystems.¹¹⁶

The World Bank's operational procurement role is to provide:

1. Fiduciary and Operational Function

To guarantee correct design and utilization of resources to generate development results in client nations and offer greatest value-for-money, provide fiduciary monitoring and assist project planning and implementation. The Bank's procurement department provides

¹¹² Williams-Elegbe 'Public Procurement and Multilateral Development Banks: Law Practice and Problems' (2017)

¹¹³ Williams-Elegbe (n 112)

¹¹⁴ Knowledge Kit (n 111)

¹¹⁵ Knowledge Kit (n 111)

¹¹⁶ World Bank <https://www.worldbank.org/en/topic/procurement-for-development> (Accessed 15 September 2021)

fiduciary support for project procurement and contract administration, as well as assistance with portfolio monitoring.

2. Country Engagement

Governments wanting to enhance their public procurement function can turn to World Bank procurement experts for technical and country-specific advice and assistance. This includes rules and regulations, governance, and political settings, as well as professional institutions and technology infrastructure, such as electronic Government Procurement (e-GP).

2.3 Public procurement: the African standpoint

Procurement systems in many countries around the world have been influenced either substantially or to some lesser degree by the need to comply with trade agreements that open up public markets to international trade.¹¹⁷The procurement structures that exist in Africa fall under Regional Economic Communities (RECS) such as Common Market for Eastern and Southern Africa (COMESA) or Southern African Development Community (SADC). These respective RECS have set forth recommendations that are aimed at guiding their members on procurement related practices.

2.3.1 Guidance on public procurement from the Common Market for Eastern and Southern Africa

COMESA launched the Public Procurement Reform Project (PPRP) in 2001, with the goal of laying the basis for guaranteeing accountability and transparency, fighting corruption, and establishing an enabling legislative architecture in public procurement in COMESA nations, including Zambia.¹¹⁸The project was also sparked by demands from member states who claimed that some member states' public procurement policies were preventing increasing commerce in the

117 E. Caborn S.Arrowsmith 'Procurement Methods in the Public Procurement System in Africa' Cambridge University Press
118 Karangizi 'Regional Procurement Reform Initiative, 2003 at the Forum on Public Procurement Reform Dar-E-Salam'
Common Market for Eastern and Southern Africa (COMESA) Secretariate

COMESA area. As a result, COMESA saw the necessity to begin on the Public Procurement Reform initiative as part of a broader effort to establish a regional competition strategy.¹¹⁹

Between 2001 and 2009, the COMESA worked on two projects to strengthen public procurement reform capacity: (i) the COMESA Public Procurement Reform Project (PPRP), which was approved in 2001 and completed in 2004; and (ii) the COMESA Enhancing Procurement Reforms and Capacity Project (EPRCP), which was approved in 2006. The COMESA Secretariat in Lusaka, Zambia, planned the two programs for execution in the 19 COMESA member nations.¹²⁰

“The Key objectives¹²¹ of the Public Procurement Reform Project (PPRP) were to:

- a. Harmonise public procurement rules, regulations, and procedures in COMESA
- b. Improve national procurement systems and strengthen the capacity of COMESA member states in public procurement
- c. Enhance awareness of procurement opportunities in COMESA.”

The COMESA Directives of 2003 provided for members to adopt national legislation that was consistent with certain general international standards based mainly on the UNCITRAL rules.¹²² They required that states adopt review mechanisms and that solicitation should be broadly disseminated through media and be accessible by the general public, including the COMESA website, where possible.¹²³

In 2009, the COMESA Council made another step toward harmonization by adopting a standard procurement law that applies to any public procurement within the common market that falls below certain criteria.¹²⁴ The new regulations would apply to all regional competitive bidding unless the regulations stated otherwise.¹²⁵ The regulations required that member states reduce into their domestic legislation principals commensurate with the regulations. It was founded on the

¹¹⁹ Karangizi (n 118)

¹²⁰ Mamphuzasseril ‘COMESA Public Procurement Reform and Capacity Building Projects: Project Performance Evaluation Report’ (2012) Africa Development Bank Group

¹²¹ Mamphuzasseril (n 120)

¹²² Carbon, Arrowsmith (n 117)

¹²³ Carbon, Arrowsmith (n 117)

¹²⁴ G. Quinot ‘Current Developments of African Procurement Laws, Symposium: Europe Meets Us and Others: Current Developments in Procurement Law with a Focus on the Selection, Qualification, and Exclusion of Tenderers’ (2014)

¹²⁵ Common Market for Eastern and Southern Africa (COMESA) Legal Notice No. 3 of 2009, COMESA Official Gazette Vol. 15 No. 3 of 9 June 2009.

principles of competition and openness in public procurement procedures, as well as fairness and transparency, which included the publication of all necessary information for public procurement participation and supervision, accountability, and value for money.¹²⁶

In response to the COMESA Project, a report by the Africa Development Bank in 2012 found that despite the regulations put in place, there were “major shortcomings in COMESA member states’ procurement systems including: deficiencies in procurement practices, weak institutional capacity, discriminatory practices, restrictions against fair competition, lack of information on public procurement opportunities, and revenue loss through non-transparent practices.”

2.3.2 West Africa Economic and Monetary Union (WAEMU) procurement policy

“Niger and Senegal are founding members of the West African Economic and Monetary Union (WAEMU). The WAEMU Treaty was signed on 11 January 1994 by Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, and Senegal, with Togo and Guinea Bissau acceded to the Treaty on 1 January 1997. It was introduced to the WTO in March 2002.”¹²⁷ WAEMU adopted a "Code of Transparency in Government Finance Management," which instructs states to award public contracts and have them executed economically, transparently, and effectively by allowing all bidders who meet the selection criteria to compete and encouraging the participation of union business people, manufacturers, and consultants.¹²⁸

Other regional trade initiatives that are relevant for the countries considered in this volume, such as the Southern African Customs Union (SACU) and the Southern African Development Community (SADC), of which Zambia is a member, do not address government procurement.¹²⁹ The East African Community (EAC) has no detailed obligations applying to public procurement yet.

¹²⁶ Article 4 ‘Common Market for Eastern and Southern Africa (COMESA) 2009 Regulations’

¹²⁷ World Trade Organisation (WTO) ‘Trade Policy Review by The Secretariate – Niger and Senegal WT/TPR/S/2231 2009’

¹²⁸ Directive No. 02/2000/CM/UEMOA Article 2 (1)(2)

¹²⁹ Carbon, Arrowsmith (n 117)

2.4 Conclusion

This chapter provided a comprehensive global framework on procurement through analysis of the various directives that govern public procurement in an array of international institutions. Many regulations seek to strike a balance between national and international frameworks while they provide for the principles of transparency, efficiency, effectiveness, and equity. While many of the frameworks are similar in their pursuits to improve public procurement practices for their members, this chapter also identified some of the shortcomings that still pose difficulty for members to attain immaculate procurement systems. Finally, the chapter details that, in the African context, the guidelines are not as stringent, and they apply to fewer members in the region. The chapter presents a better understanding of public procurement from a global perspective thus providing a backdrop for the *Zambian public procurement context* which will be covered in more detail in chapter three.

2.0 Chapter three – An overview of the past and current Zambian public procurement framework

3.1 Introduction

The previous chapter outlined the existing global frameworks that surround public procurement. It looked at the World Trade Organisation (WTO) Agreement on Government Procurement, the European Union Directives on Public Procurement, the Organisation for Economic Co-Operation and Development (OECD) Council Recommendations, the United Nations Commission on Trade Law (UNCITRAL) Model Law on Public Procurement, as well as the Multilateral Development Banks position on public procurement. The chapter ended by detailing public procurement from an African perspective with a specific focus on the regulations provided by Regional Economic Communities such as Common Market for East and Southern Africa (COMESA) and West African Economic Union (WAEMU).

In this chapter, the researcher will give detailed insight into the legal and institutional framework around public procurement that exists in Zambia today. Furthermore, the chapter will look at the existing structures that govern procurement in the health sector while illustrating the efforts made by various public institutions to ensure compliance with public procurement principals. The main objective of this chapter is to show the progressive changes in the law from 1964 when Zambia gained independence from Britain to date.

3.2 The legal framework of public procurement in Zambia

The public procurement landscape in Zambia has seen multiple changes in the past decade. To appreciate the current system of public procurement, it is imperative that we look to the history of the legal and institutional frameworks as well as identify the challenges that existed throughout the process.

Coming from a background of colonial rule, the laws that have been enacted by Zambia post-independence have been heavily influenced by international laws and institutions. Many such establishments have rendered both technical and financial assistance toward ensuring that Zambia

builds a functional system that reflects international best practices as well as amplifies the basic tenets of transparency, firmness, competitiveness, and accountability. The World Bank, OECD, COMESA, and similar bodies have been instrumental to the transformation of public procurement laws in Zambia. For example, Zambia was among the few developing countries that used the OECD-DAV methodology for the assessment of National Procurement Systems.¹³⁰ Over the years, in a quest to curb corruption, there has been a concerted effort by the government to usher in laws that create a favourable environment that insulates the public procurement system from corruption, fraud, and theft, among others. These commitments by the government have seen a replication of the UNCITRAL Model Law on Public Procurement as evidenced by the enactment of the PPA of 2008 and later into the newly enacted PPA 2020.

Despite the progressive strides that have been made, sectors such as infrastructure development and health continue to experience malpractices that go against the government's efforts to fight corruption and building a solid public procurement system.

3.2.1 Public Finance (Control and Management Act) chapter 347 of 1969

In the early years post-independence, public procurement was governed by the Public Finance (Control and Management) Act of 1969.¹³¹ Procurement under this Act was executed by the public stores¹³² whose task was to provide an “efficient and centralized purchasing and distribution service for ministries and provinces. This was in order to maintain a constant supply of goods and services at a more competitive price than those on the open market.” The officers of the public stores would make the orders needed by various ministries before submitting them to the Central Supply and Tender Board.¹³³ The board would then proceed to make the purchases on behalf of the public stores.

This system in which the Tender Board made changes, was problematic. This was because in 1968, government ushered in an economic system that saw State Owned Enterprises (SOEs)

¹³⁰ OECD-DAC ‘Joint Venture for Procurement Country Pilot Program Zambia – Assessment of Public Procurement System’ August (2007)

¹³¹ Chapter 347 of the Laws of Zambia at

<https://www.parliament.gov.zm/sites/default/files/documents/acts/Finance%20%28Control%20and%20Management%29%20Act.pdf> (Accessed 15 August 2021)

¹³² Public Stores Regulation No 13 (1a) part III of Cap 347 of the Laws of Zambia

¹³³ Regulation 15 (3) (n 131)

become the main instruments of development in Zambia.¹³⁴ This enabled government to control and direct the economy in a bureaucratic manner through SOEs such as the Industrial Development Corporation (INDECO) and the Zambia Industrial and Mining Corporation (ZIMCO).¹³⁵ Moreover, between 1972 and 1991, Zambia was under the one party state rule of President Kenneth Kaunda's United National Independence Party (UNIP)¹³⁶ which meant procurement procedures and decisions were unilateral. One of the hallmarks under this regime was that there was little free competition in the market. Many SOEs were used as a source of wealth and political muscle by politicians of the day.¹³⁷

With a change in government in 1991, amidst growing concerns around the country's economic outlook, the Zambian government took radical measures to liberalise the economy.¹³⁸ This was necessitated by the states' financial accountability which was meaningless, high rising levels of maladministration, misappropriation of public funds, accounting irregularities, unconstitutional and unauthorized expenditures.

Business in this time was very restrictive, the government set in place reforms that were aimed at reducing business participation and set out restrictions on business ventures that could be entered into by Zambians and non-Zambians.¹³⁹ The policies pursued by UNIP were opposed to the development of private enterprises.¹⁴⁰

Therefore, under the procurement process, there was no tendering process to allow for bids by other parties. The negative to this system meant there was no transparency, accountability, and effectiveness. This system of public procurement remained functional until new legislation was ushered in in 1982 when there was need to restructure the procurement system.

¹³⁴ Craig 'State Enterprise and Privatisation in Zambia 1968- 1998' (1999) *University of Leeds*

¹³⁵ Phiri 'Colonial Legacy and the Role of Society in the Creation and Demise of Autocracy in Zambia, 1964-1991' (2001) *Nordic Journal of African Studies*

¹³⁶ Mushingeh, Chiponde 'The Evolution of One-Party Rule in Zambia, 1964-1972' *Trans African Journal of History*, vol. 22

¹³⁷ M.Lamer 'What Went Wrong? Zambian Political Biography and Post-colonial Discourses of Decline' (2006) 51 *Historia* 247

¹³⁸ Third United Nations Conference of the Least Developed Countries, Brussels May 2001, Country Presentation by the Government of Zambia: Action Program for the Development of Zambia, UNCTAD

¹³⁹ A.Beveridge 'Economic Independence, Indigenisation, and the African Businessman: Some Effects of Zambia's Economic Reforms' (1974) *African Studies Review*, Vol. 17, No. 3 (Dec., 1974), pp. 477-490

¹⁴⁰ N.Simutanyi 'The Politics of Structural Adjustment in Zambia' *JSTOR, Taylor & Francis Online*

3.2.2 Zambia National Tender Board Act

In 1982, parliament enacted the Zambia Tender Board Act.¹⁴¹ The Act established the Zambia National Tender Board (ZNTB) whose mandate was to regulate and control the procurement of goods and services by the government and all parastatal companies.¹⁴² The functions of The Board were run by the Central Tender Committee (CTC) which comprised various persons from other government institutions, namely, The Deputy Secretary to the Cabinet, Permanent Secretaries from the Ministries of Finance, Works and Supply, and Development and Planning, the Managing Directors of Zambia State Insurance Corporation (ZSIC), Zambia Electricity Supply Company (ZESCO), the General Manager of the Bank of Zambia (BoZ), Company Secretary of Zambia Consolidated Copper Mines (ZCCM), and, finally, the Director and Secretary of the Zambia National Tender Board (ZNTB).

The functions of the committee, which was in charge of all public procurement for government, were couched under the Zambia National Tender Board Act.¹⁴³ This involved inviting and awarding running contracts, examining and authorising the variation of tender procedures for the tender committees established under regulations of the Act, and, further, undertaking, and regulating the registration of the supply of goods, works, and services.

Salient Features of The ZNTB Act

The ZNTB Act came at a time when the government of Zambia sought to create a comprehensive legal framework to regulate public procurement. The framework consisted of the ZNTB Act and the Tender Regulations and the Procurement Guidelines.¹⁴⁴ The newly enacted piece of legislation had some significant features that distinguished it from the previous system under the Financial (Control and Management) Act of 1969.

a. Decentralisation

- The ZNTB Act attempted to decentralize the powers of the board by allowing for the creation of the CTC. However, it will be seen in the weaknesses, that this attempt

¹⁴¹ Chapter 394 of the laws of Zambia at <https://www.parliament.gov.zm/sites/default/files/documents/acts/Zambia%20National%20Tender%20Board%20Act.pdf> (Accessed 14 August 2021)

¹⁴² Section 3 (n 141)

¹⁴³ Section 5 (n 141)

¹⁴⁴ M. Lamer (n 137)

created a conflict of interest and impeded on the independence of the CTC in decision making. The procurement role in most public procurement systems is decentralized to a significant extent. Government agencies act as procurement entities in a decentralized system, fulfilling their demands for products, works, and services in line with the country's legal and/or regulatory standards. The decentralization of government authority demanded a decentralized procurement method, which contrasted with the centralised approach.¹⁴⁵

- The attempt to decentralize was exhibited when the regulations allowed for the creation of the Provincial Tender Committee.¹⁴⁶ The Act also allowed parastatal companies to create procurement committees.¹⁴⁷ It further allowed for the creation of tender committees within each governmental ministry.¹⁴⁸ Until recently, public procurement in most nations was centralized and hence a function of the central government. However, since government power is being devolved to provincial, state, and municipal governments, procurement now takes place at the national, subnational (province/state), and local levels.¹⁴⁹

b. Transparency

- The ZNTB Act made efforts to bring accountability and transparency to the procurement system. Although still under one party rule, the government attempted to open and restructure the procurement process with the help of the International Development Association (IDA) wing of the World Bank. The ZNTB made a provision for tendering by the public and set parameters under which a tender process was to be executed and managed.

Weaknesses of The ZNTB Act

The ZNTB aimed at addressing the weaknesses that were identified in the previous procurement system under the Financial (Control and Management) Act of 1969. Despite being slightly more

¹⁴⁵Khan, Naushad (n 3 above)

¹⁴⁶Tender Regulation 7

¹⁴⁷ Tender Regulation 14

¹⁴⁸ Tender Regulation 26

¹⁴⁹Khan, Naushad (n 3 above)

progressive than the former regime, there still existed some weakness according to the OECD¹⁵⁰ which stated that while the system under the ZNTB Act remained well documented with clear responsibilities and procedures, some shortcomings were identified upon assessment. These include:

- a. *“Open competitive bidding was not categorically stated as the default procurement method*
- b. *The complaints system structure and sequence were non-existent or, at most, ambiguous*
- c. *There were no standard bidding documents for the procurement of goods, services, and works. The ones that were in use at the time were adapted from the World Bank Standard Bidding Documents.*
- d. *Selective tendering was used in place of open competitive tendering due to time constraints which reason was not provided for in the regulations*
- e. *ZNTB was totally dependent on the Ministry of Finance and National Planning for its funding and, therefore, its independence as a regulatory body was questionable.*
- f. *Conflict of interest of ZNTB as a regulatory body because it participated in the procurement decision process through the CTC.*
- g. *The system had no procedure for monitoring national procurement statistics.”¹⁵¹*

These identifiable challenges that were being experienced by the ZNTB called for reform in the procurement system. The government sought assistance from various international institutions to align the procurement laws with international best practices and remedy the shortcomings of the Act, regulations, and guidelines. The urgent need to bring sanity to the regime of the day saw the Zambian government reach out to the World Bank. Thus, together with the World Bank in 1993, the government agreed on a Financial and Legal Management upgrading System (FILMUP)¹⁵² which:

- was an attempt by the World Bank to render assistance to the Zambian government by improving the procurement performance of the ZNTB and selected government

¹⁵⁰ OECD-DAC Joint Venture (n 130)

¹⁵¹ OECD-DAC Joint Venture (n 130)

¹⁵² OECD-DAC Joint Venture (n 130)

ministries through training, equipment, procurement reforms, and clarification of relationships.¹⁵³

- saw the Zambian and Swedish governments enter into an agreement to improve the former's procurement system. Hence under the Swedish International Development Corporation Agency (Sida) initiative, the Swedish government rendered assistance by way of training and capacity building.

The two projects mentioned above helped to reform the Zambian public procurement system, albeit at a slow pace. The Government was extremely keen on ensuring that it created a legal framework that was transparent and free of corruption. In this context, the World Bank championed public procurement reform in Zambia in collaboration with the Government of the Republic of Zambia. The Zambian public procurement system was studied by the World Bank in 2002. This resulted in the publishing of the Zambian public procurement system's "Country Procurement Assessment Review" (CPAR). The study's objective was outlined as follows: "...to study and analyse the existing procurement system in Zambia and to recommend suitable actions to improve the economy, efficiency, predictability and transparency of the procurement processes."¹⁵⁴

Convinced that the procurement system needed reform, the government proceeded to enact a new legal framework. The Public Procurement Act of 2008 was premised on the recommendations given by the World Bank, particularly, that Zambia should adopt the UNCITRAL Model Law on Procurement on the basis that the model law attempted to cure inefficiency and ineffectiveness in the procurement process, curb patterns of abuse of the system, and diminish "the failure of the public purchaser to obtain adequate value in return for the expenditure of public funds."¹⁵⁵

This legal reform also came in as part of the COMESA commitments to ensure that Zambia and all other member states of COMESA were required to include best international practices of public procurement in their domestic laws. The 2003 Public Procurement Reform Project (PPRP) under COMESA also helped Zambia to recognise the urgent need to bring the Procurement Act

¹⁵³ OECD-DAC Joint Venture (n 130)

¹⁵⁴ OECD-DAC Joint Venture (n 130)

¹⁵⁵ *World Bank 'Zambia: Country Procurement Assessment Report' (2002) Volume 2*

into alignment. Although the PPRP was not mandatory, it served as a useful guideline for member states.

3.2.3 Public Procurement Act 2008

The enactment of the Public Procurement Act of 2008¹⁵⁶ brought about both a legal and institutional change. The Public Procurement Act maintained the existence of the Zambia National Tender Board (ZNTB) renaming it the Zambia Public Procurement Authority (ZPPA).¹⁵⁷ The ZPPA is an independent body with perpetual succession, capable of suing and being sued and to do all things in its name as a body corporate.¹⁵⁸ The Act was ratified to promote “transparency and accountability in public procurement as well as to regulate and control practices relating to public procurement in order to promote integrity of fairness and public confidence in the procurement process.”¹⁵⁹

The World Bank played a key role in assisting Zambia to make the necessary reforms using the Methodology for Assessing Public Procurement (MAPS). MAPS was the standard and initiative that was created by the World Bank aimed at assessing the procurement policies of its member states. The OECD was also important in Zambia's procurement landscape. The joint venture between the OECD and the Development Assistance Committee (DAC) arose from a World Bank/OECD-DAC round table initiative in 2003/2004.¹⁶⁰ The Paris Declaration on Assistance Effectiveness was signed by OECD Member Nations in 2005 with the goal of ensuring that, within the context of aid effectiveness, partner countries built dependable country procurement systems and had long-term capability.

In July 2006, the OECD-DAC joint venture created a MAPS (Version 4) to measure the efficiency of the National Procurement System. With the intention of expanding the “use of the methodology, it was decided to select pilot countries for the exercise. The criteria for selection

¹⁵⁶ Public Procurement Act Number 12 of 2008

¹⁵⁷ Section 5 (1) (n 156)

¹⁵⁸ Section 5 (2) (n156)

¹⁵⁹ Preamble (156)

¹⁶⁰ OECD-DAC Joint Venture (n 130)

were: (i) Adherence to the Paris Declaration; (ii) Submission of Expressions of Interest; and (iii) Support from the donor community.”¹⁶¹

The main objectives of the Public Procurement Act of 2008 were premised on the recommendation of the CPAR Report by the World Bank. These were to fuse in international best practices on public procurement by adopting the UNCITRAL Model Law of 1994 as recommended for the World Bank. Zambia was one of the few countries in Southern Africa that adopted the UNCITRAL 1994 Model law according to S de la Harpe.¹⁶² Harpe pointed out that the Model was used as a benchmark for many countries to reform their public procurement regimes around Africa. The adoption of the UNCITRAL Model rules by some African countries was tied to their membership with COMESA. The scope and coverage of the model law was based on the presumption that the law applied to all procurement except that involving national security and defence as well as other types of procurement excluded from the law’s coverage.¹⁶³ Consequentially, the model law was essentially a framework setting forth basic rules on procurement that were meant to be supplemented by more detailed regulations of the state enacting the model law.¹⁶⁴

With the evident shortcomings of the ZNTB Act, the new Act was intended to remedy the weaknesses that were identified in the previous regime. For the first time, this Act expressly pointed out corruption and defined what amounted to corrupt practices to mean the “offering, giving and receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the procurement process or in contract execution.”¹⁶⁵ It also further provided that any controlling officer, Chief Executive Officer, or member of the committee that was found to engage in corrupt practices would have their employment terminated.¹⁶⁶ The commitment to fight corruption in the procurement system was of utmost concern for the Zambian government.

Therefore, this commitment to fighting corruption was evident when the government issued the National Anti-corruption Policy. This policy was the first comprehensive policy on the

¹⁶¹ OECD-DAC Joint Venture (n 130)

¹⁶²S. Harpe ‘Procurement under the Uncitral Model Law: A Southern Africa perspective’ *SCIELO*

¹⁶³J.JMyers ‘The New UNCITRAL Model Law on Procurement’ (1993)

¹⁶⁴ S. Harpe (n 162)

¹⁶⁵ Section 2 (n 141)

¹⁶⁶ Section 17(3)(b) (n 141)

fight against corruption in a thorough, coordinated, and inclusive manner, adopted in 2009.¹⁶⁷ It provided a framework for developing methods of preventing and combating corruption in a coordinated, inclusive, and sustainable way. It acknowledged that corruption is a complex, crosscutting problem, which required a multi-faceted approach to dealing with it.¹⁶⁸

A key feature of the new Act was a grievance mechanism that allowed for parties dissatisfied with the actions of the ZPPA to raise concerns through the relevant channels. The ZPPA is empowered to review the decision of an awarding authority. An application for the review of a decision made by a procuring entity had to be submitted within 10 working days from the date the bidder submitted the application or from the date the bidder was informed and became aware of the circumstances that gave rise to the application. If a party was not satisfied with the review process of the ZPPA, they had the opportunity to appeal the decision. The appeal process must be done by way of arbitration¹⁶⁹ and in accordance with the provisions of the Arbitration Act¹⁷⁰ No. 19 of 2000. The regulations, however, did not stipulate the circumstances under which an arbitral tribunal could terminate an awarded contract.

The Public Procurement Act of 2008 also expanded on the concept of non-discrimination and equal participation, stating that a person should not be discriminated against based on race, nationality, religion, gender, or other non-eligibility or qualification criteria, except to the extent that this Act allows.¹⁷¹ The idea of discrimination was taken from the UNCITRAL Model, which said that in the first instance, nations must have a policy of non-discrimination against foreign involvement in public procurement.¹⁷² However, there was a twist to this provision. In as much as the Act provided for non-discrimination, it placed a limitation on the condition: participation in open national bidding and selection was limited to citizens and local bidders.¹⁷³ If a foreign bidder wanted to openly bid in Zambia, the bidder was required to partner with a citizen or local supplier

¹⁶⁷ Africa Development Bank Group 'Report on Poverty Reduction Budget Support' at <https://www.afdb.org/en/projects-and-operations/p-zm-ka0-004>

¹⁶⁸ National Anti-Corruption Policy 2009 at https://www.academia.edu/37753195/NATIONAL_ANTI_CORRUPTION_POLICY_REPUBLIC_OF_ZAMBIA_REPUBLIC_OF_ZAMBIA

¹⁶⁹ Section 70(1) (n 156)

¹⁷⁰ Arbitration Act No. 19 of 2000

¹⁷¹ Section 37 (n 156)

¹⁷² World Bank Report (n 155)

¹⁷³ Section 26(1) (n 156)

or bidder in an open international bidding and selection.¹⁷⁴ This preference proved to be a deterrent to international bidders.¹⁷⁵

A prominent attribute of this Act was the need to involve the local community.¹⁷⁶ The Act guided that procurement procedures could adapt for the participation of local communities and non-governmental organizations as well as increased utilization of local materials and employment of labour-intensive technologies. As long as the procurement procedures followed were efficient, procuring entities could adopt community participation. Although this was the position of the Act, others argued that despite having emphasised the need to improve local community participation, the Act did not give much support to local domestic suppliers. The Act seemed to favour foreign goods over locally supplied ones.¹⁷⁷ The “Buy Zambia” campaign, an initiative of the Zambia Association of Manufacturers to encourage the support of local suppliers, only gained traction in later years.¹⁷⁸

A lack of enforcement remained one of the key challenges faced both at legal and regulatory level under the Act of 2008. The result of this was poor compliance leading to poor procurement practices and increased opportunities for corruption to prevail.¹⁷⁹

3.2.4 Public Procurement Regulations 2011

The Public Procurement Regulations¹⁸⁰ came into force in 2011. They were put in place to supplement to the Public Procurement Act (PPA) of 2008, particularly in exercise of the powers contained in Section 82 of the PPA of 2008 which gave authority to government Ministers to make regulations upon recommendation from the ZPPA. The new laws stated that the basic values of openness, competition, justice, economy, efficiency, value for money, and accountability would govern public procurement in Zambia.¹⁸¹ In addition to the fundamental principles, the regulations

¹⁷⁴Section 28 (6) (n 156)

¹⁷⁵Section 63 (n 156)

¹⁷⁶Section 36 (n 156)

¹⁷⁷Z.Duma ‘Benefiting Manufacturing from Zambia’s Public Procurement Systems Zambia Association of manufacturers’ at <http://zam.co.zm/benefiting-manufacturing-from-zambias-public-procurement-systems-2/http://zam.co.zm/pzc/> (Accessed 18 September 2021)

¹⁷⁸ Z. Duma (n 177)

¹⁷⁹ W.Booth ‘Public Procurement System In Zambia, A Case for procurement Monitoring’

¹⁸⁰Statutory Instrument No 63 of 2011, Public Procurement Regulations 2011

¹⁸¹Regulation 3 (n 180)

made it a requirement for the ZPPA to allow for the effective publication and dissemination of information pertaining to public procurement.¹⁸²

The regulations of 2011 came not very long after COMESA published the 2009 Public Procurement Regulations. The wording of the COMESA 2009 regulations meant that all members “shall” in its domestic legislation in relation to public procurement apply:¹⁸³

- a. *“Principles of competition and openness in public procurement regulations.*
- b. *Fairness*
- c. *Transparency, including disclosure of all relevant information for participation in, and oversight of, public procurement.*
- d. *Accountability*
- e. *Value for money”*

The Regulations of 2011 addressed several issues that were absent in the PPA of 2008. The PPA comprised 9 parts which included the preliminary, the objectives and functions of the ZPPA, rules regarding procurement entities, methods of procurement, general procurement rules, guidance on the procurement process, provisions for bidders and suppliers, arbitration as a mode of appeal for persons who were dissatisfied with the decisions of the ZPPA, and lastly, general provisions.

The Regulations of 2011 were more comprehensive and introduced progressive reforms which included:

- a. Procurement planning

The regulations provide that a procurement unit of any Ministry or Parastatal will prepare an annual procurement plan¹⁸⁴ that would include a thorough analysis of the products, works, and services required, as well as the purchasing agency's yearly priorities and an indication of whether any studies for the required bids would be required.¹⁸⁵ This and all other information vital to procurement in the entity in question should be included in the annual plan.

¹⁸²Regulation 4 (n 180)

¹⁸³ Common Market for Eastern and Southern Africa (COMESA) Public Procurement Regulations, Legal Notice no. 3 of 2009, Volume 15

¹⁸⁴ Regulation 26 (n 180)

¹⁸⁵ Regulation 27(a) (n 180)

b. Bidding process for consultation services

The PPA of 2008 provided for the bidding and supply of goods and services. The services provided for also included consultancy, however the scope was limited. Thus, The Regulations of 2011 gave a comprehensive position on the bidding process for open and limited consultation services. Services of an intellectual or advisory nature, the delivery of reports, drawings, or designs, including engineering designs, accounting, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice, assistance with institutional reforms, and software development were all defined as consultation services in the PPA 2008.¹⁸⁶ It provided that any procuring entity that sought to engage any consultancy services had to do so in line with the Regulations of 2011.¹⁸⁷ The regulation allows for entities to use either limited or open bidding to invite tenders for consulting services . The entity must evaluate the expressions of interests and develop shortlists based on the bidders.¹⁸⁸

c. Bidding for simplified bidding

The regulations elaborated on the methods of simplified bidding. Simplified bidding was defined in the PPA 2008 as a procurement method which includes comparing quotations from different bidders.¹⁸⁹ The Regulations added more structure to the process of simplified bidding, calling for increased transparency in the simplified bidding process. The regulations required compliance by entities¹⁹⁰ and directed that it was mandatory for procurement entities to make written requests for quotations using the standard documents provided by the ZPPA.¹⁹¹

d. Bidding for direct bidding

The Regulations also laid out a detailed reform for procuring entities to navigate the direct bidding processes.¹⁹² The regulations further outlined the procedures to be followed in the event a procuring entity was procuring from a sole bid.¹⁹³ Unlike the PPA

¹⁸⁶ Section 2 (n 156)

¹⁸⁷ Regulation 77 (n 180)

¹⁸⁸ Regulation 80 (n 180) (n 180)

¹⁸⁹ Section 2 PPA 2008

¹⁹⁰ Regulation 106 (n 180)

¹⁹¹ Regulation 107 (n 180)

¹⁹² Regulation 112 (n 180)

¹⁹³ Regulation 114 (n 180)

2008, the Regulations specified the procedure regarding negotiations¹⁹⁴ and emergency procurements.¹⁹⁵

e. Contract awarding

The Regulations introduced the steps to be taken before any contract can be awarded to the selected bidder by the procuring entity.¹⁹⁶ It states that the procuring entity must follow the laid down approval procedures, publish the name of the best evaluated bidder once selected, and provide details of the goods, services, or works to be undertaken, including things such as reference numbers and price.¹⁹⁷

f. Contract management

A contract manager was a new addition to the Regulations.¹⁹⁸ A controlling officer, or the CEO of the procuring entity shall appoint a contract manager for every contract awarded. In the case of Zambia, the contract manager should be a senior member of staff of the procuring entity. This role is the “active monitoring and control of the contract between the procuring and disposing entity to ensure delivery of a cost effective and reliable service at an agreed standard price.” However, Contract management involves delivery management, relationship management, and contract administration.¹⁹⁹

g. Procedure for investigations and appeal

The Regulations introduced a procedure for investigations and appeals.²⁰⁰ Unlike the PPA of 2008 that did not set out a procedure, the Regulations give in-depth steps on how inspectors should deal with complaints and appeals as well as the remedies that are available under the Act.²⁰¹

¹⁹⁴ Regulation 115 (n 180)

¹⁹⁵ Regulation 116 (n 180)

¹⁹⁶ Regulation 120 (n 180)

¹⁹⁷ Regulation 121 (n 180)

¹⁹⁸ Regulation 145 (n 180)

¹⁹⁹ Muhwezi, Ahimbisimbwe ‘Contract Management, Inter-functional Coordination, Trust and Contract Performance of Works Contracts in Ugandan Public Procuring and disposing Entities’ *European Journal of Business and Management*, Volume 7, no 20 2015

²⁰⁰ Part 14 Regulations of 2011 (n 180)

²⁰¹ Regulation 181 (n 180)

3.2.5 Public Procurement Act 2020

Weak enforcement mechanisms in the regulation of procurement as well as introducing electronic systems, necessitated the repeal and replacement of the Public Procurement Act of 2008. The need to enhance legislation on public procurement by, gave rise to the Public Procurement Act of 2020. Cabinet approved The Public Procurement Bill, 2020²⁰² for publication and introduction in Parliament in November 2020. The objectives of this act are to:

- a. *“revise the law relating to procurement to enhance transparency, efficiency, effectiveness, economy, value for money, competition, and accountability in public procurement.*
- b. *regulate and control practices relating to public procurement to promote the integrity of fairness and public confidence in the procurement process.*
- c. *promote the participation of citizens in public procurement.*
- d. *continue the existence of the ZPPA.*
- e. *repeal and replace the PPA of 2008.”*²⁰³

The strengthening of the oversight and regulatory role of the ZPPA was also reiterated in the Act as cardinal to public procurement. The Act also allows for the participation of Zambians in matters pertaining to procurement as part of ensuring Zambians fully contribute to the development of their country.²⁰⁴

The PPA of 2020 came into force on the 16th of April 2021.²⁰⁵ It was meant to address among other issues, price benchmarking through the publication of quarterly market prices, analysis of price reasonableness, mandatory usage of an electronic government procurement system, and the capping of contract variations to a maximum of 25% of the original contract price.²⁰⁶

²⁰²Public Procurement Bill 2020 at <https://www.parliament.gov.zm/sites/default/files/documents/bills/The%20Public%20Procurement%20Bill%2C%202020%20N.A.B%208.pdf>

²⁰³ Public Procurement Bill (n 202)

²⁰⁴Press Statement By The Chief Government Spokesperson On The Decisions Made By Cabinet At The 17th Cabinet Meeting Held At State House On Thursday, 23rd July 2020 at https://www.mlnr.gov.zm/?wpfb_dl=90

²⁰⁵ Circular No. 2 of 2021 Commencement of the PPA No 8 of 2020, ZPPA at https://www.zppa.org.zm/documents/20182/85608/CIRCULAR_2_OF_2021_COMMENCEMENT+OF+THE+PUBLIC+PROCUREMENT+ACT+NO.+8+OF+2020.pdf/f5fba563-8c53-42bd-9cff-bedd6490c8c7?version=1.0

²⁰⁶ Public Procurement Bill (n 202)

In this new Act, the use of an e-procurement system also known as the Government Procurement (E-GP) System is fundamental. This is defined as the “use of Information and Communications Technology by governments in conducting their procurement relationships with suppliers for the acquisition of goods, works, and consultancy services required by the public sector.”²⁰⁷ According to the ZPPA the digitalisation of the procurement system was aimed at providing solutions to the challenges that were faced by the Authority prior to the Act. These solutions include:

- a. certain manual procedures, such as tendering, bidding, and notification, may be replaced by computerized processes.
- b. the introduction of centralized storage of bidding information thus reducing paper usage and movement
- c. the reduction in environmental degradation as a result of using less paper
- d. the elimination or reduction of costly vendor visits to the procuring entities
- e. the elimination of geographical boundaries.²⁰⁸

According to the World Bank, adopting an e-government system that is mandatory for everyone to use will save the government significant time and resources, improve transparency, reduce corruption, open markets to international competition, and encourage the growth of local and small businesses because procedures and information will be accessible to all.²⁰⁹ The report then makes specific suggestions, including as concentrating the ZPPA's function on more strategic regulatory, development, and monitoring duties. Increased enforcement against fraud and corruption, as well as professional skills development for the procurement staff, are two more examples.²¹⁰

Currently, the e-procurement system is in effect notwithstanding the challenges that have been identified. “Electronic procurement has continued to gain ground in many organisations world over both in government and private institutions as a basis for competitive procurement and

²⁰⁷ Zambia Public Procurement Authority (ZPPA) <https://www.zppa.org.zm/e-procurement-system>

²⁰⁸ Zambia Public Procurement Authority (ZPPA) (n 207)

²⁰⁹ Ali, Aquino, Reso (n above)

²¹⁰ N.I Ali *et al* 'Improving Public Procurement in Zambia and How to get there with MAPS' (2020)

good practice.”²¹¹ The process of implementing e-procurement is hampered by vested interest from involved parties, lack of management support, and cost of equipment, among others.²¹² In 2016, the ZPPA mandated that all businesses and government agencies use electronic government procurement (e-GP). The e-GP is one component of a larger procurement reform agenda, and it was implemented with the goal of improving efficiency, effectiveness, and Value for Money (VfM) in government procurement.²¹³ Despite this reform in “government pronouncement, not much is being done by ZPPA and many other institutions on implementation of e-procurement.”²¹⁴

In addition to this, the internet facilities such as bandwidth, on which thee-procurement facility rides, are quite poor particularly in the third world. M. Sinkala also points out that the need for a highly trained IT staff is critical to the implementation of thee-procurement system, and that is seemingly lacking in Zambia. Other significant barriers to successful electronic procurement implementation in Africa include difficulties in selling the e-procurement concept internally to organizational stakeholders such as senior management and end-users, a lack of confidence, a fear of making mistakes, and a lack of technology and innovation champions within organizations.²¹⁵

3.3 Health sector procurement

In practice, procurement in the public sector is carried out by the Procurement and Supplies Unit (PSU). The PSUs were created as part of the law to decentralize powers from the ZPPA. It allowed for the creation of procurement departments in respective ministries and parastatals. In the health sector, the PSU is tasked with procuring pharmaceutical supplies and all health-related products for the Ministry of Health (MoH). Therefore, the PSU under MoH should abide by the principals set under the PPA to ensure transparency, fairness, competitiveness, and effectiveness whilst

²¹¹ C.K Kademaunga J. Phiri ‘Factors Affecting the Successful Implementation of Electronic Procurement in Government Institutions Based on the Technology Acceptance Model’ (2019) *Open Journal of Business Management*

²¹² M. Sinakala ‘Valuation of Benefits and Challenges of Implementation of Electronic Procurement (E-Procurement) In Public Organisations in Zambia at <http://155.0.3.194:8080/jspui/bitstream/123456789/147/1/evaluation%20of%20benefits%20and%20challenges%20of%20implementation%20of%20electronic%20procurement%20%28e-procurement%29%20in%20public%20organisations%20in%20zambia.pdf>

²¹³ K.M Chenga ‘Electronic Government Procurement (e-GP): A solution to institutional challenges in Zambia’s Medical Supply Chain or another technical solution?’ (2019) Faculty of Commerce, Graduate School of Development Policy and Practice. <http://hdl.handle.net/11427/31518>

²¹⁴ C.K Kademaunga,J. Phiri (n 211)

²¹⁵ C.K Kademaunga,J. Phiri (n 211)

remaining cognisant of the need to protect and achieve a high level of integrity by desisting from corrupt and collusive practices.

All procurement effected by the PSU is stored by the Medical Stores Limited (MSL) of Zambia which is an autonomous governmental agency established under the Companies Act Cap 388 of the Laws of Zambia. MSL is a State-Owned Enterprise (SOE), with Ministry of Finance being the main shareholder (98%) and the MoH the minor shareholder (2%). The Company is governed by a non- executive and²¹⁶ its mandate is to supply the nation with good quality drugs and medical equipment.²¹⁷ “In 1996, the responsibility for drug procurement was transferred to the Ministry of Health as part of a general government reform policy of re-locating public procurement activity into relevant line ministries. MSL’s operations since 1996 have therefore been limited to drug storage and distribution.”²¹⁸

In 2012, the Ministry of Health published a new directive for the provision and management of critical medicine and medical supply procurement and supply chain services. MSL was to take up all of these tasks and carry them out on behalf of the MOH, according to this mandate. The takeover of procurement services by MSL, as well as the provision of supply services directly to health institutions rather than through district shops, were two significant advances. The National Supply Chain Strategic Plan underpins this new mandate (2015-2017).²¹⁹

3.4 Infrastructure procurement/Public Private Partnership

Procurement under a Public Private Partnership (PPP) is governed by the Private Public Partnership Act²²⁰ as opposed to the Public Procurement Act and Regulations. The PPP Act stipulates that any procurement conducted under the Act must be fair, equitable, transparent, and cost-effective.²²¹ The Act stipulates that where the PPP Act is silent on a matter, reference will be drawn from the Public procurement Act of 2008.²²² This provision remains problematic as the PPA

²¹⁶Industrial Development Corporation (IDC) at <https://www.idc.co.zm/industry-sectors/health-care-2/medical-stores-limited/>

²¹⁷ Industrial Development Corporation (IDC) (n 216)

²¹⁸ W. Booth (n 179)

²¹⁹ Industrial Development Corporation (IDC) (n 216)

²²⁰ Public Private Partnership Act No. 14 of 2009 at

²²¹ Section 20 (1) a (n 156)

²²²Section 20 (1)a (ii) (n 156)

of 2008 was repealed and replaced by the PPA of 2020. The provisions of this section under the PPP Act need to be amended to bring it in line with the new PPA Act of 2020.

3.5 Conclusion

This chapter has given insight into the general public procurement system of Zambia. It provided an in depth look at the evolution of the laws governing the sector from the post-colonial period to the present day while detailing the challenges faced with each regulatory reformation and highlighting the progressive changes brought about by each reform. Additionally, this chapter looked at the influence of various international bodies, global organisations, as well as countries on the public procurement landscape in Zambia. The chapter investigated the regulations and bodies concerned with health sector procurement and closed with a glance at procurement under Private-Public Partnerships. This chapter has highlighted on the procurement objectives that have necessitated reform of public procurement process in Zambia such as the tenets of transparency, accountability, value for money, efficiency, and lack of corruption. With this backdrop, the next chapter will delve into the practical challenges of procurement in Zambia as well as underscore the shortcomings of procurement in the health sector that have necessitated this research.

3.0 Chapter four – Challenges of public procurement in Zambia: a health sector study

4.1 Introduction

Public procurement in Zambia has come under much scrutiny over the years both from the general populace and the international community. Reports of widespread corruption, lack of transparency, and lack of accountability have been widespread. With the advent of the COVID-19 pandemic, the gaps in the public procurement system in Zambia have become more apparent, more so in the health sector. Over the last couple of years, gross misconduct has been exposed in the health sector, yet few perpetrators have been brought to book. Having looked at the public procurement landscape in Zambia in Chapter Three, this chapter will use case examples in the procurement of health sector supplies in the country to provide insight into the issues that arise in the sector. Chapter Three provided a general overview of the public procurement process in Zambia, all the reforms that have been effected from post-independence to date, the influence of international best practices, and, finally, the regulations that govern procurement in public private partnerships as well as the health sector.

Against this backdrop, this chapter will expound on the drawbacks of the public procurement system, with reference to the health sector which is one of the biggest proponents of poor procurement practices. The chapter will begin with a snapshot of the challenges in procurement and then it will zoom into the challenges in the health sector and detail the legal implications of these challenges. At the core of the chapter, the researcher will focus on the controversial case of Honey Bee Pharmaceuticals, a company that supplied defective health kits to the government, as well as recount other health procurement cases that have come to the fore owing to the pitfalls of the procurement system within the health sector.

4.2 Procurement challenges in Zambia

“Globally, governments and other public entities adopt processes to acquire goods, works, and services needed to implement public projects, this is commonly referred to as public

procurement.”²²³ In Zambia, the government has made strides in ensuring that it creates an efficient public procurement system to improve the procurement of goods and services for the populace. The Zambia National Tender Board Act, the Public Procurement Act of 2008, the Public Procurement Regulations of 2011 and, lastly, the Public Procurement Act of 2020, have all made strides in the reformation and improvement of the system while addressing the weaknesses that have emerged in public procurement and, more so, have aligned the Zambia laws with international best practices.

Despite these progressive strides to reform public procurement, some challenges have been observed. In 2020, the World Bank issued a report that found that even though Zambia has managed to modernize its public procurement laws, it still experienced some problems around transparency, barriers to foreign bidders, delayed implementation due to lack of funds from the government, a lack of competition, and inflated contract prices.²²⁴ W. Booth has also noted that, despite having a relatively modern legal and regulatory framework, the Zambian procurement system faces a number of challenges as a result of non-enforcement or poor enforcement of the Act's provisions, such as sanctions for breach, resistance to change, limited capacity, and, in some cases, simply incompetence.²²⁵

“The observation within civil society is that there are high levels of corruption in the procurement processes in Zambia.” According to Booth, “Zambia loses millions of Kwachas due to corruption and corrupt tendencies every year.”²²⁶ This inference can be drawn from the Auditor General Annual Report showed that Zambia lost close to 105 million Kwacha (almost 5.8 million US Dollars) in 2019 due to corrupt practices by public institutions. The report also pointed out that the failure to adhere to procurement regulations and contract provisions remained an obstacle in the procurement sector.²²⁷

Whilst the challenges of public procurement remain prevalent in all sectors of the economy, the health sector has been greatly affected. The COVID-19 Pandemic has continued to expose the

²²³ B. Ado-Fosu ‘Compliance with Public Procurement Act and its Correlation with Procurement Performance of Senior High Schools in Ghana’ (2016) *European Journal of Business and Management*

²²⁴ N.I Ali *et al* (n 210)

²²⁵ W. Booth (n 179)

²²⁶ W. Booth (n 179)

²²⁷ Simplified Report Of The Auditor General On The Accounts Of The Republic For The Financial Year Ended 31st December 2019 at https://www.ago.gov.zm/?wpfb_dl=236 (Accessed 21 September 2021)

procurement pitfalls that plague the health sector today. The challenges presented by COVID-19 represent an opportunity to analyse and rethink the role of public procurement as a strategic tool to respond to the real needs of citizens.²²⁸ Beyond this, there is need to revisit the governance and regulation of public procurement to identify the legal reforms required to make it more efficient and effective. The World Bank revealed that the Coronavirus has greatly impacted procurement systems and that work needs to be done to ensure effectiveness in procurement operations.²²⁹

4.3 Challenges in public procurement within the health sector

The Zambian government is mandated by the constitution to provide health care to all citizens as each person has the right to healthcare services.²³⁰ The right to health, widely documented in international human rights instruments, allows for access to medication and affordable health services. This basic human right impresses upon governments the obligation to take steps to progressively realize that right.²³¹ Through the responsible ministries, governments need to engage in the trade of procuring health care resources and building infrastructure necessary to fulfil the mandate of providing health care to all citizens. This task must be in line with the procurement laws and regulations that exist.

According to the European Commission,²³² the procurement issues that apply to various purchases made in the health sector may be divided into three main categories, none of which are unique to the health sector but are particularly relevant to it. The first is the transaction's complexity. The second is the power imbalance on each side of the transaction between the procurer and the provider, particularly if circumstances limit competition on the supplier's side (barriers to entry, monopoly, etc.) or on the purchaser's side (monopoly, etc). (small purchaser with limited technical

²²⁸ Fighting COVID-19 through Public Procurement, Inter-American Network on Government Procurement, <http://www.oas.org/docs/ricg/Webinar-Agenda-eng-DGPE-Fighting-COVID19-thru-Public-Procurement.pdf>

²²⁹V. Sharma 'COVID-19 Challenges and Response: How Procurement Underpins the Worlds Bank Response to the Pandemic 2020' World Bank Blogs

²³⁰ Article 52 (1)(a) Part 3, The Constitution of Zambia at

<https://www.parliament.gov.zm/sites/default/files/documents/general/Bill%20of%20Rights.pdf>

²³¹A.H Mabika , L. London 'Zambia: The right to health and international trade agreements' Southern and Eastern African Trade, Information and Negotiation Institute (SEATINI), School of Public Health and Family Medicine, University of Cape Town

²³²Public Procurement in Health Care Systems, *Opinion of the Expert Panel on Effective Ways of Investing in Health (EXPH)*, The European Commission at

https://ec.europa.eu/health/sites/default/files/expert_panel/docs/027_public_proc_healthcare_sys_en.pdf

skills). The third concern is policy goals that may be in conflict. “The three challenges are looked at as they apply to pharmaceuticals, medical devices, and e-health solutions.”²³³

The Zambian health sector is no exception to the issues detailed by the European Commission. Despite progressive strides being made in the public procurement system in Zambia, and particularly under the health sector, malpractice continues to be on the rise. Procurement in the Zambian health sector has been a subject of great attention to several stakeholders such as the World Bank, the OECD, Multilateral Development Banks, as well as the Zambian populace. Several assessments have expressed concerns about the lack of openness, inadequate adherence to good governance norms, and the potential of procurement corruption.²³⁴ Furthermore, internal evaluations of the Ministry of Health's Procurement and Supplies Unit have found several places where the system is vulnerable to corruption and flaws.²³⁵ Indeed COVID-19 in Zambia has caused distress to the public procurement system as evidenced by the Auditor General's COVID-19 Report.²³⁶ It was suggested that during the COVID-19 Pandemic, there has been non-compliance of the Act and Regulations by procuring officials. Contracts were awarded without following the due process of the law and often without approval from the ZPPA.

Zambia recently enacted the Public Procurement Act of 2020, which exists alongside the Public Procurement regulations of 2011. These two pieces of law guide the procurement system of all ministries and parastatals, unless the law provides otherwise, such as the Private-Public Partnership Act which forms its own rules on public procurement.²³⁷ To provide practical insight into the concerns in the health care system, the next section will detail the case of Honey Bee Pharmacy and outline the repercussions thereof.

4.3.1 Background to the Honey Bee Pharmacy Limited case

Honey Bee Pharmacy Limited is a company registered and incorporated in Zambia whose main businesses is the dealing of pharmaceutical supplies. Before August 2019, the pharmacy was

²³³ The European Commission (n 232)

²³⁴ OECD-DAC Joint Venture (n 130)

²³⁵ W. Booth (n 179)

²³⁶ Interim Report of the Auditor General, Audit on Utilisation of Covid-19 Resources As at 31st July 2020 at

https://www.ago.gov.zm/?wpfb_dl=203

²³⁷ Section 20 Private- Public Procurement Act 2009

barely known and did not have a website nor an online presence. It was this nondescript pharmacy that the government contracted to supply USD17 Million worth of medical materials. In 2020 the Auditor General of Zambia released a damning report²³⁸ which found that the Ministry of Health (MoH) had ordered the procurement of 50,000 health centre kits which comprised paracetamol tablets, lubricated latex condoms, latex examination gloves, and soaps that were defective and not fit for use. According to the bidding document, the tender was split into five (5) batches so that the Ministry did not have to rely on one supplier for the delivery of the kits.

*Honey Bee Pharmacy Limited v Zambia Medicine Regulatory Authority*²³⁹

This is a matter that was commenced in the High Court of Zambia by Honey Bee Pharmacy Limited against the Zambia Medicines Regulatory Authority (ZAMRA). The Plaintiff, Honey Bee, rose on the contention that the Defendant, ZAMRA, was not party to the contract with MoH and as such, was not in a position to issue threats nor disparaging and unverified remarks suggesting that despite the MoH issuing a certificate of fitness, the goods supplied by the Plaintiff were defective.²⁴⁰ In this matter, the Plaintiff contended that it bade and won the tender and supply of 22,500 health centre kits with the MoH. By a special condition 9.1c of the contract of supply, the goods contracted were subject to a testing and confirmation procedure as a conditional precedent for awarding a certificate of acceptance.²⁴¹ Honey Bee denied the allegations by ZAMRA and sought the court to compel ZAMRA from revoking its license.

As part of its defence, Honey Bee produced evidence from three international laboratories in an attempt to show that the kits that it supplied to MoH were not defective and that the publications issued by the Defendant were a malicious attempt to tarnish the reputation of the Plaintiff both locally and internationally.

In the matter, the Plaintiff sought various reliefs from the court. Firstly, it sought an order that the Defendant should not revoke its license, secondly, that the matter be referred to arbitration as prescribed by the contract, and, finally, that the Defendant through its servants or agents desist from issuing remarks intended at injuring the Plaintiff's reputation.

²³⁸ Report of the Auditor General on the Accounts of the Republic for the Financial Year ended 2019, at https://www.ago.gov.zm/?wpfb_dl=207

²³⁹ Honey Bee Pharmacy Limited v Zambia Medicines Regulatory Authority, 2021/HP/0083

²⁴⁰ Statement of Claim para6 (n 239)

²⁴¹ Statement of Claim para 4 (n 239)

ZAMRA, in its defence, claimed that it had never granted a license to Honey Bee Pharmacy Limited, but it did grant a license to Honey Bee Pharmacy, a sole trader. It further stated that the issued publications were not maliciously made, arguing that, the contracted goods were tested by reputable national laboratories such as Zambia Bureau of Standards (ZABS), National Drug Quality Control Laboratory, and the Zimbabwe Medicine Control Authority and did not meet the specified criteria.

The matter is still in court pending determination.

The People v Chilufya Chitalu

Following the Honey Bee debacle, the then Minister of Health, Chitalu Chilufya, was fired by the President. The reasons for his dismissal were not supplied, however, it was amid investigations by the Anti-Corruption Commission (ACC) surrounding the procurement of defective goods from Honey Bee Pharmacy. The details of the case are outlined below.

As a consequence of the Honey Bee Case, a criminal matter was initiated in the courts of law which sought to prosecute the Former Minister of Health, Chitalu Chilufya, as well as any other people that were directly involved. The named individuals include, MoH Procurement Officer Wilson Lungu, ZAMRA Director-Laboratory Services Bonaventure Chilinde, as well as, Zakir Husen Motala, Chomba Kaoma, Imran Lunat, and Abdurrauf Abdurahim Motala of Honey Bee Pharmacy. The matter arose after a lawyer, Joseph Chirwa, the complainant, had the matter commenced by the National Prosecution Authority (NPA).

The parties involved were facing six counts of wilful failure to comply with the law and applicable guidelines relating to procurement, obtaining a pharmaceutical license without complying with lawful authority, and formulating false documents, among other charges relating to the procurement and supply of defective products to the MoH. Lusaka Magistrate, Chibabula Chinuda discharged all the accused after the complainant decided to withdraw his complaint after the matter was allocated on January 19, 2021.

Incidentally, none of the officials implicated in the Honey Bee case have been prosecuted, nor have they paid back the money that was paid them for the defective products that were distributed on the market by Medical stores. This and many more accounts provide insight into the hurdles that are experienced in the procurement of goods in the health sector. As these challenges

are rife, their implications stretch far beyond the health sector and have a massive impact on the public sector and the country as a whole. The next section will look at each of these challenges and their effects on the sector in isolation.

4.4 Legal Implications and Challenges

4.4.1 Transparency

Transparency forms the bedrock of an effective and efficient public procurement system. An array of analysts on modern systems of governance have acknowledged the principle of transparency as paramount in promoting good governance.²⁴² Transparency in procurement involves procuring entities providing open, adequate, and timely processes at each stage of the public procurement cycle.²⁴³ That means that in its generic form, “transparency has been defined as openness, honest visibility, and ready accessibility to information about individuals, businesses, and government entities.”²⁴⁴

Transparency in public procurement not only promotes accountability and assures access to information, but it also helps level the playing field for companies, allowing small and medium-sized businesses to compete on an equal basis.²⁴⁵ To enable transparency in the public procurement system, the contract management processes should be well documented and widely publicised in a manner that ensures stakeholders are able to easily access all relevant information.²⁴⁶ Furthermore, such a system should guarantee that award choices are made using widely disclosed criteria, and that the winner's name and prize amounts are made public. It should also provide a stress-free mechanism for ensuring that processes are followed. Because of the constraints imposed by national security, the complex and constantly changing demands of government, as well as the

²⁴² A.Osei-Afoakwa ‘How Relevant is the Principal of Transparency in Public Procurement? developing Country Studies’ (2014)

²⁴³ Organisation for Economic Co-Operation and Development (OECD) ‘Checklist for Supporting the Implementation of OECD Recommendation of the Council on Public Procurement: Transparency’

²⁴⁴ Osei-Afoakwa (n 242)

²⁴⁵ Organisation for Economic Co-operation and Development (OECD) ‘Preventing Corruption in Public Procurement’ (2016)

²⁴⁶ S.J Evenett, B.M Hoekman ‘Transparency in Government Procurement: What can We Expect from International Trade Agreements?’ (2003) *Kluwer Law International*.

need for transparency, competition, accountability, and non-discrimination, procurement processes and procedures must be transparent.²⁴⁷

According to the World Bank Report on Zambia, transparency remains one of the key challenges of the public procurement system.²⁴⁸ Transparency has been at the cornerstone of all Zambia procurement reforms. Specifically, the PPA of 2020 highlights the need to enhance transparency to improve public procurement. Despite the mention of transparency as a key tenet of public procurement laws in Zambia, implementation remains a challenge. As previously discussed, Zambia replicated the UNCITRAL Model Law on Public Procurement and transparency remains at the core of this model. However, lack of transparency remains a key hindrance in the procurement process as was indicated in the Honey Bee Pharmacy Case. The importance of “transparency in health sector procurement minimises waste, preventing corruption and fraud, and, thus providing better value for money for governments and, ultimately, citizens.”²⁴⁹ This cannot be overstated.

To help curb the transparency challenge under the health sector, various organisations have begun working with local entities to create a more open system for procurement. Open Contracting for Health (OC4H), which is a Foreign and Common Wealth Development Office (FCDO) funded project, seeks to improve the transparency of public procurement in the health sector in conjunction with Transparency International Zambia (TIZ).²⁵⁰ Since 2018, TIZ have been working towards developing the capacity of government partners to implement open contracting. The initiative advocates for the timely disclosure and usage of public procurement data on accessible platforms so as to improve transparency and accountability in health systems.²⁵¹ Additionally, the OC4H project has sought to increase the capacity of Civil Society Organisations (CSO) to provide independent oversight to the government operations, as well as to facilitate the diversity of

²⁴⁷ A.S Oyegoke ‘Transparency in Public Procurement: A study of the European Union Directives for Public Works, Supply and Service Contracts’ (2012) *International Journal of Business excellence*

²⁴⁸ N.I Ali *et al* (n 210)

²⁴⁹ Transparency International, *Transparency in Health Sector Procurement*, G20 Position Paper 2016

²⁵⁰ Enhancing Transparency of Public Health Procurement in Zambia, <https://ti-health.org/content/enhancing-transparency-of-public-health-procurement-in-zambia/>

²⁵¹ Open Contracting for Health (OC4H), Transparency International at <https://ti-health.org/open-contracting-for-health/>

suppliers in the health sector.²⁵² Training is offered to government officials to enhance their knowledge and awareness in areas of procurement transparency and e-procurement.²⁵³

Despite having these structures in place, the blatant disregard of the provisions of the Act, the Regulations and other frameworks that help to curb the challenges of public procurement is apparent. Honey Bee Pharmacy, for example, received tender number MoH/SP/032/19 after a decision to buy 50,000 health centre kits through a limited bidding procedure, according to MoH sources.²⁵⁴ MoH only invited a few companies to tender for the supply of the testing kits.

“Records showed that 10 companies were invited to take part in the limited bidding process; among them Shalina Pharmaceuticals, NRB Pharma Limited, Kingphar Limited, Yash Pharmaceuticals Ltd, Missionpharma (Z) Limited, International Drug Company Limited, Baxy Pharmaceutical Manufacturing Company Limited, Pharmanova Zambia Limited, Artemis Pharmaceuticals Zambia Limited, and Honey Bee Pharmacy Limited.”²⁵⁵

The Act provides that one of the methods that can be used by procuring entities to procure goods and services is through limited bidding.²⁵⁶ The objective of limited bidding is to achieve competition and value for money,²⁵⁷ on the condition that, limited bidding be used where there are limited suppliers or there is an urgent need for the goods, works, or services.²⁵⁸ This process was followed in the Honey Bee case, and a number of the above mentioned suppliers were invited. The negative consequences of restrictions on the bidding process, give rise to monopoly or oligopoly to a small number of bidders that are well known and, in turn, they can charge higher prices knowing that there are fewer competitors that may bid lower.²⁵⁹ This has been observed in MoH procurements, where a few suppliers remain key players in the supply and procurement process.

Ideally, health sector procurement should be done under unrestricted tendering “or open tendering which can elicit the lowest prices from suppliers, but there are persuasive arguments for

²⁵² Open Contracting for Health (n 250)

²⁵³ Open contracting for Health (n 250)

²⁵⁴ Auditor General’s Report (n 238)

²⁵⁵ Auditor General’s Report (n238)

²⁵⁶ Public Procurement Act 2020 Section 42 (1)

²⁵⁷ Public Procurement Act 2020 Section 42(1)

²⁵⁸ Public Procurement Act 2020 Section 42(2)

²⁵⁹ Dijkema, Gunderson ‘Restrictive Tendering: Protection for Whom? Cardus Construction Competitiveness Monitor’ (2017) White Paper

restricted tendering.”²⁶⁰ First, an unlimited tender might generate a high number of answers, especially in the early years, complicating the procurement agency's data processing and decision-making at a time when it is least prepared to deal with administrative problems. Second, unrestricted tendering prevents pre-screening and the creation of performance requirements for a supplier in terms of manufacturing process, packaging, and item delivery.²⁶¹ However, owing to the benefits attributable to open tendering, it must remain the preferred option for the procurement of health resources because it promotes competition, a fundamental principle in public procurement. While recognizing that there are certain circumstances in which “procurement can take place in the absence of competition, the principle that it is a means of selecting the most economically advantageous tender implies that there is a competitive market.”²⁶² While MoH called for a select few suppliers to bid for the tender in the Honey Bee case, the report shows that the MoH did not satisfactorily conduct pre-screening of the parties that tendered.

The report suggests that there was no transparency in the way that the tender was dealt with. Firstly, only a limited number of bidders were invited to bid which impedes on competitiveness. Secondly, information on the details of the tender was not made available to the public which compromises access to information and disclosure. Thirdly, the matter was dealt with in secrecy that meant that the public was not made aware of the goings on. The argument presented by the MoH to support their selected bidding process, was that it was an emergency situation. While governments are allowed to procure goods and services under emergency situations, this must not be used as a derogation from public procurement rules.

“A restricted tender is not advertised because the supplies are either shortlisted (in cases of emergency procurement) or known due to there being a limited number of them.”²⁶³ In practice, however, limited bidding can have a negative implication on enhancing free competition and transparency. The MoH pointed out that, in this instance, the reason for selecting few bidders was due to COVID-19 and the emergency surrounding the pandemic. Countries are vulnerable to numerous hazards during emergencies, and it is critical that authorities make effective use of

²⁶⁰ M. Huff-Rousselle, Burnett ‘Cost Containment Through Pharmaceutical Procurement: A Caribbean Case Study’ *The International Journal of Health Planning and Management* at <https://univofpretoria.on.worldcat.org/v2/search/detail/5155037239?queryString=restrictive%20bidding%20health%20procurement%20&clusterResults=true&groupVariantRecords=false> (Accessed 28 August 2020)

²⁶¹ M. Huff-Rousselle, Burnett (n 260)

²⁶² M. Huff-Rousselle, F. Burnett (n 260)

²⁶³ Khan, Naushad. *Public Procurement Fundamentals: Lessons from and for the Field*, Emerald Publishing Limited, 2018.

available public resources to prevent, control, and recover from the negative consequences of such occurrences.²⁶⁴

The COVID-19 Report²⁶⁵ also observed that the MoH awarded Procurement Contracts Awarded without Competition Contrary to the Public Procurement Regulations No. 39 (4) which states that, “*Where an emergency situation affects the choice of procurement method, the procuring entity shall not automatically exclude competitive methods of procurement but shall obtain competition to the maximum extent practical in the circumstances*”. In addition, the investigation found that the Ministry of Health went outside conventional bidding, resulting in unfair and uncompetitive procurements. Cover bidding happens when a rival makes proposals that are meant to be unsuccessful so that another conspirator can win the contract, according to the Certified Fraud Examiner's Manual. A review of financial documents and contracts related to the COVID-19 epidemic kept at the Ministry of Health headquarters revealed cover bidding tactics in four (4) contracts.²⁶⁶

4.4.2 Corruption and unethical practices

Public procurement is one of the most vulnerable areas of government to corruption. Corruption risks are heightened by the complexity of the process, the close connection between public officials and the private sector, and the vast number of players, in addition to the volume of transactions and financial interests at stake.²⁶⁷ While “the conditions which lead to corruption within the procurement process are many, what is certainly a facilitator is the potential for substantial financial rewards from large procurement contracts.”²⁶⁸ Decentralisation, it has been suggested, can help to reduce the risk of corruption by providing constituents with more knowledge about the procurement process and therefore holding public officials accountable for procurement results.²⁶⁹ Decentralization, on the other hand, isn't a panacea, because if there aren't strong transparency and

²⁶⁴ Public Procurement During State of Emergency: Minimum Requirements to Ensure the Integrity of Contracts Awarded during Crises, Transparency International
https://www.transparency.org/files/content/event/EN_Latin_America_emergency_procurement_report_Layout.pdf (Accessed 29 August 2021)

²⁶⁵ COVID-19 Report (n 236)

²⁶⁶ COVID-19 Report (n 236)

²⁶⁷ Organisation for Economic Co-operation Development (OECD) (n 243)

²⁶⁸ J.C Kohlera, D. Dimancesco ‘The risk of corruption in public pharmaceutical procurement: how anti-corruption, transparency and accountability measures may reduce this risk’ (2020) Global Health Action

²⁶⁹ J.C Kohlera, D. Dimancesco (n 268)

accountability measures in place throughout the procurement process, corruption may still occur.²⁷⁰ “Zambia faces significant corruption challenges and the public procurement and the justice sector are especially affected.”²⁷¹

A 2018 report found that “public procurement activities were significantly vulnerable to corruption.”²⁷² According to the Financial Intelligence Centre (FIC), the tender process in Zambia, from the drawing up of specifications, awarding the contract, and the implementation of the contract is flawed.²⁷³ The FIC also observed that key steps within the procurement process are used to manipulate and disadvantage other bidders. The awarding of contracts is also prone to corruption, especially in the implementation stage as most contracts are not performed in line with contractual obligations. Procurement fraud has resulted in the exclusion of genuine firms, as well as a considerable increase in the cost of government projects.²⁷⁴

“Public procurement is an area particularly sensitive to corruption, and many states have special anti-corruption programs to fight it.”²⁷⁵ In reference to public procurement, Zambia made attempts to highlight corruption by making an express provision in an effort to mitigate corruption in public procurement in the new PPA of 2020. It defines corruption according to the Anti-Corruption Act which defines “corruption to include the solicitation, acceptance, obtaining and giving, promising or offering of gratification by way of bribe or other personal temptation or inducement, or the misuse of public for advantage and benefit for oneself and another person.”²⁷⁶ The PPA has made a provision that aims to curb corruption in public procurement by criminalising “corrupt, coercive, obstructive, collusive or fraudulent practice, or conflicts of interest in any procurement proceeding.”²⁷⁷ It also states that any person that remains convicted of any corrupt practices, in addition to the penalty imposed by the court, will be disqualified from participating in any procurement proceedings for five years from the date of such conviction.²⁷⁸

²⁷⁰ J.C Kohlera, D. Dimancesco (n 268)

²⁷¹ K.Rahman ‘Zambia: Overview of Corruption and Anti-Corruption- With a focus on the justice sector, grievance mechanisms in the public sector, and gender and corruption’ Transparency International at <https://www.u4.no/publications/zambia-overview-of-corruption-and-anti-corruption-2020.pdf>

²⁷² Financial Intelligence Centre (FIC), Annual Trends Report 2018 at <https://www.fic.gov.zm/79-fic-news/104-trends-report-2018>

²⁷³ FIC Report 2018 (n 272)

²⁷⁴ FIC Report 2018 (n 272)

²⁷⁵ Lindskog, *et al* ‘Corruption in Public Procurement and Private Sector Purchasing’ *Journal of Organisational Transformation and Social Change*, Volume 7 Number 2 Linköping University, Linköping, Sweden

²⁷⁶ Section 2 Anti-Corruption Act No. 3 of 2012

²⁷⁷ Section 19 (1) Public Procurement Act 2020

²⁷⁸ Section 19(10) Public Procurement Act 2020

Despite Zambia having made steps to combat corruption in the public procurement system, procurement officers in public entities continue to engage in corrupt practice. An example of such corruption was exhibited in the Honey Bee Pharmacy case. The report of the AG pointed out that Honey Bee Pharmacy was awarded a tender with questionable referral letters.²⁷⁹ Public Procurement Regulation No. 69²⁸⁰ “requires that an evaluation committee should conduct a preliminary examination to determine whether bids are complete and responsive to the basic instructions and requirements of the solicitation document.” Moreover, the pharmaceutical license which allows trade in wholesale if an entity has been supplying for more than two years was only issued to Honey Bee Pharmacy on 28th August 2019 which was less than four (4) months before the time of the signing of the contract.²⁸¹

The incidences that occurred in the Honey Bee Pharmacy saga point out the corruption that still exists within the procurement system in Zambia. Procuring officials are still seen to be engaging in corrupt practices with a disregard of the laws set in place. The build-up on corruption will lead to the next challenge that the Zambian procurement faces today.

4.4.3 Non-compliance by procuring officers

Non-compliance is not only a third world problem but it also extends to countries in the European Union.²⁸² While procurement frameworks are designed to match procurement decision-making processes with the government's desired objectives, putting procurement policy into practice has proven to be difficult.²⁸³ Previous studies on public-sector procurement found that the established procurement regulations were not being followed by the functions.²⁸⁴ “Since established procurement frameworks serve as a tool for minimising such anomalies, their occurrences do not only signify non-adherence to the procurement rules, but also an indication of weak compliance enforcement arrangements.”²⁸⁵ In respect to compliance, studies have shown that, incidentally, the

²⁷⁹ AG Report (n 238)

²⁸⁰ Public Procurement Regulations 2011

²⁸¹ AG Report (n 238)

²⁸² De Boer, Telgen, ‘Purchasing practice in Dutch municipalities’ *International Journal of Purchasing and Materials Management*, 1998 34(2), 31-36.

²⁸³ F. A Mwakibinga, A. Buvik ‘An Empirical Analysis of Coercive Means of Enforcing Compliance in Public Procurement’ (2013) *Journal of Public Procurement*, Volume 13, Issue 2, 243-273

²⁸⁴ F. A M Mwakibinga A. Buvik (n 283)

²⁸⁵ F. A Mwakibinga, A. Buvik (n 238)

level of familiarity and knowledge of procurement regulations is one of the factors that explains why practitioners fail to comply with procurement regulations.²⁸⁶

The reasoning from the above authors can be applied to the challenges facing compliance in Zambia's public sector procurement. The problem with the Zambian public procurement system "is not the lack of a regulatory framework but rather that of poor implementation of and non-compliance with the reforms, laws, and regulations." This can be demonstrated in the inability by procurement officers to effectively comply with the laid down rules and regulations. For example, in the Honey Bee case, the procuring officers neglected to comply with the pre-contract and post-contract specifications.

The Auditor General's report observed that, "according to the results of the Post Qualification Evaluation, an analysis of the financial statements submitted by the three (3) bidders, revealed that the average turnover for Honey Bee pharmacy from 2016 to 2018 did not meet the criteria as they fell below the financial capability value of the bid." Notwithstanding this information, the procuring officers still proceeded to award the tender. Further, the procuring officers failed to obtain quality certificates for the goods which found that paracetamol tablets and BP500mg had mouldy growth on their surfaces and that the sample did not meet acceptance criteria for the appearance test. The laboratory test from ZABS revealed that the condoms supplied had failed to meet all quality parameters meaning the latex condoms were defective. The test report, dated 22nd September 2020, also "revealed that the latex examination gloves supplied with an invoice value of US\$109,961.28 had failed the water tightness test." Lastly, the report stated that the soap bars supplied as part of the kits did not have a trade and manufacturer's name.²⁸⁷ The Utilisation of COVID-19 Resources also found in respect to procurement in the Health Sector that there has been a failure of compliance such as delay in preparing annual procuring reports as prescribed by the PPA 2020.²⁸⁸

The failure of compliance by procurement officers is a cause for concern in the pursuit of a well-functioning public procurement system. Several evaluation studies have noted that there is little or no follow-up on products and services after contracts are signed to guarantee adherence to

²⁸⁶G.U Chikwere *et al* 'Compliance Issues with Public Procurement Regulations in Ghana' (2019) *International Journal of Business and Management*; Vol. 14, No. 5

²⁸⁷ Auditor General's Report (n 238)

²⁸⁸ COVID-19 Report (n 236)

quality specifications and timely delivery. Many pharmaceutical consignments come without the required documentation, with expired or soon-to-expire medicines, insufficient quantities, and inconsistencies between items received and tender requirements, according to assessments.²⁸⁹

4.4.4 Failure to perform oversight and monitoring functions by the procurement authority

It is essential to “monitor policy implementation beyond government pronouncements to ascertain its effectiveness.”²⁹⁰ The impact of the Act should be monitored through established institutional monitoring, especially in developing nations with inadequate public procurement regulatory frameworks.²⁹¹ There are several cases that raise concerns regarding the efficacy of monitoring Zambia's public sector procurement. For example, the Ministry of Health bought medical products and services for K129,010,714 without a procurement strategy between March 3 and April 5, 2020. The purchase strategy was only completed by the Ministry of Health on May 26, 2020, two (2) months after the epidemic began.²⁹²

The Zambia Public Procurement Authority (ZPPA) acts under the mandate of the PPA 2020. Its functions as stipulated under the Act, are to “regulate and control practices relating to public procurement in order to promote the integrity of fairness and public confidence in the procurement process.”²⁹³ Its other functions include monitoring the operations of procurement in ministries and parastatals to ensure compliance with the basic tenets of procurement.²⁹⁴ This regulatory function of the ZPPA entails that it should ensure compliance of all sectors for a sound procurement system.

According to the World Bank, the “ZPPA is responsible for monitoring public procurement and is also involved in procurement decisions and transactions” and as such, it needs to maintain a certain level of professionalism.²⁹⁵ It further observed that despite the PPA 2020 having “a legal

²⁸⁹ W. Booth (n 179)

²⁹⁰ S. Sikombe *et al* ‘Institutional Factors Influencing Institutionalised Supplier Development Initiatives in the Construction Industry in Zambia’ (2021), *Congent Business Management Journal Volume 8*

²⁹¹ S. Sikombe *et al* (n 290)

²⁹² COVID-19 Report (n 236)

²⁹³ Preamble of the Public Procurement Act 2020

²⁹⁴ Public Procurement Act Section 6 (1)

²⁹⁵ N.I Ali *et al* (n 210)

framework against fraud and corruption, there is no systematic detection, prevention, and enforcement of procurement-related corruption cases”.²⁹⁶

The ZPPA is meant to ensure that all procuring entities have detailed procurement plans²⁹⁷ as highlighted in the PPA of 2020. These entities, through their controlling officer or Chief Executive Officer, have a mandate to prepare and submit an annual procurement plan approved by a procurement committee to the ZPPA. This forms part of the oversight functions of the ZPPA. Despite the fact that the legislation mandates procuring organizations to establish yearly procurement plans as part of the budgeting process, many have failed to do so, resulting in haphazard program execution.²⁹⁸ The ZPPA mandate is meant to ensure that the procuring entities abide by the provisions of the Act and that there is strict adherence to procurement principals. With the continued abuse by procuring entities, it begs the question of ZPPA’s ability to effectively exercise its monitoring and oversight functions.

In the health-care industry, this lack of effective monitoring is obvious. The Office of the Auditor General and ZPPA are meant to be in charge of oversight. The Auditor General, on the other hand, frequently performs audits every two years or more, but the ZPPA has never audited the Ministry of Health's procurement.²⁹⁹ The Auditor General, on the other hand, did conduct a report, which gave a detailed outline of all the procurement shortcomings at the MoH.³⁰⁰ This lack of oversight has posed a serious threat for the operations at the MoH. The Ministry needs continuous assessment so that it remains on track record in the execution of contracts.

4.4.5 Lack of training and Technological Advancements

Capacity building is a crucial component of public procurement reform that must be accompanied by legislative change. This may be defined as the process of training or improving procurement personnel's abilities in order for them to operate efficiently and generate quantifiable outcomes in order to raise the industry's degree of professionalism.³⁰¹ The lack of trained procuring officers

²⁹⁶ N.I Ali *et al* (n 210)

²⁹⁷ Public Procurement Act 2020 Section 57

²⁹⁸ W. Booth (n 179)

²⁹⁹ W. Booth (n 179)

³⁰⁰ Auditor General Report (n 238)

³⁰¹ Williams- Elegbe ‘*The challenges of Procurement Reform Implementation in Africa*’ at <https://core.ac.uk/download/pdf/188221163.pdf>

inhibits the progression of procurement personnel into “management in most organisations. Competitive economies depend on skilled procurement professionals to develop, maintain, and sustain integrated procurement strategies.”³⁰² “Building capacity is a short to long-term strategy and the competence required to deliver on procurement reform initiatives must be developed and retained through various means.”³⁰³

Individuals seeking jobs in the industry should pursue qualifications from the Chartered Institute of Purchasing and Supply (CIPS) or equivalent organisations, as well as degree-level courses in procurement or purchasing and supply, if available.³⁰⁴ “As procurement moves towards being a tactical and strategic function, it has become imperative that staff development through training takes centre stage in the developmental process.”³⁰⁵ This is premised on the fact that an effective and well-managed public procurement system is valued as a key factor in achieving good governance and economic development.³⁰⁶ Technological changes, international trade liberalizations, and particularly the current global economic recessions have compelled governments and public institutions to pursue increasingly innovative solutions in public procurement.³⁰⁷

Perusal of the ZPPA website will indicate that it has various training materials that are aimed at strengthening the knowledge of procurement officers and suppliers alike. Despite this effort, procuring officers continue to disregard the provisions of the Act and Regulations. This is also true in the Honey Bee case where the officers involved were found wanting on all allegations. They did not follow rules on transparency in the way that they invited the bids. The report shows that the procuring officials granted Honey Bee Pharmaceuticals a tender against the provisions of the regulations that required a bidder to have had been in Business for two years or more. Upon investigation, the Auditor General’s Office found that records at Patents and Companies

³⁰² W. Dlamini *et al* ‘Unravelling Procurement Skills and Capacity Constraints in An Open Distance Learning (Odl) Environment’ *Research Journal of Business and Management*

³⁰³ Williams-Elegbe (n 301)

³⁰⁴ Williams-Elegbe (n 301)

³⁰⁵ M. Dza *et al* ‘Procurement Reforms in Africa: The Strides, Challenges, and Improvement Opportunities’ (2013) *Public Administration Research*

³⁰⁶ G. L. Albano and D. Kim ‘Symposium on International Public Procurement: Introduction’ *Journal of Public Procurement*, 2010 Volume 10, Issue 3, 290-300

³⁰⁷ G.L. Albano, D. Kim (n 306)

Registration Agency (PACRA) showed that Honey Bee Pharmacy was registered a week before being awarded the contract.

Training and adequate supervision can remedy many of the discrepancies that happen at MoH.

4.4.6 Political interference

“Political interference within the procurement process is also a big challenge to the successful implementation of public procurement reforms.”³⁰⁸ A good number of politicians are entitled to meddling in the procedures by virtue of their positions of influence, leading to capricious procurement decisions.³⁰⁹ According to Pillary, senior officials and political leaders use public office for private gain and this has weakened the motivation. It is well acknowledged that social and political factors have a significant impact on public sector change. Ministerial involvement with the tender process, where ministers intervene and influence tender awards, is one of the biggest hurdles to the procurement system in developing nations.³¹⁰ He opined that “ministers and political parties receive clandestine payments in government procurement. This ultimately interferes with the procurement process and constrains compliance.”³¹¹

Politicians can have direct influence on public procurement by intervening in the process to protect their own or their party's interests. Influence, on the other hand, can be indirect.³¹² Officials, for example, might foresee problems and avoid meddling by incorporating political interests into their decision-making process from away. Officials may also be aware that bidders have significant political links and, as a result, favourably appraise their bids to prevent conflict.³¹³

³⁰⁸ M. Dza *et al* (n 305)

³⁰⁹ M. Dza *et al* (n 305)

³¹⁰ S. Pillary ‘Corruption ‘The Challenge to Good Governance: A South African Perspective, Melbourne, Australia.

³¹¹ S. Pillary (n 310)

³¹² European Parliament, Political and other Forms of Corruption in the Attribution of Public Procurement Contracts and Allocation of EU Funds: Extent of the Phenomenon and Overview of Practices, 2013 at

[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/490676/IPOL-JOIN_ET\(2013\)490676_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/etudes/join/2013/490676/IPOL-JOIN_ET(2013)490676_EN.pdf) (Accessed 22 September 2021)

³¹³ European Parliament (n 312)

“Common modes of malfeasance include public officials selecting contractors based on personal or partisan connection or receiving kickbacks from firms in return for contracts.”³¹⁴

In respect to Zambia, the government procures all goods and services needed to run the country. The procurement is done by respective Ministries and Parastatals who have to discharge their mandates in respect to their competencies. Political interference remains a huge problem in Zambia. For instance, “national governments may interfere in constitutionally mandated functions of local governments, or purposely withhold intergovernmental transfers, resulting in muddled accountability and insufficient resources.”³¹⁵

4.4.7 Accountability and enforcement

Accountability forms part of the ethos of good governance which is highly pursued by some governments in Africa.³¹⁶ It is required that the public procurement practice shall always hold its practitioners responsible for enforcing and obeying the law, rules, and regulations.³¹⁷ A culture of accountability allows for checks and balances as well as sanctioning for neglecting or breaching laws, rules, and regulations where appropriate.³¹⁸

The ZPPA, alongside other institutions such as the Anti-Corruption Commission (ACC) and the Zambia Police, has a mandate to enforce the provisions of the PPA. Any procuring officers that are found in contravention should be brought to book in line with the provisions of the Act.

Following the recommendations by the Public Accounts Committee (PAC) in the Honey Bee Case, persons responsible had to be prosecuted in accordance with the provisions of the Act.

The Anti-Corruption Commission

The ACC commenced investigations after the PAC report to respond to the revelations of suspected corruption in the way Honeybee Pharmacy was awarded a contract to supply medical

³¹⁴ Procurement Mismanagement And the Politicisation of Bureaucratic Transfers in Ghana, Policy Brief, International Growth Centre, August 2018, at <https://www.theigc.org/wp-content/uploads/2018/08/Brierley-2018-policy-brief.pdf>

³¹⁵ Resnick *et al* ‘Deepening Decentralisation in Zambia: Identifying Political Economic Constraints to Reform’ *International Growth Centre*

³¹⁶ S. Uromi ‘Challenges Facing Public Procurement Information in Some African Countries Namely: South Africa, Uganda, Zimbabwe, and Tanzania.

³¹⁷S. Uromi (n 316)

³¹⁸S. Uromi (n 316)

kits by the MoH. The Commission reported that MoH had awarded a \$17 million contract to Honey Bee for pharmaceutical supplies, despite the company failing to comply with government safety guidelines. Honey Bee was later accused of supplying defective medical equipment, including leaky condoms, and latex gloves.³¹⁹ The investigations were instituted arising from information received from a named stakeholder. According to the ACC, a number of witnesses and suspects had been interviewed.³²⁰ The Commission warned and cautioned the former Permanent Secretary for Administration Ms. Akakulubelwa Mulalelo upon which it would submit a report of its findings to the National Prosecution Authority. At the PAC hearing, the Permanent Secretary stated that they did not know who awarded the contract to Honey Bee Pharmaceuticals.

Position of ZPPA in respect to PPA

The role of the ZPPA was to ensure that when the AG and PAC reports were concluded, it was “meant to investigate and act on complaints received on procurement proceedings from procuring entities, bidders, suppliers, or the general public.”³²¹ Following the recommendation from PAC, the ZPPA has investigative powers.³²² It can appoint inspectors that investigate allegations of misconduct by any procuring entity. In the Honey Bee case, there were evident violations of the act in accordance with Section 105. Where these offences are committed, the ZPPA has the powers to “recommend to the employer appropriate administrative and legal sanctions on the office holder, including—

- a. disciplinary proceedings
- b. suspension from employment
- c. demotion; surcharge
- d. transfer or refusal of transfer
- e. summary dismissal
- f. any other recommendation that the Authority may consider appropriate.”³²³

³¹⁹ Open Zambia <https://www.openzambia.com/politics/2021/1/14/acc-investigating-honeybee-pharmacy?rq=pharmacy>

³²⁰ Timothy Moono, ACC Investigating Honey Bee Pharmacy 13th January 2021 at <http://www.acc.gov.zm/acc-investigating-honeybee-pharmacy/> (Accessed on 31 August 2021)

³²¹ Section 6(2)(h) Public Procurement Act 2020

³²² Section 83 Public Procurement Act 2020

³²³ Section 105(4) Public Procurement Act 2020

Following the above mentioned sanctions available to use by the ZPPA, it can further “refer the case of an erring office holder to an appropriate law enforcement agency or professional body.”³²⁴ At the time of this research, there has been no prosecution initiated by the ZPPA in respect to the Honey Bee Case. As things stand, the contract between MoH and Honey Bee Pharmacy Limited was not terminated despite the AG and PAC report and the investigations by the ACC. A matter of this magnitude should ideally prompt quick action both the MoH and ZPPA.

4.5 Conclusion

In conclusion, despite progressive steps being made with public procurement in Zambia by ushering laws and reforms aimed at improving the system, the country continues to witness grave misconduct by procurement entities, particularly under the health sector. The ZPPA has failed to provide the adequate oversight and effective monitoring needed to ensure that there is compliance with principals under the Act.

Having looked into the case of Honey Bee Pharmacy and the COVID-19 Utilisation of Funds Report, it is evident that procurement in the health sector is plagued by a lack of transparency, accountability, a disregard for the law, and interference from politicians of influence. There is a palpable lack of harmony between MoH and ZPPA. The MoH as a procuring entity continuously violated the provisions of the Act, and the ZPPA as a regulatory authority in charge of overseeing compliance by procuring officers of the legal requirements under the Act failed to take the appropriate action. The next chapter will provide a summary, conclusions, and recommendations coming out of this study. It will look at the challenges faced and attempt to suggest remedies to them.

³²⁴ Section 105(5) Public Procurement Act 2020

4.0 Chapter 5 –Conclusions and Recommendations

5.1 Introduction

This chapter discusses the conclusions derived from the findings of this study on the challenges faced in the Zambian public procurement system. The conclusions are based on the responses to the research questions and the objectives of the study. Finally, the researcher will provide recommendations based on the conclusions.

5.2 Overview of key findings

The first chapter of this study laid out the research questions as well as the objectives of the study. The chapter framed the research and provided an overview of the various literature that informed the study. It established the study as an exploratory one that used desktop work as a main method of research. The main aim of this research was to test the public procurement legal framework in Zambia against international best practices. The study also aimed to identify the challenges in the procurement process in Zambia with a focus on the health sector. The overarching research question was: does the regulation adequately provide scope for best practice public procurement especially as it pertains to the health sector? The subsequent chapters examined the various factors that impact public procurement generally, as well as in the Health Sector.

Chapter two then provided a glimpse of the international guidelines that govern public procurement. A sound procurement system is cardinal to the development of any state government. A good procurement system must not only create a conducive environment in a country, it must also ensure that there is healthy competition on the market amongst suppliers of goods and services to the government. The government as a key player in the procurement process of a state must ensure that it aligns its procurement laws and regulations with internationally recognized best practices. Conformity to international standards ensures that a state has compliant laws which fortify the steady and smooth operation of a procurement system. Several models from various international bodies exist to provide a blueprint for public procurement. However, in many

governments, the issues around public procurement stem from poor implementation and weak enforcement.

In chapter three, the researcher lays the focus on the Zambian public procurement laws and reforms from independence until the present day. Being a fairly young democracy, as well as a developing nation, Zambia's legal and regulatory framework on public procurement is both a legacy of colonialism and an adoption of various international laws and guides such as the World Trade Organisation on Government Procurement, the Organisation for Economic Co-operation and Development, and the United Nations Commission on International Trade Law's Model Laws for public procurement to mention a few. Whilst Zambia has applied progressive aspects of international legislation, the public procurement system remains crippled against the inadequate capacity of key players to execute and implement the guidelines. Additionally, technical capacity remains a barrier to the Zambia Public Procurement Authority (ZPPA) to carrying out its legislative mandate to monitor the procurement systems of parastatals and ministries. As the leading authority in public procurement, the ZPPA should be more proactive in ensuring that officials that breach the provisions of the Act by way of corrupt, coercive, obstructive, collusive, or fraudulent actions must be prosecuted in timely fashion. It should ensure that there is no delay in bringing such officials to book. Further, it should proactively work with other investigative authorities such as the Anti-Corruption Commission (ACC) and Zambia Police to ensure that escalation to the Authority is enhanced. The delay in prosecutions sets a negative precedence and shows a reluctance by the authority to hold perpetrators accountable.

Chapter four is a culmination of the challenges faced in the public procurement system in Zambia applied in a practical setting, using the health sector as an example. The chapter shows that corruption remains a significant problem in Zambia's procurement system citing the Honey Bee Pharmacy Case in which substandard health care kits were procured by the Ministry of Health. Failure to adhere to and comply with the laws and regulations continues to be an impeding factor to the effective application of the existing procurement laws. Furthermore, there seems to be a challenge in the enforcement of the PPA and a failure by the ZPPA to adequately supervise and monitor the system to ensure that there is strict adherence to the laws and regulations. The researcher argues that health sector procurement should be handled with utmost care and diligence. The sensitivity and fragility of the health sector is one that requires that the government agencies

tasked with procuring medicines and all other health care resources, should be cognisant of the human aspect attached to the health sector. The need to protect and promote human life should be a focal consideration when procuring resources. The officials tasked with this mandate must ensure compliance of procurement principals under the Act and all the laid-out guidelines that are aimed at achieving an efficient procurement system.

Many institutions mandated to regulate the public procurement sector work in isolation. Zambia Bureau of Standards (ZABS), Zambia Medicine Regulatory Authority (ZAMRA), Medical Stores Limited, The Permanent Secretary of Administration, Permanent secretary of Technical Services, and the Minister of Health all work separately. This raised the confusion in the Honey Bee Case where certain officials in the MoH claimed to be unaware of the happenings surrounding the Honey Bee Case.

This study of the public procurement system in Zambia revealed several challenges as listed below:

1. A lack of transparency
2. Corruption and unethical practices
3. Non-compliance by procuring officials
4. Failure to perform oversight and monitoring functions by the procurement Authority
5. A lack of training and technological advancements
6. Political interference
7. Lack of accountability and poor enforcement

Based on these issues, the researcher has identified key recommendations to remedy the challenges in the system.

5.3 Recommendations

Despite the challenges identified in this research, the conclusions provide countless opportunities for the improvement of public procurement in Zambia. This dissertation recommends that Zambia

needs effective mechanisms that will enable an airtight procurement system particularly procurement for the health sector. The recommendations are as follows:

- An efficient procurement system needs to be competitive. According to research conducted by the Consumer Unity and Trust Society (CUTS), the procurement process is marred by significant departures from competitive bidding which is seen through the absence of standard contracts and tender documents, the absence of public access to tender documents and pre-qualifying criteria, short timelines, and no enforced publishing of tender results. Therefore, there is an urgent need for the government to follow transparent, open procurement procedures that are aimed at ensuring fair conditions of competition for suppliers. Information such as bidding criteria, pricing, time frames, and award results ought to be in the public domain. There is a need to keep pushing the government to expedite the electronic Government Procurement system (e-GP) to be rolled out countrywide. This will promote open procurement and allow for stakeholders to monitor and participate in the procurement processes end-to-end. The ZPPA needs to show commitment to the e-GP implementation by ensuring that the Procurement Entities within the country have the capacity to keep the e-GP system fed with relevant data to promote open contracting thus increasing competition and ensuring equity.
- Careful consideration must be taken into account around the bidding process. The researcher asserted that the concept of an emergency should not impede on the duty of procuring officials to be transparent during the procurement process. Officials should not use the guise of an emergency to derogate from the basic principle of transparency and fairness. Whilst emergencies, such as the COVID-19 pandemic, are often unforeseeable, it is of utmost importance that the officials mandated with the duty to procure goods and services should remain in compliance with the laws and avoid engaging in unscrupulous practices that are to the detriment of a good procurement system. As a result, specialized anti-corruption and governance mechanisms focusing on openness, supervision, and accountability must be implemented. Additionally, regulation regarding emergencies needs to be included in the law and provide explicit procedures on how procurement is to be handled in such instances. This requires increased capacity and public accountability by the ZPPA and all other parastatals and ministries that have been “entrusted with regulatory

and control functions in relation to the management of public resources.” This is attainable through the implementation of measures that strengthen integrity and manage “conflicts of interest with respect to persons entrusted with key decision-making roles including through responsive monitoring and compliance mechanisms.”³²⁵

- There is meant to be free public sharing of information among all authorities involved in the procurement process. Extensive consultations must be made by all stakeholders before procurements of a large nature are made by procuring entities. At the heart of these consultations must be the ZPPA. Information must be shared with the ZPPA so that it can provide guidance on whether the prospective tenders align with the provisions of the Act. Alternatively, these institutions can come together and pool resources and knowledge from their respective competencies to ensure that they harmonise when it comes to procurement. Notably, the ZPPA should have overall supervisory powers to oversee the whole business of public procurement. Despite powers being decentralized, the ZPPA must have oversight and must be privy to all tendering process in parastatals and ministries alike. This free flow of information will provide autonomy to regulatory bodies as well as allow for checks and balances where necessary.
- Continuous capacity building and assessment should be conducted for procuring officials to familiarise themselves with the provisions of the Act and the various best practice principals of public procurement. For example, the issues surrounding public procurement around the EU are being addressed by a series of initiatives, including the development of a European Competency Framework for public procurers. Zambia can emulate this initiative to ensure that procuring officers possess the competency to adequately execute their duties within the legal framework. Particularly, when dealing with health procurement, the officials need to be satisfactorily trained, not just on matters pertaining to procurement principles, but on the products and services needed for the health sector. It will assist officials in identifying the quality of products. The public procurement system

³²⁵Public Procurement in Health Care Systems, *Opinion of the Expert Panel on Effective Ways of Investing in Health(EXPH)* , The European Commission at https://ec.europa.eu/health/sites/default/files/expert_panel/docs/027_public_proc_healthcare_sys_en.pdf

needs to promote policies that reinforce one another and create synergies across government departments.

5.4 Concluding Remarks

In an effort to improve the public procurement system in Zambia, the country can look to aligning policy, laws, and regulations with international best practices. Zambia may adopt comparable helpful efforts aimed at promoting coordination among important actors in the sector, such as those aiming at establishing clear standards and indicators, organizing best-practice exchanges, and preparing the essential elements for periodic monitoring and assessment. At an African level, primarily under the AfCFTA, there is a need to harmonise best practices in all sectors of procurement.

In light of the COVID-19 Pandemic, Zambia should review its procurement process and make the necessary reforms. Evidently, the pandemic has exposed the various discrepancies that occur under the current procurement system. Zambia has the correct tools at its disposal to create a world class procurement system that upholds the tenets of transparency, accountability, competition, and equity.

Bibliography

Legislation

Constitution Chapter 1 of the Laws of Zambia

Finance (Control and Management) Act Chapter 347 of the Laws of Zambia 1969

Zambia National Tender Board Act No. 30 of 1982 Chapter 394 of the Laws of Zambia 1982

Public Procurement Act No. 12 of 2008 Chapter

Public Procurement Regulations Statutory Instrument No. 63 of 2011

Public Procurement Act No. 8 of 2020

Anti-Corruption Act No. 3 of 2012

Public Stores Regulation No 13 (1a) part III of Cap 347 of the Laws of Zambia

Private-Public Partnership Act No. 14 of 2009

International agreements

Agreement on Government Procurement, Mar. 30, 2012,

General Agreement on Tariffs and Trade (GATT) 1994

European Union Public Procurement Directives

Directive 2014/24/EU of the European Parliament and of The Council on Public *Procurement and Repealing Directive 2004/18/EC*

Directive 2014/25/EU of The European Parliament and Of the Council on *Procurement by Entities Operating in The Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC*

United Nations Commission on International Trade Law, *UNCITRAL Model Law on Public Procurement (PDF)* 2014 United Nations Publications

Books

Naushad Khan 'Public Procurement Fundamentals: Lessons from and for the Field' (Emerald Publishing Limited 2018)

K. V Thai, A. Araujo, R. Y Carter, G. Callender, J. Telgeni 'Challenges in Public Procurement: An International Perspective' (PrAcademics Press 2005)

Flynn, Buffington, Pennington 'Legal Aspects of Public Procurement' Third Edition, (Routledge Publishers 2020)

K.V Thai, *International Public Procurement: Innovation and Knowledge Sharing*, Volume 14 (Publisher Springer 2015)

A. Arrowsmith, Anderson, *The WTO Regime on Government Procurement: Challenge and Reform* (Cambridge University Press 2011)

Journal articles

S.N Nyeck 'Public Reform and Governance in Africa' Contemporary African Political Economy Series, Clarkson University Potsdam, NY, USA

El-Gayed 'The Influencing Factors of Public Procurement Policy Development: The Case study for Libya' University of Salford

Amemba, Nyaboke, Osoro, Mburu 'Challenges Affecting Public Procurement Performance Process in Kenya' (2015) *European Journal of Business Management*

Daniel Chigudu 'Public Procurement in Zimbabwe: Issues and Challenges' (2014) *Journal for Governance and Regulation*

Arney, Yadav, Miller, Wilkinson, 'Strategic Contracting Parties to Improve Procurement of Health Commodities, Global Health: Science and Practice'

M, Plaček, M, Schmidt, F, Ochrana, M, Půček 'Factors Affecting the Length of Procedure in Public Procurement: The Case of The Czech Republic' (2019) Prague *Economic Papers*

A. Scott, Julius 'Public Procurement, Governance and Economic Growth: Some Policy Recommendations for Africa's Growth and Development' University of Benin

A. Beveridge 'Economic Independence, Indigenisation, and the African Businessman: Some Effects of Zambia's Economic Reforms' (1974) *African Studies Review* (Cambridge University Press)

N, Simutanyi 'The Politics of Structural Adjustment in Zambia' JSTOR *Taylor & Francis Online*

Anderson, Muller 'The Revised Agreement on Government Procurement (GPA): Key Design Features and significance for Global Trade and Development' *International Law Journal*

Z, Awino, P, Marendi-Getuno 'Public Procurement Legal Framework Implementation Challenges and Organisational Performance' (2014) *DBA Africa Management Review*, Vol.4 No.2

Valenza, Allesandrini, Negrila, Celoti 'Assessing the Implementation of the 2014 Directives on Public Procurement: Challenges and Opportunities at Regional and Local Level' (2019) *Commission for Economic Policy*

Pircher, 'EU public procurement policy: the economic crisis as trigger for enhanced harmonization' (2020) *Journal of European Integration*

Gelderman, Ghijssen, Schoonen, Explaining 'Non-Compliance with European Union Directives: A Multidisciplinary Perspective' (2010) *Journal of Common Markets*

Yukins, 'Integrating Integrity and Procurement: The United Nations Convention Against Corruption and the UNCITRAL Model on Procurement Law' (2007), *Public Contract Law Journal*, Vol 36, No.3, The George Washington University Law School.

Hlope, Bimha, 'An Analysis of Impediments to Procurement in Selected Public Procurement Entities in the Kingdom of Eswatini' (2020) *OSR Journal of Business and Management*

S, Williams-Elegbe, 'Public Procurement and Multilateral Development Banks: Law Practice and Problems' (Hart Publishing 2017)

E. Caborn S. Arrowsmith 'Procurement Methods in the Public Procurement System in Africa' Cambridge University Press

J.R Craig 'State Enterprise and Privatisation in Zambia' 1968- 1998, (1999) University of Leeds

B.J Phiri 'Colonial Legacy and the Role of Society in the Creation and Demise of Autocracy in Zambia, 1964-1991' (2001) *Nordic Journal of African Studies*

Mushingeh, Chiponde, 'The Evolution of One-Party Rule in Zambia, 1964-1972' *Trans African Journal of History* (Gideon Were Publications 1993)

Miles Lamer, 'What Went Wrong? Zambian Political Biography and Post-colonial Discourses of Decline' (2006) *Historia*

G.K Mwamba 'Public Procurement in Zambia: A Commentary on the Law and Practice' *IJRDO-Journal of Business Management*

S de la Harpe 'Procurement under the Uncitral Model Law: A Southern Africa perspective' (Scientific Electronic Library Online) *SCIELO*

J.J Myers 'The New UNCITRAL Model Law on Procurement' (1993).

Willa Booth 'Public Procurement System in Zambia, A Case for procurement Monitoring' at <https://silo.tips/download/public-procurement-system-in-zambia-a-case-for-procurement-monitoring>

Muhwezi, Ahimbisimbwe, 'Contract Management, Inter-functional Coordination, Trust and Contract Performance of Works Contracts in Ugandan Public Procuring and disposing Entities' (2015) *European Journal of Business and Management*

Ado-Fosu 'Compliance with Public Procurement Act and its Correlation with Procurement Performance of Senior High Schools in Ghana' *European Journal of Business and Management*

A.H Mabika, L. London ‘Zambia: The Right to Health and International Trade Agreements,’ *Southern and Eastern African Trade, Information and Negotiation Institute (SEATINI)* University of Cape Town (UCT)

Public Procurement in Health Care Systems, *Opinion of the Expert Panel on Effective Ways of Investing in Health (EXPH)*, The European Commission at https://ec.europa.eu/health/sites/default/files/expert_panel/docs/027_public_proc_healthcare_sys_en.pdf

Osei-Afoakwa ‘How Relevant is the Principal of Transparency in Public Procurement?’ (2014) *Developing Country Studies*

S.J Evenett, B.M Hoekman “*Transparency in Government Procurement: What can We Expect from International Trade Agreements?*” *Public Procurement: The Continuing Revolution* (2003) (Arrowsmith, S. & Trybus, M. editions), 269-282. The Hague: Kluwer Law International

A.S Oyegoke ‘Transparency in Public Procurement: A study of the European Union Directives for Public Works, Supply and Service Contracts’ (2012), *International Journal of Business excellence*

Dijkema, Gunderson, ‘Restrictive Tendering; Protection for Whom?’ (2017) Cardus Construction Competitiveness Monitor, White Paper

M.Huff-Rousselle, F. Burnett ‘Cost Containment Through Pharmaceutical Procurement: A Caribbean Case Study’ *The International Journal of Health Planning and Management*

Lindskog, Brege, Brehmer, ‘Corruption in Public Procurement and Private Sector Purchasing, *Journal of Organisational Transformation and Social Change*’ Volume 7 Number 2 Linköping University, Linköping, Sweden

L, De Boer, Telgen, ‘Purchasing practice in Dutch municipalities’ (1998) *International Journal of Purchasing and Materials Management*

F.A Mwakibinga, A. Buvik ‘An Empirical Analysis of Coercive Means of Enforcing Compliance in Public Procurement’ (2013) *Journal of Public Procurement, Volume 13, Issue 2, 243-273*

O.U Chikwere, S. Dzandu, M. Dza ‘Compliance Issues with Public Procurement Regulations in Ghana’ (2019) *International Journal of Business and Management; Vol. 14, No. 5*

S. Sikombe, M. Phiri, F. Olan ‘Institutional Factors Influencing Institutionalized Supplier Development Initiatives in the Construction Industry in Zambia’ (2021) *Cogent Business Management Journal Volume 8*

A. Flynn ‘Investigating the Implementation of SME Friendly Policy in Public Procurement’ *Journal for Policy Studies, Taylor & Francis Online*

W. Dlamini, Maelekanyo C. Mulaudzi ‘Unravelling Procurement Skills and Capacity Constraints in An Open Distance Learning (Odl) Environment’ (2016) *Research Journal of Business and Management*

M.Dza, R. Fisher, R. Gapp, ‘Procurement Reforms in Africa: The Strides, Challenges, and Improvement Opportunities’ *Public Administration Research; Vol. 2, No. 2* (Canadian Center of Science and Education 2013)

G.L Albano, D. Kim ‘Symposium on International Public Procurement’ *Journal of Public Procurement* (2010)

M.S Jibril, S. B Ejura, N.I Augustine ‘The Procurement Reforms in Nigeria: Implementation and Compliance Challenges’ *Journal of Asian Business Strategy*

S. Pillary ‘Corruption – the Challenge to Good Governance: A South African Perspective’ Melbourne, Australia. (2004)

D.Resnick, G. Siame, P. Mulambia, D. Ndhlovu, B. Sichilenge, B. Sivasubramanian ‘Deepening Decentralisation in Zambia: Identifying Political Economic Constraints to Reform’ *International Growth Center*

S.M Uromi ‘Challenges Facing Public Procurement Information in Some African Countries Namely: South Africa, Uganda, Zimbabwe and Tanzania.’

Online sources

WTO Agreement on Government Procurement, 2021, Congressional Research Service at <https://crsreports.congress.gov/product/pdf/IF/IF11651> (Accessed 14 September 2021)

Public procurement is the cornerstone of strategic governance at <https://www.oecd.org/gov/public-procurement/recommendation/> (Accessed 15 September 2021)

UNCITRAL https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement/status (Accessed 15 September, 2020)

World Bank <https://www.worldbank.org/en/topic/procurement-for-development> Accessed 15 September 2021

Benefiting Manufacturing from Zambia’s Public Procurement Systems Zambia Association of Manufacturers at <http://zam.co.zm/benefiting-manufacturing-from-zambias-public-procurement-systems-2/>

Simplified Report of The Auditor General on The Accounts of The Republic for The Financial Year Ended 31st December 2019 at https://www.ago.gov.zm/?wpfb_dl=236 (Accessed 21 September 2021)

Enhancing Transparency of Public Health Procurement in Zambia, <https://ti-health.org/content/enhancing-transparency-of-public-health-procurement-in-zambia/>

Open Contracting for Health (OC4H), Transparency International at <https://ti-health.org/open-contracting-for-health/>

Open Zambia <https://www.openzambia.com/politics/2021/1/14/acc-investigating-honeybee-pharmacy?rq=pharmacy>

ACC Investigating Honey Bee Pharmacy 13th January 2021 at <http://www.acc.gov.zm/acc-investigating-honeybee-pharmacy/> (Accessed on 31 August 2021)

Working papers

Asako, Ueno ‘Multilateralising Regionalism on Government Procurement’ OECD Policy Papers No. 151

Organisation for Economic Co-Operation and Development (OECD) ‘System Change in Slovenia: Making Public Procurement More Effective’ OECD Publishers

The Organisation for Economic Co-Operation and Development (OECD) ‘Public Procurement Principals, A Policy Briefing Note Fair Market Conditions for Competitiveness in the Adriatic Region’

Ali, Aquino, Reso ‘Assessment of the Public Procurement System of Zambia’ The World Bank

The Organisation for Economic Co-Operation and Development (OECD) ‘Fighting Corruption and Promoting Integrity in Public Procurement’ (2005)

The Organisation for Economic Co-Operation and Development (OECD) ‘Integrity in Public Procurement, Good Practice from A to Z’

Assessment of the Public Procurement System, The Organisation for Economic Co-Operation and Development (OECD) OECD-DAV JV Country Pilot Program Zambia (2007)

Challenges and Opportunities in improving access to Medicines through efficient public procurement in World Health Organisation (WHO) European Region

World Health Organisation (WHO) ‘Practical Guidelines on Pharmaceutical Procurement for Countries with Small Procurement Agencies’ (2002)

The Agreement on Government Procurement, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 4 (hereinafter ‘GPA’)

Overview of Developments in the International Trading Environment: Annual Report by the Director-General (WT/TPR/OV/12 of 18 November 2009)

Anderson, R. Müller, A. Caroline ‘The revised WTO Agreement on Government Procurement (GPA): Key design features and significance for global trade and development’ WTO Staff Working Paper, No. ERSD-2017-04, World Trade Organization (WTO), Geneva, (2017)

The Organisation for Economic Co-Operation and Development (OECD) ‘Public Governance Reviews, Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendations’ (2019)

Knowledge Kit: Multilateral Development Banks User’s Manual, Federation of the Indian Chamber of Commerce and Industry (FICCI)

Common Market for East and Southern Africa (COMESA) Karangizi ‘Regional Procurement Reform Initiative (2003) at the Forum on Public Procurement Reform Dar-E-Salam COMESA Secretariate

Mamphuzasseril ‘COMESA Public Procurement Reform and Capacity Building Projects: Project Performance Evaluation Report (2012) Africa Development Bank Group

Public Procurement Toolbox Checklist For supporting the Implementation of the OECD Recommendation of the Council on Public Procurement (2016)

G. Quinot ‘Current Developments of African Procurement Laws’ (2014) Symposium: Europe Meets Us and Others: Current Developments in Procurement Law with A Focus on The Selection, Qualification, And Exclusion of Tenderers

World Trade Organisation (WTO) Trade Policy Review by The Secretariate – Niger and Senegal WT/TPR/S/2231 (2009)

Third United Nations Conference of the Least Developed Countries, Brussels May 2001, Country Presentation by the Government of Zambia: Action Program for the Development of Zambia, UNCTAD

Africa Development Bank Group ‘Report on Poverty Reduction Budget Support’
<https://www.afdb.org/en/projects-and-operations/p-zm-ka0-004>

Fighting COVID-19 through Public Procurement, Inter-American Network on Government Procurement,<http://www.oas.org/docs/ricg/Webinar-Agenda-eng-DGPE-Fighting-COVID19-thru-Public-Procurement.pdf>

V.Sharma ‘Covid 19 Challenges and Response: How Procurement Underpins the Worlds Bank Response to the Pandemic’ (2020) World Bank Blogs

Interim Report of the Auditor General, Audit on Utilisation of Covid-19 Resources As at 31st July 2020 at https://www.ago.gov.zm/?wpfb_dl=203

Report of the Auditor General on the Accounts of the Republic for the Financial Year ended 2019, at https://www.ago.gov.zm/?wpfb_dl=207

Organisation for Economic Co-Operation and Development (OECD) ‘Checklist for Supporting the Implementation of OECD Recommendation of the Council on Public Procurement: Transparency’

Organisation for Economic Co-operation and Development (OECD) ‘Preventing Corruption in Public Procurement’ (2016)

Transparency International ‘Transparency in Health Sector Procurement’ G20 Position Paper 2016

Public Procurement During State of Emergency: Minimum Requirements to Ensure the Integrity of Contracts Awarded during Crises, Transparency International
https://www.transparency.org/files/content/event/EN_Latin_America_emergency_procurement_report_Layout.pdf (Accessed 29 August 2021)

K. Rahman ‘Zambian Overview of Corruption and Anti-Corruption With a focus on the justice sector, grievance mechanisms in the public sector, and gender and corruption Transparency International’ at <https://www.u4.no/publications/zambia-overview-of-corruption-and-anti-corruption-2020.pdf>

Theses

Dzuke, Public Procurement: Panacea or fallacy – A Case of Public service Delivery in Zimbabwe University of KwaZulu Natal At
https://researchspace.ukzn.ac.za/bitstream/handle/10413/14609/Dzuke_Abel_2015.pdf?sequence=1&isAllowed=y (Accessed 13 September 2021)

M. Sinkala, Valuation of Benefits and Challenges of Implementation of Electronic Procurement (E-Procurement in Public Organisations in Zambia, Cavendish University
<http://155.0.3.194:8080/jspui/bitstream/123456789/147/1/EVALUATION%20OF%20BENEFITS%20AND%20CHALLENGES%20OF%20IMPLEMENTATION%20OF%20ELECTRONIC%20PROCUREMENT%20%28E-PROCUREMENT%29%20IN%20PUBLIC%20ORGANISATIONS%20IN%20ZAMBIA.pdf>

Eunice Maposa ‘Developing an Ideal Turn Around – A Case for the Zambia Public Procurement Authority’ University of Lusaka

Other

Communication from The Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions: *Making Public Procurement work in and for Europe* Strasbourg, 3.10.2017, COM (2017) 572 final

Buying Green! A Handbook on Green Procurement 2016 3rd Edition at
<https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf> (Accessed 15 September 2021)

The Organisation for Economic Co-Operation and Development (OECD) ‘Recommendation of the Council on Public Procurement’ Adopted 18.02.2015

COMESA Legal Notice No. 3 of 2009, COMESA Official Gazette Vol. 15 No. 3 of 9 June 2009.

National Anti-Corruption Policy 2009

https://www.academia.edu/37753195/NATIONAL_ANTI_CORRUPTION_POLICY_REPUBLIC_OF_ZAMBIA_REPUBLIC_OF_ZAMBIA

Common Market for East and Southern Africa (COMESA) Public Procurement Regulations, Legal Notice no. 3 of 2009, Volume 15

Press Statement by The Chief Government Spokesperson on The Decisions Made by Cabinet at the 17th Cabinet Meeting Held at State House on Thursday, 23RD JULY, 2020 at

https://www.mlnr.gov.zm/?wpfb_dl=90

Circular No. 2 of 2021 Commencement of the PPA No 8 of 2020, ZPPA at

https://www.zppa.org.zm/documents/20182/85608/CIRCULAR_2_OF_2021_COMMENCEMENT+OF+THE+PUBLIC+PROCUREMENT+ACT+NO.+8+OF+2020.pdf/f5fba563-8c53-42bd-9cff-bedd6490c8c7?version=1.0

Financial Intelligence Center (FIC), Annual Trends Report 2018 at <https://www.fic.gov.zm/79-fic-news/104-trends-report-2018>

European Parliament, Political and other Forms of Corruption in the Attribution of Public Procurement Contracts and Allocation of EU Funds: Extent of the Phenomenon and Overview of Practices, 2013 at

[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/490676/IPOL-JOIN_ET\(2013\)490676_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/490676/IPOL-JOIN_ET(2013)490676_EN.pdf)