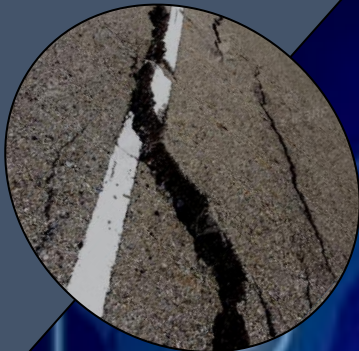
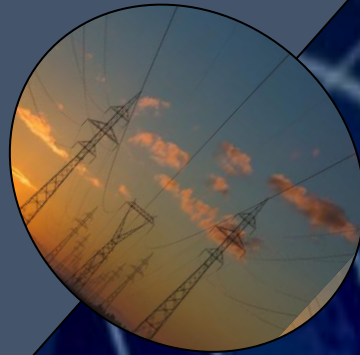


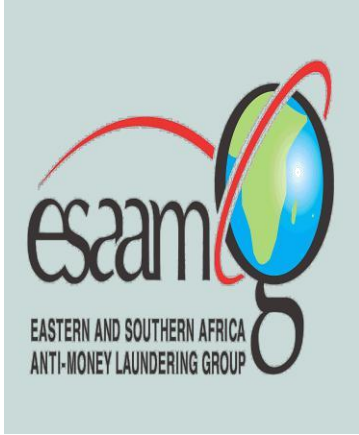
# Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region





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**September 2019**



The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 18 countries and also includes a number of regional and international observers such as AUSTRAC, COMESA, Commonwealth Secretariat, East African Community, Egmont Group of Financial Intelligence Units, FATF, GIZ, IMF, SADC, United Kingdom, United Nations, UNODC, United States of America, World Bank and World Customs Organization.

ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

For more information about the ESAAMLG, please visit the website: [www.esaamlg.org](http://www.esaamlg.org)

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**This Typologies Report was adopted by the ESAAMLG Task Force of Senior Officials and approved by the Council of Ministers at the September 2019 meeting in Ezulwini, Eswatini.**

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## ACRONYMS

<b>AML/CFT</b>	Anti-Money Laundering/ Countering the Financing of Terrorism
<b>AU</b>	African Union
<b>CDF</b>	Constituency Development Fund
<b>CPI</b>	Corruption Perception Index
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions
<b>EAC</b>	East African Community
<b>ESAAMLG</b>	Eastern and Southern Africa Anti-Money Laundering Group
<b>FATF</b>	Financial Action Task Force
<b>FIU</b>	Financial Intelligence Unit
<b>GIABA</b>	Intergovernmental Action Group Against Money Laundering in West Africa
<b>LEA</b>	Law Enforcement Agency
<b>MLA</b>	Mutual Legal Assistance
<b>MOU</b>	Memorandum of Understanding
<b>ODPP</b>	Office of Director of Public Procurement
<b>OECD</b>	Organization of Economic Cooperation and Development
<b>PEP</b>	Politically Exposed Person
<b>PwC</b>	PriceWaterhouse Coopers
<b>REC</b>	Regional Economic Community
<b>RMC</b>	Regional Member Countries
<b>SADC</b>	Southern African Development Community
<b>STR</b>	Suspicious Transaction Report
<b>UNDP</b>	United Nations Development Programme
<b>WAEMU</b>	West African Economic Monetary Unit

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## EXECUTIVE SUMMARY

Governments use the procurement process to acquire goods and services required for the effective running of government and provision of services. These goods and services are procured from third party private companies. The process of procurement is based on principles of fair competition and transparency. This process also affords governments an opportunity to contract the most responsive service provider to the specifications of the procurement.

It is without doubt that for most governments, a big portion of their budgets are earmarked for paying for goods and services. This makes government procurement an area that is highly susceptible to fraud and corruption. It was the intention of this study to understand three main things: the ways in which the procurement system is manipulated, the main players that abuse the system and finally the manner in which the ill-gotten monies are laundered.

The study indeed confirms that procurement corruption exists in the ESAAMLG region and most responding member states cited cases. The evidence presented by member states indicated that corruption exists at all stages of the procurement process. However, it is at the awarding of the tender that most corruption occurs. At this stage, political influence and abuse of power are the most common factors that make the awarding of tenders flawed. This meddling in the tendering process was found to be prevalent among politically exposed persons as well as procurement officials at all levels. Once these funds have been fraudulently earned by manipulating the procurement process they are laundered through corporate vehicles (including shell companies), the use of off-shore jurisdictions, banks and other depository instruments and through the use of associates or nominees. These proceeds are used to finance and support lavish and expensive lifestyles. It is for this reason that most monies are invested in real estate by purchasing expansive properties and also for the purchase of expensive cars.

While efforts are made by law enforcement agencies to deal with procurement corruption, it was noted that a lot more can be done. Member states should invest more in improving human resources skills required to deal with this form of crime. This



should address the entire value chain of combating money laundering linked to public procurement. In addition, member states submitted that the lack of coordinated domestic approach to this crime hinders the efforts made as agencies work in silos. This cooperation should also extend to foreign counterparts as some of the funds fraudulently gained are laundered in foreign jurisdictions.

The report concludes by accepting that ESAAMLG has a serious problem when it comes to public procurement corruption. Furthermore, the study was able, through making reference to finalized cases, to confirm that there is a link between money laundering and public procurement corruption. It is through these cases that various gaps and loopholes that are exploited by those that launder money stolen from the government fiscus were identified.

Numerous recommendations were made that could be implemented in a bid to combat this form of money laundering. These vary from agency level, to domestic level and even regional efforts that could be undertaken.

## CHAPTER 1 -INTRODUCTION

### 1.1 Background

Most governments use the system of public procurement to source goods and services required for the running of government. This form of government spending can amount to about 18% to 20% of gross domestic product (GDP) of most countries (OECD, 2018). It is for this reason that it is always advocated that public procurement should be a transparent process that has integrity. This notion is fully supported by Walker et al, who states that public procurement must be guided by principles of transparency, accountability, and achieving value for money for citizens and tax payers<sup>1</sup>.

Needless to say, due to the amounts of money involved in public procurement, it is prone to increased corruption and fraud. As a government function involving significant amounts of contract awards each year, it is considered by societies around the world as an area prone to corruption (Organisation for Economic Co-operation and Development , 2015).

Efforts have therefore been undertaken by individual governments to fight this form of corruption. This fight has even escalated to regional and international organisations, where protocols are adopted by member countries to fight corruption. This has been guided mainly by the United Nations Convention against Corruption which came into force in December 2005. The Convention is the only legally binding universal anti-corruption instrument whose far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem (United Nations Office on Drugs and Crime, 2003). Despite the existence of this convention, weak enforcement of procurement laws has resulted to an increase in corruption in many jurisdictions. This is due to the fact that corruption is seen as one way of making money quickly with very little effort involved.

The laundering of the proceeds gained through corruption led to organisations like the Financial Action Task Force (FATF) getting involved in understanding how these proceeds are acquired and then laundered. It is against this backdrop that the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) saw the need to

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<sup>1</sup>Brammer, S. and Walker, H. (2011) Sustainable Procurement in the Public Sector: An International Comparative Study. *International Journal of Operations & Production Management*, 31, 452-476.

understand the dynamics of this crime within its region. In line with this rationale, a decision taken by the Council of Ministers in September 2017 approved a typology study on *Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region*.

This report thus details the outcomes of that study and seeks to identify possible policy recommendations that could be undertaken by ESAAMLG member states to deal with this form of corruption and subsequent money laundering.

### **1.2 Objectives of the study**

The study was undertaken to gain better understanding of the methods of procurement corruption in the public sector within the ESAAMLG region. Furthermore, the study was to shed light on how the proceeds generated from these activities are laundered. The study was anchored on the objectives outlined below as approved by the ESAAMLG Council of Ministers:

- i. To provide the contextual understanding of the relationship between public procurement, corruption and money laundering in the ESAAMLG Region;
- ii. To identify the main methods of procurement corruption, and how the proceeds are laundered;
- iii. To identify the five most susceptible areas to procurement corruption in the public sector;
- iv. To identify gaps in the Legal and Institutional framework around public procurement in the ESAAMLG Region;
- v. To identify the top five sectors in which proceeds from procurement corruption are invested, in and outside the ESAAMLG Region;
- vi. To identify gaps that exist in the public procurement process that encourage corruption and money laundering;
- vii. To quantify the proceeds of procurement corruption as well as monetary and asset recoveries;
- viii. To identify the main perpetrators of procurement corruption

### **1.3 Scope of the study**

In this study, public sector procurement refers to any procurement in central, regional and local government. It also includes parastatals or state enterprises and any quasi government body. The study investigates the nature and manner of public procurement corruption through the public procurement value chain and limits itself to the activities within the ESAAMLG region.

In addition, the study uses tried corruption cases in a bid to establish how the proceeds were laundered. It is important to note that the study limits itself only to laundered proceeds and does not seek to understand proceeds used in terrorist financing.

Lastly, while private sector insights were sought, it must be noted that there was no focus made on private sector corruption methods. The information gathered from the private sector was used to understand methods, trends and patterns within the public sector. It was important to gain this insight from the private sector, because as earlier stated, the private sector does play a role in the general public sector procurement corruption activities, either as the corruptor or the corrupted.

#### **1.4 Methodology**

The Council of Ministers, at its meeting in September 2017 in Zanzibar, approved a typology study on "Procurement Corruption and Associated Money Laundering in the ESAAMLG Region". The study was designed to identify the methods of procurement corruption in the public sector and how the proceeds generated from these activities are laundered.

As per the approved proposal, in carrying out the study both the public and private sector in the region were consulted. In light of this, two questionnaire templates were developed and circulated to ESAAMLG member countries in December 2017. Responses were received from Law Enforcement Agencies, Public Procurement Regulatory Authorities, Financial Intelligence Units and Government ministries as well as private sector respondents. The data from these responses was then analyzed to get a picture of what is going on in the region in the area of public procurement corruption. In addition to the information received from the aforementioned organisations, extensive review of literature was undertaken to understand public procurement corruption, present different policy positions on the topic as well as identifying ongoing global dialogue on the subject matter. Finally, to give evidential credence to the study selected case law and supplied case studies were used, especially to demonstrate the steps undertaken by different jurisdictions in dealing with public procurement corruption.

It is important to note that two questionnaires were sent to each ESAAMLG member state and responses were received from 17 jurisdictions (94% of respondents) for the public sector questionnaire and 11 jurisdictions (61%) for the private sector questionnaire. Nonetheless, not all questions in the questionnaire were answered and statistics were only provided by 11 responding jurisdictions.

## CHAPTER 2 – LITERATURE REVIEW

The following section will seek to define public sector procurement corruption and also detail the phases that are involved in this complex process. The literature review will also give a brief overview of the ongoing global dialogue on the subject matter as well as available policy positions.

### 2.1 Corruption in public procurement

The Organisation for Economic Co-operation and Development (OECD) in the *Compendium of Good Practices on the Use of Open Data for Anti-Corruption*<sup>2</sup>, defines public procurement as the purchase of goods, services and works by governments or state-owned enterprises from private sector.

However, for one who wishes to understand procurement, there is an acceptance that this is a lengthy process with various stages. Therefore, when dealing with matters related to it, it is important to identify its various stages and the elements that each stage is exposed to. These elements differ at each stage and include, but are not limited to, political interference, the appointment of inexperienced and unqualified officials and contractors, bid committees that exclude qualified technical and professional experts, ignorance and lack of knowledge and capacity, noncompliance with the relevant legislative framework and unethical behavior amongst others.

Corruption is defined differently in various jurisdictions. However, there are common elements that can be found in most of these definitions. It can be understood as the abuse of public office for private gain and involves an activity where both the public

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<sup>2</sup> Organisation for Economic Planning and Development (OECD) 2015, *Compendium of Good Practices on the Use of Open Data for Anti-Corruption*

and private sector participate and in most instances it is based on greed and not on need (Opperman, 2014).

## 2.2 ESAAMLG Context

Generally, countries within the ESAAMLG region have not effectively dealt with procurement corruption. This is evident in the consistent poor ranking of the majority of countries in the region on the Corruption Perception Index (CPI). The average for ESAAMLG countries on a scale of 0 to 100 was 37 for the period 2013 to 2017, and 38 for the year 2018; where zero means highly corrupt and 100 means very clean. This is an indication of the perceived levels of public sector corruption for the region.

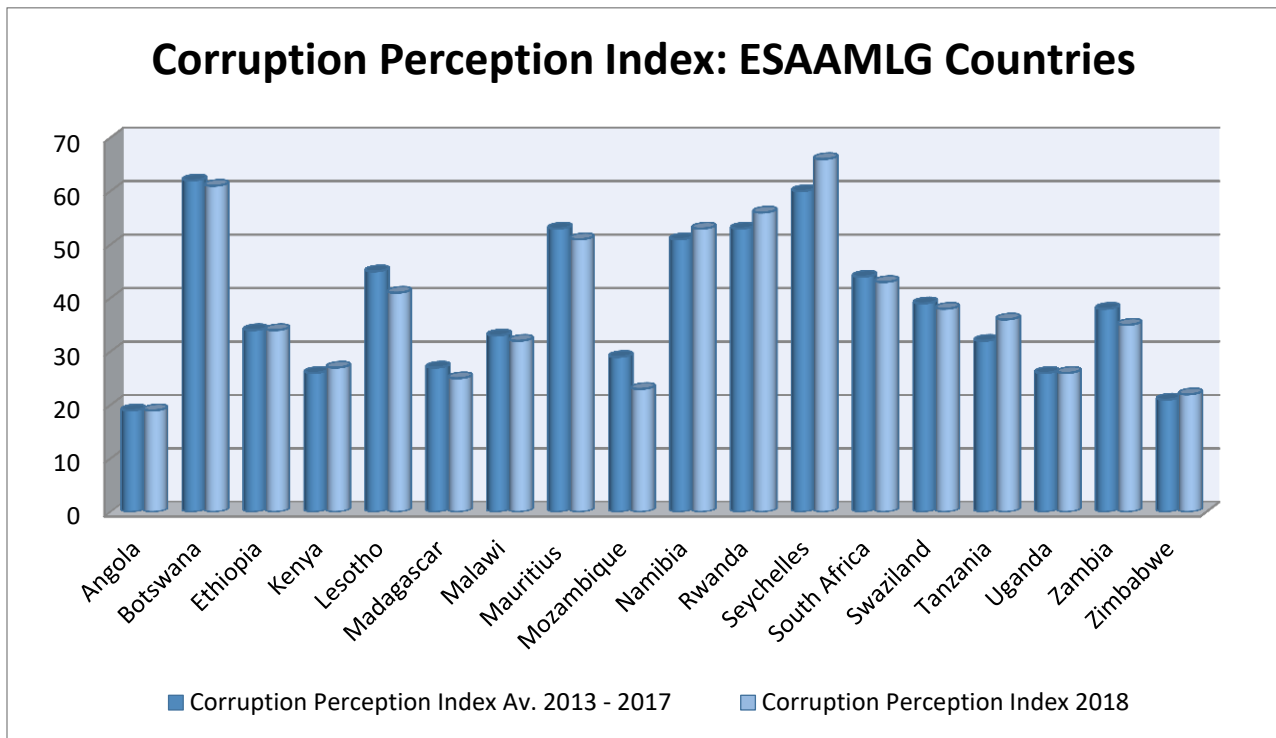


Figure 1: Corruption Perception Index: ESAAMLG Countries. Source: Transparency International ([www.transparency.org](http://www.transparency.org))

According to Transparency International, the majority of countries in Sub-Saharan Africa are making little or no progress in ending corruption. This is true despite the fact that corruption is regarded as a serious offence which contributes to money laundering in all member states. Furthermore, it is undeniable that the link between procurement

corruption and money laundering is such that the proceeds of procurement corruption are susceptible to laundering. There are many reasons attributed to this increasing scourge of laundering proceeds gained from corruption linked to public procurement. A recent study conducted by ESAAMLG acknowledged that financial, human and communication resources allocated to anti-corruption and anti-money laundering interventions in most member countries are inadequate and could affect implementation of both anti-corruption and AML legislation<sup>3</sup>.

Following a study that was undertaken by the FATF, it was found that information on trends in procurement corruption and associated money laundering in the ESAAMLG region was not readily available. It was also noted that ESAAMLG had not conducted a study to determine the methods, magnitude and destination of funds laundered from procurement corruption. Likewise, a determination had not been made on who the perpetrators were, which sectors were most vulnerable, and where the laundered funds were invested. However, it was noted that efforts have been made using various regional forums to address issues relating to procurement corruption.

The foundations for public procurement reform in Africa were laid in 1998, by the Abidjan Conference on Procurement Reform organized by the African Development Bank in cooperation with the United Nations Development Program (UNDP), World Bank (WB), OECD and other donors. This Conference, attended by 30 African countries, succeeded in setting the agenda for improvement of public procurement in Africa by highlighting the need for:

- (i) modernization of public procurement to meet international standards and best practices;
- (ii) forging a consensus among all stakeholders on engaging in public procurement reforms; and
- (iii) promoting national reform programs with a common strategic framework focusing on accountability, transparency and efficiency.

The Abidjan Conference initiated many national procurement reform programs in African countries. In addition, Africa's Regional Economic Communities (RECs) such as the Common Market for Eastern and Southern Africa (COMESA) and the West African

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<sup>3</sup> An Assessment of the Links between Corruption and the Implementation of Anti-Money Laundering Strategies and Measures in the ESAAMLG Region (2009)

Economic and Monetary Union (WAEMU) initiated procurement reforms at the regional level. The Abidjan Conference also marked the commencement of the African Development Bank's commitment to supporting increased transparency and accountability in public procurement in Regional Member Countries (RMCs). The Bank supported the establishment of Public Procurement Regulatory Authorities in more than 15 member countries, decentralization of national procurement systems; and development, improvement, integration, or connection of Procurement Information Systems to Public Financial Management Information Systems.

In addition to this, East African countries had enacted anti-corruption laws and had established agencies devoted to helping control corruption even before the adoption of the AU Convention. Nonetheless, there is still strong skepticism within the East African region regarding the effectiveness of these institutions, which are vigorously criticised in view of the disparity that exists between the governments' anti-corruption rhetoric and the impunity enjoyed by public servants (Open Society Foundation, 2015). This is attributed to limited autonomy of these agencies where they have been found to lack sufficient independence required for them to fulfil their mandate effectively and their mandate is usually limited and does not afford them powers to institute legal proceedings.

The SADC Protocol against Corruption (2001) seeks to 'promote and strengthen the development, within each Member State, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector'. The Protocol has seen member states establishing various mechanisms at national level to combat corruption. These include the enactment of laws, establishment of agencies and adopting policies with the aim of preventing, detecting, punishing and eradicating corruption (Open Society Initiative for Southern Africa, 2017). Notwithstanding these efforts corruption in Southern Africa has not abated. Just like in East Africa, the review found that to improve the current situation institutional autonomy, financial, political and administrative independence is crucial. There is urgent need to ensure that all public institutions, as well as the private sector, introduce user-friendly, efficient and transparent systems (Open Society Initiative for Southern Africa, 2017).

### **2.3 Understanding the Procurement Process**

Public procurement is a process starting with procurement planning and proceeding in sequence to, advertising, invitation to bid, bid evaluation, contract award and contract



implementation. Three core phases can be identified in this process and they are the pre-tendering phase, the tendering phase and the post-tendering phase, as illustrated below in figure 2. Mantzaris asserts that corruption can occur at any of these stages and in various forms (Mantzaris, 2014).

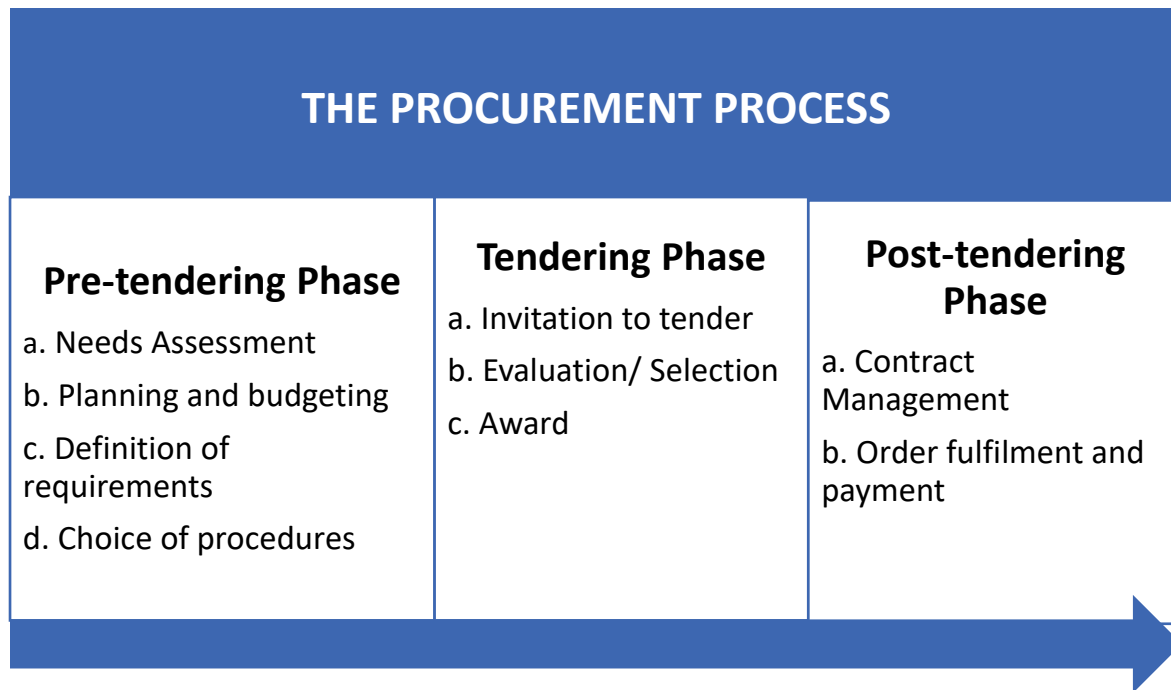


Figure 2: Stages of the Procurement Process. Source: OECD Principles of Integrity in Public Procurement, 2016

***a) Pre-tendering Phase***

The pre-tendering phase generally involves, a needs assessment, planning and budgeting, defining the requirements and developing specifications. The vulnerabilities at this stage can be in defining the requirements. Reports could be prepared that falsely justify current or future departmental needs, falsely inflate actual needs or falsely report damaged equipment in order to create an excess supply that could be used for corrupt purposes. Equally, the procurement requirements could be written to favour or disfavour certain suppliers or budgets set artificially high so that excess allocations can be stolen or diverted.

***b) Tendering Phase***

Bidder selection and evaluation occur during the tendering phase which ends in the award of a contract. During this phase, the prominent form of corruption is price fixing

between suppliers in order to secure business or bid rigging where suppliers submit false bids to secure who gets the business. During the evaluation of proposals or tenders, the evaluation criteria could be amended after tender receipt. It is also possible that advance information could be provided to a particular favored supplier or the evaluation criteria drafted to emphasize weaknesses of a particular competitor. After the evaluation is complete, it is possible to award a contract that materially differs from the terms of the solicitation in terms of specifications, quantity and delivery schedule. On the other hand, a bidder could propose an unrealistically low offer in the hopes that after the contract is awarded, procurement officials will allow amendments to increase costs.

### *c) Post-Tendering Phase*

Corruption in the post tendering phase relates mainly to contract management and payments made for goods, works and services. A common practice at this stage is the over-payment of suppliers through fraudulent submission of duplicate or false invoices. A contractor could substitute inferior products or personnel, oversight and reporting requirements may be minimized and in some cases cost overruns can be corruptly explained away or falsely justified. PricewaterhouseCoopers found that fraud in the procurement cycle occurred most often during the payments process stage, followed by the vendor selection and invitation of quotes or bids stage (Pricewaterhouse Coopers, 2014).

## **2.4 Public Procurement, Corruption and Money Laundering**

Articles 4 and 6 of the African Union Convention on Preventing and Combating of Corruption and Related Offences sets parameters that establish the laundering of proceeds of corruption as an offence. Public procurement corruption provides the funds, which are laundered through formal channels, as well as informal channels such as unregistered real estate and motor vehicle agents. It further appears that there is a strong link between procurement fraud and money laundering, as proceeds of procurement fraud are most likely to be laundered. This then creates a cycle where one activity feeds the other with public procurement fraud facilitating money laundering and money laundering encouraging public procurement fraud (Levi, 2010).

The aforementioned view was supported by The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) which asserted that a direct connection existed between the lack of adherence to good governance standards and the proliferation of frauds in public and private sectors of Nigeria (Inter-Governmental Action Group against Money Laundering in West Africa, 2014). This study further affirmed earlier claims made about the lack of political, financial and administrative independence, and how this exacerbated procurement corruption especially with politically exposed persons.

The FATF also had its own findings on procurement corruption and money laundering and its report stated the following:

*“.....While all holders of public positions may have corrupt opportunities to a certain degree, those having substantial authority over or access to state assets and funds, policies and operations – including procurement awards, other public expenditures, use of government owned resources, and control over regulatory approvals, including the awarding of licenses and concessions – can pose a greater risk than others. Their actual vulnerability to corruption will vary, depending on the extent to which they exercise hierarchal control. These individuals also enjoy a special status in their country of origin because of their executive, legislative, judicial, administrative function, military and/or bureaucratic power. They are in a unique position of influence in their nation state and perhaps diplomatically when they are acting abroad. Some public officials who have an important role in significant procurement, export contracts, licensing and other activities with substantial economic consequences for the interest of their parties, may be much more exposed to large scale corruption than their counterparts in less risky sectors...”* (Organisation for Economic Cooperation and Development, 2012).

As per the findings of the above report FATF stressed that effective implementation of the FATF Recommendations (i) assists in safeguarding the integrity of the public sector by adequately resourcing agencies involved in AML/CFT and (ii) establishes a legal framework and mechanisms to alert the authorities to suspicious activities in the financial system and to provide them with sufficient powers to investigate and prosecute such activities, and to recover stolen assets.

However, to achieve the above, the FATF shares the same sentiments that agencies should have sufficient operational independence and autonomy to ensure freedom from undue influence or interference; be provided with adequate budgetary resources to fully and effectively perform their functions; and the staff should have the appropriate skills, receive adequate training, and maintain high professional standards in order to foster a culture of honesty, integrity and professionalism. There should be a legal framework that criminalises money laundering and allows for the establishment of an independent Financial Intelligence Unit. These laws should also allow for freezing, seizing and confiscating stolen assets.

In addition, Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs) should conduct ongoing due diligence on all business relationships including enhanced scrutiny of high-risk relationships, clients and jurisdictions in order to detect suspicious activities that might be related to corruption and report these to the relevant authorities.

The aforesaid prevalence of procurement corruption and its undeniable link to money laundering is what informed this study. To effectively deal with this practice in ESAAMLG, it became apparent that policies in the region have to be informed by a clear understanding of how funds that are illegally gained through procurement corruption are laundered in the region. It is for this reason that the study, whose findings are tabled below, was undertaken.

### **CHAPTER 3 – PROCUREMENT CORRUPTION AND MONEY LAUNDERING VULNERABILITIES, TRENDS & METHODS**

This chapter examines the different forms of procurement corruption and the indicators that point to its presence in public sector entities in the ESAAMLG region. It further identifies areas in the procurement cycle that are abused by both internal and external actors who in most cases have access to public funds and significant control over budgets and contracts and are therefore able to manipulate the procurement process for their private advantage. Finally, the chapter highlights the sectors in which procurement corruption is prevalent, and the manner in which the illicit funds generated from these sectors are laundered.

### 3.1 Procurement Methods

The study identified various procurement methods that are commonly used in the region. These include:

- i. *Simplified bidding / Quotations* - a procurement method which compares quotations from a number of bidders.
- ii. *Open bidding* - a procurement method for goods, works and services which is open to participation on equal terms by all eligible bidders through advertisement of the opportunity.
- iii. *Limited bidding / Selective bidding* - a procurement method for goods, works and services where bids are obtained by direct invitation to a shortlist of bidders, without open advertisement.
- iv. *Direct bidding* - this is a procurement method where a bid is obtained directly from a single bidder, without competition.
- v. *Force account* – this method entails a procuring entity using its own personnel and equipment where the quantities of work involved are small, scattered in remote locations and qualified contractors are unlikely to tender at a reasonable price. The method may also be used where works need to be carried out without disrupting on-going operations and the quantities of works cannot be defined in advance.
- vi. *Direct procurement/ single source* – the procuring entity goes directly to the supplier to procure goods or services or buys goods and services from a single source. This method is used in situations where, inter alia, there is an urgent need for the goods, works or services, there is only one supplier who can supply them or there is no reasonable alternative or substitute.
- vii. *Community participation* - this method involves the participation of local communities in order to increase the utilization of local know-how and materials and to employ labour intensive and other appropriate technologies.
- viii. *Micro Procurement* – this is the acquisition of goods or services, the aggregate amount of which does not exceed the micro-purchase threshold (petty cash).

- ix. *Purchases from other procurement entities* - The procuring entity may purchase directly from another Government agency without the application of any other method of procurement where the Government agency is able to meet all the procuring entity's requirement as specified in the statement of requirement for a particular procurement need and there would be no benefit in purchasing from a supplier.
- x. *Procurement of infrastructure for private financing and award of concessions* – this refers to the use of the private sector to carry out certain projects such as construction, rehabilitation or operation of public infrastructure and other public goods on the basis of private investment.

With regard to which procurement methods were most vulnerable to procurement corruption, the responses from responding jurisdictions varied significantly. The following were highlighted:

- a) *Limited bidding and Direct bidding* – The study identified limited bidding and direct bidding as the most vulnerable methods to abuse. These methods were considered vulnerable due to reduced levels of transparency, lack of competition and the possibility of tailoring specifications to suit favored suppliers. Limited bidding for instance is prone to biased development of the shortlist as well as biased sharing of information with bidders.

#### **Vulnerability of Limited Bidding**

In respect of limited bidding, a procurement officer approached two of his associates to bid for supply and delivery of office equipment and furniture by way of providing quotations which were above the threshold of the controlling officers. The officer thereafter selected the one who quoted lower than the other and recommended them for the award of a contract. The successful bidder was awarded a contract to supply and deliver office equipment and furniture. The payment was broken in two instalments to avoid the threshold requirement though it was based on the quotation which was above the threshold of the controlling officer. The officer was prosecuted for corrupt practices and abuse of authority of office. He was convicted and sentenced to 7 years imprisonment with hard labour.

Source: Zambia

Similarly, direct bidding is prone to abuse by public officials and could result in a highly inflated contract price for the procuring entity as illustrated in the case below.

#### **Vulnerability of Direct Bidding**

A commandant at a military institution directed a foreign company to supply military garments to the institution at an inflated price. The company supplied the garments and they were paid after the execution of the contract. In turn one of the Directors in the contracted company transferred US\$ 15,000 from the company account held in another jurisdiction to the account of the son of the commandant who was studying abroad. The commandant and the supplier were prosecuted for engaging in corrupt practices in connection with the procurement of military garments. They were convicted of corrupt practices and sentenced to five years imprisonment with hard labour.

Source: Zambia

- b) *Simplified bidding and Open bidding* – these methods were selected by 31% of respondents who stated that these methods were vulnerable to abuse by corrupt procuring authorities and suppliers. Simplified bidding for instance, allowed for negotiations between the procurement personnel and the suppliers, thus exposing the process to abuse. Respondents further noted that with simplified bidding it was possible for a procuring entity to source three quotations from the same supplier trading under different names.

### **3.2 Forms of procurement corruption**

Procurement corruption can be committed in many different ways and at any stage of the procurement process. The table below outlines the four main forms of procurement corruption and their subcategories.

NO.	TYPE OF PROCUREMENT CORRUPTION	SUBCATEGORIES
1.	Eliminating or Reducing Competition	<p><b>Single tender</b> - engineering a situation whereby only one organization is invited to bid (unjustified single source awards)</p> <p><b>Extending contracts</b> – achieving a contract extension instead of a competitive process.</p> <p><b>Tailoring the specification</b> - in order to favour a particular bidder who may then be the only supplier (or one of a few) who can meet the specification.</p> <p><b>Discouraging other bidders from competing</b> - by bribing those other organizations, offering them other inducements, or indeed through threats.</p> <p><b>Bid rigging</b> and manipulation of the procurement process</p> <p><b>Collusion</b> between suppliers and/or between staff in the procuring organization and suppliers.</p>
2.	Biased Supplier Selection	<p><b>Inside information</b> - enabling the preferred supplier to position their bid successfully by giving them information other bidders do not have.</p> <p><b>Design of the evaluation process</b> - introducing an unfair bias or element of the process to favour one firm (the preferred supplier).</p> <p><b>Marking of bids</b> – biased marking and evaluation of the</p>



		<p>tenders received to favour one firm.</p> <p>Conflict of interest</p>
3.	<b>Corrupt Contract Negotiation and Management</b>	<p><b>Non- competitive Ts and Cs</b> – agreeing to contractual arrangements that are not truly competitive or in the contracting authority’s interest; or ignoring contract terms in a manner that favours the supplier.</p> <p><b>Contract change/ variation</b> – once supply is under way, agreeing to changes to the contract that are not in the contracting authorities best interests. Suppliers not supplying the agreed quality and/ or quantity of goods and services.</p> <p><b>Contract extension</b> – either in scope, volume or time, where this is against the best interests of the contracting authority.</p>
4.	<b>Over Payment or False Payment</b>	<p><b>Over-billing quantity</b> (against what was delivered) – this includes invoicing for more than the actual amount provided, or for goods or services that were not provided at all.</p> <p><b>Over-charging</b> - invoicing at prices higher than agreed in the contract.</p> <p><b>Over-buying</b> – collusion between internal staff and suppliers leads to over-buying and invoicing of goods or services that were provided – but were not required.</p> <p><b>Fake invoices</b> – invoices submitted from a fraudster that is not a supplier to the contracting authority; supply of invoices with unauthorized additional costs</p> <p><b>Payment diversion</b> – legitimate payment is diverted to a non-legitimate recipient; staff diverting legitimate</p>

		<p>payments intended for suppliers to themselves.</p> <p>Creation of shell companies to commit fraud or facilitate fraudulent payments.</p>
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Figure 3: Forms of Procurement Corruption. Source: [www.publicspendforum.net](http://www.publicspendforum.net)

According to responses from member countries, all of the above forms of procurement corruption are practiced within the ESAAMLG region. The most common forms are listed below and some are illustrated in the cases studies that follow:

- Conflict of interest and corruption in the evaluation and approval processes
- Payment for sub-standard goods or services
- Technical specifications tailored for a specific supplier
- Lack of proper justification for the use of non- competitive procedures
- False or duplicate invoicing for goods and services not supplied

#### **Conflict of interest**

1. Company S Ltd is a State-Owned Enterprise ('SOE') and the complainant herein. Accused 2 was the sole director of Accused 1 and also the employee of Company S. The allegations against Accused 1 and 2 were, *inter alia*, that they misrepresented to Company S and its employees that Accused 2 had disclosed his conflict of interest in the outsourcing of work as contemplated in Company S's integration and decorporatization plan of Accused 1 at the appropriate time. During the period February 2009 to July 2010 Company N, a subsidiary of Company S, paid Accused 1 US\$4,636,850.

Accused 1 and 2 were convicted of fraud and money laundering. Accused 1 was sentenced, in respect of the count of fraud, to US\$42,680 and US\$28,450 in respect of the count of money laundering, all wholly suspended for five years. Accused 2 was sentenced to an effective 15 years imprisonment.

2. In the case of **ICAC v R. JANDOO 2013 INT 95**, the accused was charged with the offence of 'Conflict of interests' in breach of section 13(2)(3) of the

Prevention of Corruption Act (2002). The particulars of the offence were to the effect that on or about 21 December 2006, whilst being a public official having a personal interest in a decision of the Board of the Information and Communications Technology Authority (ICTA), he took part in the proceedings of that public body as regards the sale of car Rover 3555 NV02 when he was interested in obtaining the car for his personal use. The accused was found guilty.

Sources: South Africa, Mauritius

#### **Payment for sub-standard goods, false invoicing and duplicate invoicing**

A syndicate of more than ten Ministry of Health Officials engaged in a scheme of procuring goods and services which were either not supplied or under supplied or paid for twice. The source of the funds was various donors for various programs and activities of the Ministry. During the period the syndicate engaged in bogus procurements and members of the syndicate amassed wealth in the form of high value motor vehicles and real estate. The syndicate was investigated by a Joint Team of law enforcement agencies. At the conclusion of the investigations members of the syndicate were arrested and charged for various offences of corruption, abuse of authority of office, theft by public servant and money laundering in connection with either goods and services not supplied, supply of substandard goods double payments for single supply.

Source: Zambia

#### **Payment for goods or services not supplied/ Creation of shell company to facilitate fraudulent payments**

The Accused person, who was working as a Secretary at the National Construction Industry Council (NCIC) registered a company after she was approached and convinced to do so by a senior official in the Ministry of Tourism. She had never done any construction work before.

A few days after registering the company and giving the government official the

company certificates, the official gave her two Government cheques worth approximately US\$198,113. After the cheques were cashed, the Accused was instructed by the government official to take 10% and return the 90% to him.

The Ministry of Tourism had not advertised or invited bids from companies, neither had it sent a request for quotations for the supply of goods and services. Although the scheme was designed to appear like single sourcing, no goods or services were delivered to the Ministry of Tourism.

The Accused was arrested and charged alongside the government official for the offences of Theft and Money Laundering. She was convicted and sentenced to 7 years with hard labour (3 years for theft and 7 years for money laundering).

Source: Malawi

According to the respondents, the above were identified as the most common forms of procurement corruption through audit reports, assessments and findings from investigations. The majority of respondents asserted that these occurred largely due to a lack of proper supervision and inadequate administrative monitoring mechanisms in government departments. However, it can be argued that over and above the aforementioned, abuse of power, conflict of interest and process manipulation also play a critical role in perpetrating procurement corruption.

### **3.3 Stages of the Procurement Cycle Most Vulnerable to Corruption**

The study identified three phases of the procurement process: pre-tendering, tendering and post tendering phases. According to responses from eleven (11) countries, all three phases of the procurement cycle were vulnerable to corruption although the majority of responses indicated that the tendering phase was the most vulnerable to abuse by public authorities.

In the pre-tendering phase the definition of procurement requirements and needs assessment stages were more prone to abuse. This is due to the fact at these stages the needs and specifications could be tailored to target specific suppliers.

Within the tendering phase, the most vulnerable stage to corruption was the award process, followed closely by the evaluation stage. Respondents stated that during this phase, procurement officials had the most discretion to decide which bidders to shortlist.

In the post tendering phase, contract management could present problems especially where there was ineffective supervision of works or collusion between the contractor and the project manager. This could result in substandard works or products being procured by the public entity.

The above findings are illustrated in the chart below:

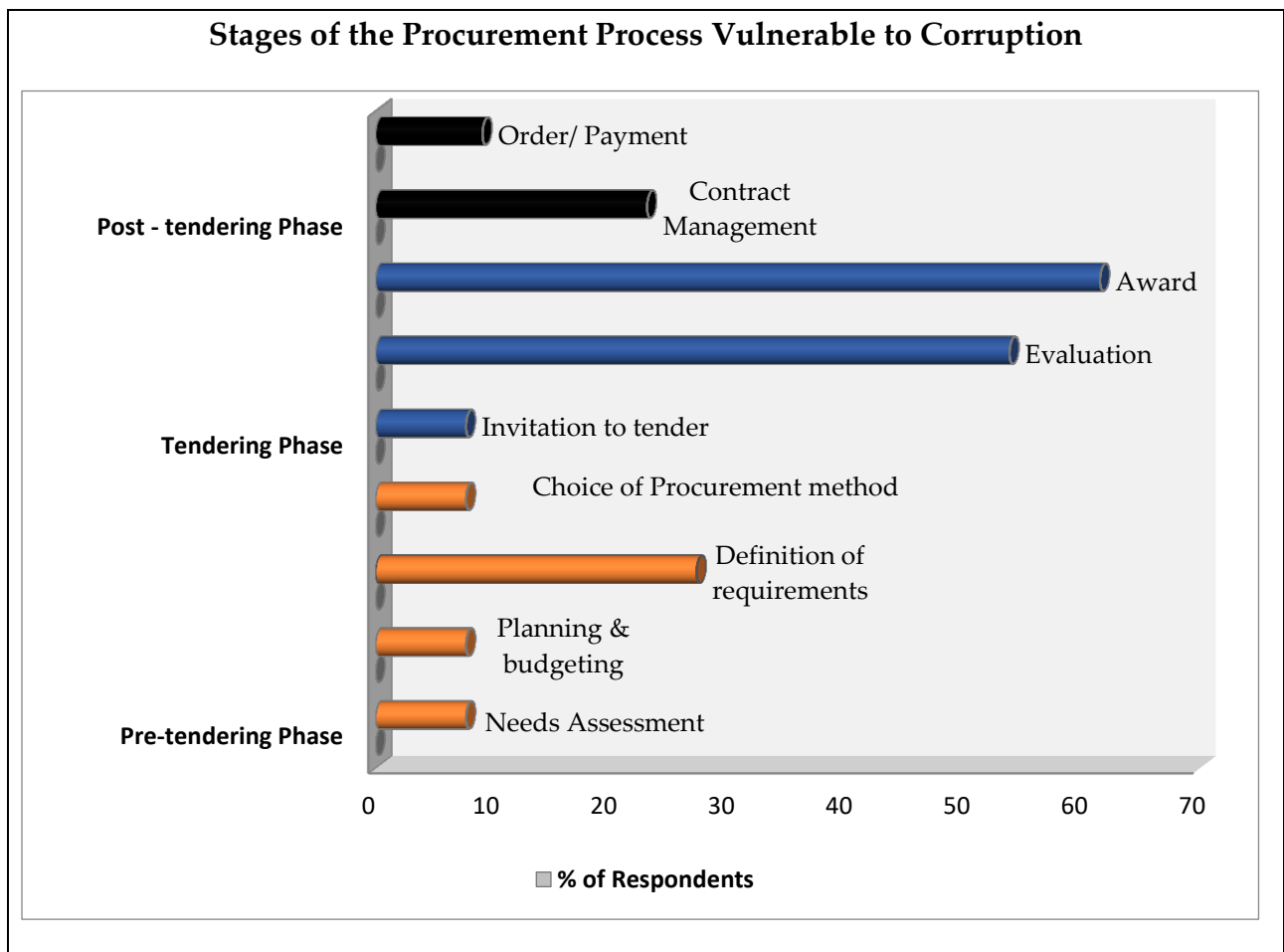


Figure 4: Stages of the Procurement Process Vulnerable to Corruption

A case that occurred in one of the responding jurisdictions clearly highlights how procurement corruption can occur at every stage of the procurement process.

### **Manipulation of the procurement process**

A politically exposed person and employees of a procuring entity and a financial institution and one of its customers were involved in procurement corruption where the Government lost over US\$6.5million. The PEP was alleged to have influenced the procurement process that led to the award of the road tender to a fake company.

The charges stemmed from an investigation in the illegal award of a contract to a fictitious road construction company from USA that was contracted to construct a road. It was later discovered that the fictitious company did not have relations to the firm in the US that it used as its parent company. Investigations further revealed that a company called X Construction Company Inc. was awarded a contract for the construction of the road, yet the bidder for the job was Y Construction Company. The prosecution argued that this was illegal since the bidding company was different from the one awarded the contract.

The fraud in the procurement of a contractor started when a bid was presented to the procuring entity purporting to be a bid for Y Mississippi but with X Florida tagged on as its representative. At the stage of bid opening, X bid should have been rejected. The procurement unit allowed this bid to go through to evaluation stage and the contracts committee also strangely allowed it not only to pass but in fact to win the contract. Red flags were raised by the preliminary due diligence team however, by then the process had advanced since a contractor had been selected.

The prosecution evidence was that the discrepancy between the bid and the final award was the subject of due diligence which was not concluded. Further, that the securities which were supposed to secure the advance payment were fake as well as forged. Securities are the reason money is advanced to a contractor. It is a form of collateral. Nonetheless, an advance payment of over US\$ 6.5 million was made against the forged or unenforceable securities. These funds were withdrawn and spent and another company called Z was subcontracted and given half of the funds and mobilized to start the construction of the road.

After evaluating the prosecution and defense evidence, the judge concluded that the prosecution case against A1 the PEP and A2 CEO has not been proved beyond reasonable doubt. Consequently, A1 and A2 were acquitted on all counts.

A3, the Finance Director, was found guilty of neglect of duty for failing to verify securities against which an advance payment was made.

A5 was the manipulator of the entire procurement process facilitated by a weak procurement unit and a complicit contracts committee. He was able to get free money

by fronting a company that had no capacity to construct a public road on its own. He was found guilty of theft, uttering false documents and obtaining execution of securities by false pretense. A5 was convicted and sentenced by the Anti-Corruption Court to ten years in prison.

Source: Uganda

### **3.4 Sectors Most Prone to Procurement Corruption**

Respondents were asked to identify the sectors that were most vulnerable to procurement corruption. All respondents (100%) selected the construction sector, demonstrating that it was perceived to be highly susceptible to corruption. In a 2012 report<sup>4</sup>, the FATF recognized large infrastructure projects as being one of the sectors most prone to corruption related to money laundering. The report asserts that it is easier to conceal inflated costs and bribes in this sector due to the large scale of works involved.

About 77% of respondents also identified the health sector as presenting a high risk for procurement corruption. FATF notes that the health sector may be attractive to corrupt individuals given the specialized nature of items that are procured and the many steps involved in the dispensing of medical products, which can create opportunities for corrupt activities.

The case below demonstrates conflict of interest among health professionals who were involved in the Bid Evaluation committee for medical products.

#### **Procurement Corruption in the Health Sector**

The members of the Bid Evaluation Committee of the Ministry of Health for cardiology consumables are mainly the doctors posted at the Cardiology Unit of the public hospitals. It was noted that the doctors: -

- (i) would meet medical representatives of various bidding companies (Laboratories) at the hospital although they were not allowed to do so;
- (ii) prepared the annual requirement and specifications which they then forwarded to the procurement section for tender exercise;

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<sup>4</sup> FATF (2012) : Specific Risk Factors in Laundering the Proceeds of Corruption

(iii) sat in the bid evaluation committee where they analysed the various bids received and prepared a report with their recommendations which they submitted to the Departmental Tender Committee for approval.

The investigation revealed that further to the Bid Evaluation Committee, a doctor and a charge nurse were sponsored by the successful companies to attend medical seminars in UK and South Africa, respectively. The companies paid for their air tickets and hotel accommodation.

Source: Mauritius

The education sector and the defence and security sector (selected by 62% of the respondents) were also identified as posing significant risk for procurement corruption.

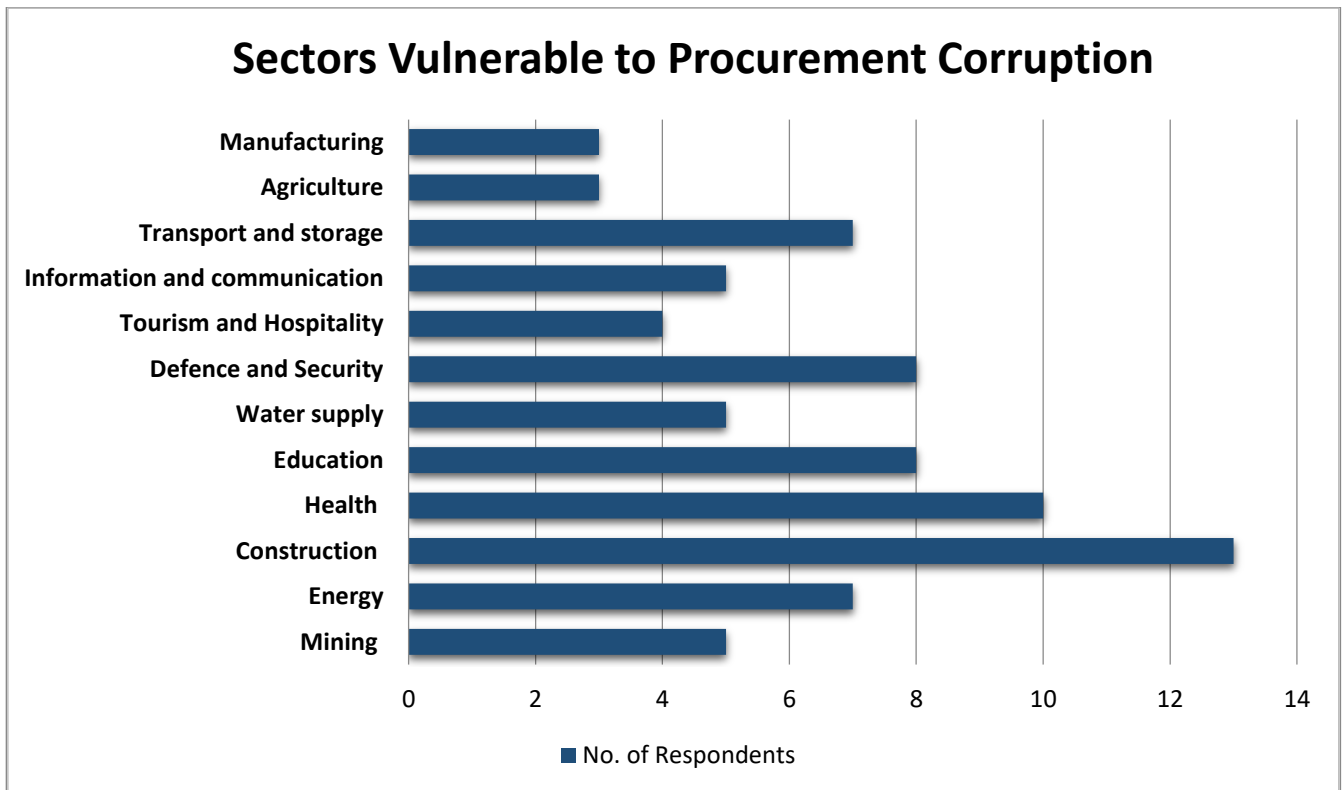


Figure 5: Sectors Vulnerable to Procurement Corruption



### 3.5 Perpetrators of Procurement Corruption

The public procurement cycle involves multiple actors. According to financial intelligence reports and general reports, the perpetrators of procurement corruption in twelve respondent countries were mostly local actors, although six jurisdictions stated that foreign actors were also involved. Amongst both the local and foreign actors, respondents cited politically exposed persons (PEPs), public procurement officials, suppliers, agents of suppliers, political party members and foreign companies and governments.

The study noted several case studies from the region which highlighted the extent to which PEPs were involved in influencing the procurement process to benefit themselves, their associates or companies in which they had interest.

#### **PEPs involved in Procurement Corruption**

1. An area Member of Parliament in one of the constituencies of the jurisdiction, using the Constituency Development Fund (CDF) influenced the District Council to procure hammer mills, a seven ton truck and solar panels for the benefit of club members of the constituency. The procurement was single sourced from one supplier who was paid accordingly by the District Council using the CDF. The goods were not delivered to the District Council instead they were delivered to the premises of the area Member of Parliament (MP) who distributed the hammer mills to his relatives and associates. The MP registered the truck in his name and kept the solar panels at his premises. The MP was investigated, arrested and charged for the offences of corruption, abuse of authority of office and theft by public servant. He was convicted and sentenced to imprisonment with hard labour for five years in respect of theft by public servant. He was convicted and sentenced to two years in respect of corruption and abuse of authority of office and the hammer mills truck and solar panels were forfeited to the state. The convict was however pardoned after serving a one year sentence due to poor health. The value of forfeited property was \$14,000.
2. The accused were arraigned in the High Court, with various counts of fraud, corruption and money laundering. Accused 1 was indicted in his personal capacity and representative capacity for Accused 2, 3, 4, 5, 6 and Accused 7 (legal entities). Accused 2 – 7 were used as conduits at one time or another in some of

the transactions to which the charges related.

Accused 9 was a Politically Exposed Person and was indicted in his personal and representative capacity for Accused 10 (legal entity).

Accused 11 was a member and Deputy Secretary of the ruling party. From May 2009 Accused 11 served as a government official (member of executive council) for one of the Provincial Departments. Accused 11 was indicted in his personal and representative capacity for Accused 12 (legal entity).

In a summary, the allegations against the Accused were, *inter alia*, that Accused 1, holding company of Accused 2 – 7, secured lease agreements with various Provincial departments for office accommodation by engaging influential government officials and or politicians (Accused 9 and 11 included) to influence the process, who in turn received some undue form of benefits from Accused 2. The State maintained that the contracts awarded to Accused 2 and its related entities were entered into without following the proper procurement procedures.

All the Accused were convicted of offences involving corruption and money laundering involving US\$42,680,700. Accused 1 was sentenced to an effective 15 years imprisonment. Accused 1's companies being Accused 2 – 7 were convicted of corruption and money laundering and sentenced to fines of US\$5,335 and US\$10,670. Accused 9 was sentenced to an effective 15 years imprisonment.

The Asset Forfeiture Unit secured confiscation orders of US\$ 4,481,470 against Accused 1 – 7 and US\$ 177,836 against Accused 9 and 10.

3. In the case of Uganda vs Byandala & 6 others the then Honourable Minister for Transport Byandala was accused of abusing the authority of his office by irregularly directing the immediate signing of a contract between the National Roads Authority and Eutaw Construction Company Inc. before due diligence was concluded. The amount involved was US\$ 6,700,223.
4. In the case of the State vs Godfrey Tanyanyiwa, the accused, being the Town Clerk of Chitungwiza was charged with fraud and concealing a transaction from his principal where it is alleged that he purchased a house and he failed to disclose the transaction to the employer. He was convicted and sentenced to an

effective prison term of two and a half years.

Sources: Zambia, South Africa, Uganda, Zimbabwe

Responses from member countries did not indicate the presence of organized syndicates in procurement corruption activities, however studies and information from media and other open sources point out that some of the most effective and lucrative procurement corruption schemes are collusive in nature. A case in point was observed in the South African construction sector where several construction companies were found guilty of engaging in collusive practices.

### **Collusion in the Construction Sector**

The case was against WBHO Construction (Pty) Ltd which colluded with Group Five Construction (Pty) Ltd by fixing contractual conditions relating to the N17 link road between New Canada and Soccer City (N17 project). The Competition Commission's investigation found that, at a meeting of the South African Federation of Civil Engineering Contractors Association (SAFCEC), WBHO and Group Five agreed on a preferred set of contractual conditions for the N17 tender issued by the South African National Roads Agency Limited (SANRAL). On the basis of this agreement, they requested SAFCEC to approach SANRAL on their behalf, to demand that SANRAL change its tender conditions and issue the tender with the conditions they agreed about. This amounted to fixing of trading conditions which contravened section 4(1)(b)(i) of the Competition Act No. 89 of 1998.

In a related matter, the Competition Commission of South Africa fined 15 major construction companies a collective R1.46-billion for collusive tendering related to projects concluded between 2006 and 2011. These penalties were the result of the Construction Fast-Track Settlement Process, initiated by the commission in February 2011, in which firms were incentivised to make a full and truthful disclosure of bid-rigging in return for penalties lower than what would be sought by the commission should it pursue legal action. The Competition's investigations into anti-competitive practices revealed several ways in which firms had historically determined maintained and monitored collusive agreements. These included meetings to divide markets and agree on margins, as well as "cover pricing", in which firms colluded to create the illusion of competition by

submitting sham tenders to enable a fellow conspirator to win a tender. In other instances, firms agreed that whichever company won a tender would pay the losing bidder a “loser’s fee” to cover their costs of bidding, while the awarding of subcontracts was also used to compensate losing bidders.

Source: [www.compcom.co.za](http://www.compcom.co.za); [www.engineeringnews.co.za](http://www.engineeringnews.co.za)

### **3.6 Red flags/ Indicators of Procurement Corruption**

Eleven respondent countries identified various red flags or indicators of procurement corruption. These are presented below according to the following procurement corruption categories:

#### **I. Eliminating or Reducing Competition**

- a) No public tenders or selected invitation of tenderers/bidders in certain industries;
- b) The use of the security veil by state security organs;
- c) Lack of or inadequate justification to use the direct procurement method or any other inappropriate method.

#### **II. Biased Supplier Selection**

- a) Contracting of companies with no financial or technical capacity to carry out and supervise the works;
- b) The same companies or individuals winning or being awarded Government contracts;
- c) The same companies being used for capital projects;
- d) The same contractors bidding for project or product of a particular procuring entity;
- e) Evaluating and passing a bidder, that was substantially non-responsive to the requirement of the bid;
- f) Insider trading.

### **III. Corrupt Contract Negotiation and Management**

- a) Overpriced contracts;
- b) Non-completion of projects;
- c) Non-performance of contracts;
- d) Projects completed with cost overruns;
- e) Failure to submit End of Activity Reports;
- f) Lack of project evaluation and monitoring mechanisms;
- g) Shoddy and substandard work by contractors;
- h) Deviating from the contract specifications without approval of the contracts committee.
- i) Failure to implement contract as per the terms, conditions, and statement of requirements;
- j) High number of variations awarded to a particular supplier;
- k) The contract specification is poorly written, so changes are required;
- l) A last-minute (unscheduled) contractor is brought in to carry out change order or variation works.

### **IV. Over Payment or False Payment**

- a) Overbilling;
- b) Duplicate payments;
- c) Overspending by public sector entities;
- d) Expenditure on non-budgeted items;
- e) Non- accountability and proper justification for overstocking.

## V. Other Indicators

- a) Trading in influence - people connected to politically exposed persons wielding immense power;
- b) Cases of sudden enrichment or possession of unexplained property among public officers involved in public procurement;
- c) Individuals living beyond the known means of income;
- d) Close relations between captains of the industry and those suspected of involvement in criminal activities;
- e) The crowding of the Tender Board with government officials.

### 3.7 Laundering of the Proceeds of Procurement Corruption

Countries were requested to provide statistics on the procurement corruption cases which led to money laundering investigations, convictions, seizures and forfeitures by law enforcement agencies between 2013 and 2017. The statistics below are based upon the responses received from ten jurisdictions. It should be noted that some jurisdictions were unable to provide statistics as they keep records of all corruption cases and do not disaggregate these according to categories (eg. procurement).

Country	No of ML Cases	No. of convictions	No. of Non Conviction Based Forfeitures	Total amount involved (US\$)	Total amount of proceeds seized (US\$)	Total amount of proceeds confiscated (US\$)
Botswana	74					
Angola	13					
Malawi	64	15				
Namibia	3		3	966,198.62	293,698.18	293,698.18
Eswatini	42		1	8,196,159.11	342,935.53	51,440.33
Zambia	255	4	2	25,338.28	498,428.58	46,956.15
Seychelles	2	2	2	136,398.00		

South Africa	32	17		176,697,640.00		3,764,737.00
Mauritius	96			77,200,000.00	225,000.00	
Ethiopia	101	28			35,850,217.80	
	<b>682</b>	<b>66</b>	<b>8</b>	<b>263,221,734.01</b>	<b>37,210,280.09</b>	<b>4,156,831.66</b>

Figure 6: Money Laundering Statistics related to Procurement Corruption (2013 - 2017)

Between 2013 and 2017, investigative authorities in the ten jurisdictions reported 682 cases of money laundering investigations linked to procurement corruption. There were 66 convictions reported by 5 countries while 8 Non-Conviction Based forfeitures were reported by 4 countries. Based on the responses, over US\$ 260,000,000 was involved in these activities; the total value of proceeds seized by 5 jurisdictions was US\$ 37,210,280.09, while the total value of assets confiscated by 4 countries amounted to US \$4,156,831.66.

The above figures indicate that member states are beginning to appreciate the importance of bringing to trial money laundering related cases. However, the low conviction rate of 9.6% is an area of concern. This could be attributed to lack of either investigative or prosecutorial skills, inadequate human and financial resources and challenges faced by law enforcement agencies in tracking funds laundered in offshore jurisdictions.

A similar observation was made on the exceptionally low conviction rates related to corruption investigations in a previous study conducted by ESAAMLG (ESAAMLG, 2009). However, the study identified the reason for low conviction rates to be the long timeframe for investigations and prosecution of corruption cases.

Reports<sup>5</sup> have shown that perpetrators of procurement fraud or corruption make use of various avenues to launder their criminal proceeds. These include, but are not limited to:

- Use of corporate vehicles and trusts
- Use of gatekeepers (financial and legal experts)

<sup>5</sup> FATF (2011): Laundering the Proceeds of Corruption

- Use of banks and other depository institutions
- Use of non-bank financial institutions such as securities and insurance
- Use of offshore/ foreign jurisdictions
- Use of nominees and associates
- Use of casinos

The most prevalent methods identified by the study were the use of offshore jurisdictions (69% of respondents), the use of corporate vehicles (62%), the use of banks and other depository institutions (62%) and the use of associates/ nominees (62%).

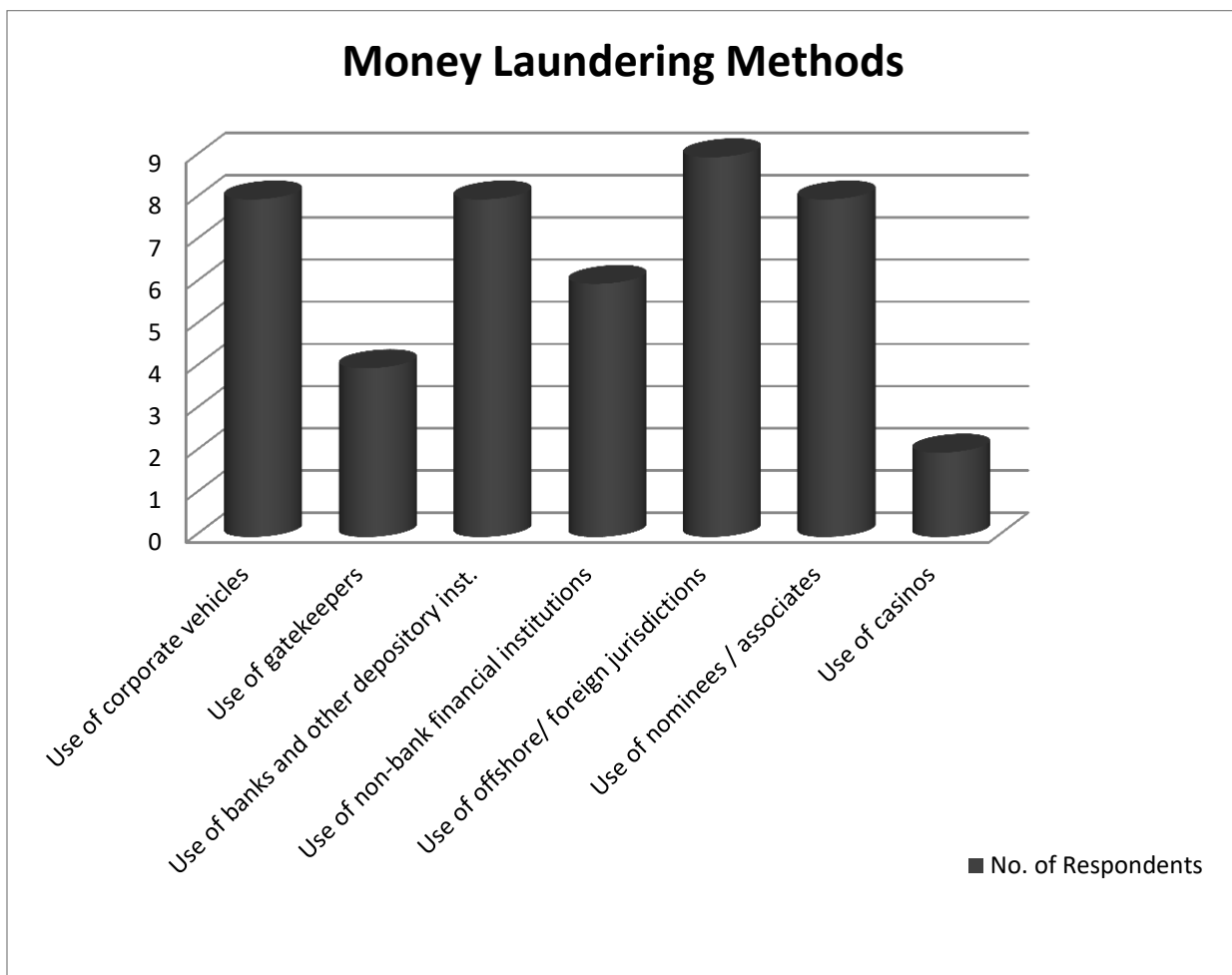


Figure 7: Money Laundering Methods



An assessment to identify the sectors receiving laundered funds from procurement corruption activities was conducted. Respondents listed the sectors in which procurement corruption proceeds were invested as illustrated below. The most commonly selected options were the real estate and motor vehicle sectors, followed by the securities and education sectors.

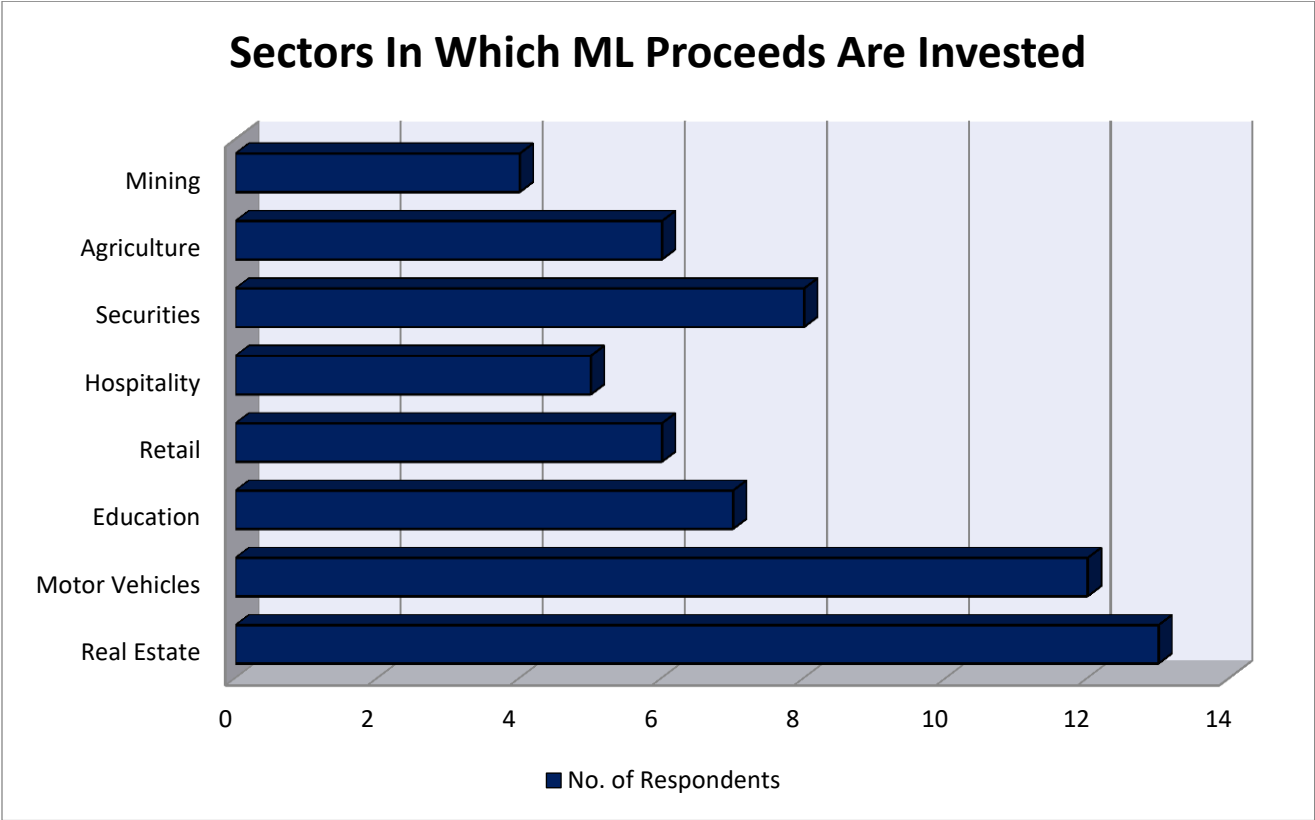


Figure 8: Sectors Where ML Proceeds are Invested

Respondents stated that the real estate sector had several features which made it attractive to launderers. These include:

- i. Transactions involving the use of cash (although the high-value transactions involving the use of other intermediaries such as lawyers would normally be done through banks).
- ii. Limited or no KYC/CDD performed on clients, especially in transactions involving unregistered land.
- iii. Lack of an effective central registry for real estate and a large number of the properties which are unregistered

- iv. The lack of beneficial ownership identification
- v. The value of land being easily manipulated, for example, the value of land may be deflated for purposes of hiding illicitly acquired wealth in the purchase or it may be inflated for purposes of using it as security to obtain loan facilities.

The study found that while there are numerous ways of laundering money, the use of foreign jurisdictions and corporate vehicles remain prevalent. In instances where the funds are not taken out of the jurisdiction, they are used to purchase immovable property or vehicles. This pattern is not peculiar to the region as this was the finding of the GIABA study<sup>6</sup> which revealed specific and identifiable methods to the manner in which funds from corrupt procurement activities were laundered. The study showed that the illicit proceeds were first placed in financial institutions and then withdrawn by the perpetrators or their associates. Thereafter, the funds were moved to the informal market, to real estate holdings, motor vehicle dealerships, hospitality businesses and non-bank financial institutions such as bureau de changes. In other cases, the proceeds were smuggled as bulk cash to other jurisdictions.

The above findings support the presence of an established trend or practice within money laundering. In as much as this practice is known to be true of money laundering, the legal system is yet to respond effectively to curbing this scourge. This ESAAMLG study confirmed previous study findings of low conviction rates related to ML cases in general.

### **3.8 The Private Sector Perspective**

The private sector responses were in many ways similar to those provided by the public sector. They seemed to agree with the public sector concerning the types of procurement corruption methods, red flags pointing to corrupt activities as well as the reasons why these forms of procurement corruption are common.

In terms of the vulnerability of the procurement process, the private sector identified public administrations, health, transport and storage sectors as the most vulnerable to procurement corruption. The perpetrators of procurement corruption were listed as suppliers, public procurement officials, PEPs and investors. Respondents highlighted the involvement of PEPs as beneficial owners of corporate vehicles that bid for

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<sup>6</sup> Inter-Governmental Action Group Against Money Laundering in West Africa (2014): Money Laundering Related to Fraud in Public Procurement in West Africa: A Case Study Of Nigeria

government contracts. They argued that PEPs were able to exert undue influence on the procurement process and on public officials involved in the procurement process.

In relation to the procurement corruption methods, the private sector indicated the primary forms of corruption were tender or bid rigging, conflict of interest and corruption in the evaluation process and divulging information on cost estimates to preferred bidders. Another common practice identified by the private sector was that the same contractors were allowed to bid using different companies in which they were directors or they owned. The private sector also flagged the issues of false and duplicate invoicing, payment for substandard goods or services as well as delayed payment of invoices as indicators of procurement corruption. The private sector was of the view that these forms of procurement corruption were the result of lack of supervision by public officials and collusion between contractors and supervising officials of procuring entities.

All countries indicated that law enforcement agencies and financial intelligence units (FIUs) were involved in the investigation of procurement corruption cases. According to the private sector, the powers given to law enforcement agencies to investigate procurement corruption cases varied from country to country. All except one jurisdiction indicated that they had regulatory bodies investigating procurement corruption cases.

While the private sector acknowledged the presence of a legal framework to combat procurement corruption, they were of the view that the law enforcers faced challenges that made the laws ineffective. The challenges faced by LEAs in investigating procurement corruption cases included institutional and legal barriers. Examples of the institutional barriers highlighted by respondents were inadequate financial, technical and human resources, inadequate coordination and cooperation between domestic agencies, lack of comprehensive procurement policies and lack of trust between authorities. In addition to these, the private sector was of the view that compromised institutions and inadequate training and expertise of investigating officers were significant impediments to combatting procurement corruption in the region.

The private sector noted that jurisdictions in the ESAAMLG region have legal frameworks that regulate public procurement. While it was noted that the legal framework in various jurisdictions provide for administrative sanctions which include

termination of contracts, suspension of non-compliant contractors and disciplinary steps against corrupt officials, the administrative sanctions were deemed not effective, proportionate or dissuasive and in some circumstances not enforced.

The following gaps and weaknesses were identified by the private sector:

- Inadequate or weak legal requirements to regulate variation of contract prices;
- Lack of transparency in the procurement process which the private sector is of the view could be attributed to gaps in legislation providing procurement guidance particularly when it comes to offences involving the private sector;
- Payment of kickbacks to corrupt officials by corrupt bidders which results in sub-standard work being deliberately certified by public officials;
- Inadequate monitoring by officials for compliance with specifications.

In addressing the gaps and weaknesses, the private sector recommends that countries consider increasing transparency in the procurement process, identifying international best practices on combating procurement corruption and adopting tailor made programs for investigating officers in line with identified corruption red flags in each country's procurement process.

For countries to effectively address the scourge of procurement corruption, they have to ensure that law enforcement officers are well trained and capacitated to detect and investigate and be capable of tracing assets linked to procurement corruption and be able to collaborate when necessary in addressing procurement corruption and associated money laundering. Countries should enforce current existing laws on corruption.

## **CHAPTER 4 – PREVENTION, DETECTION, INVESTIGATIONS AND SANCTIONS**

The Chapter examines the legal and institutional frameworks within the ESAAMLG region that deal with public procurement, corruption and money laundering. In order to understand the capabilities among member states to detect, deter and sanction procurement corruption and money laundering activities, the roles and powers of the competent authorities are also discussed.

#### **4.1 Legal Framework Relating to Procurement Corruption and Money Laundering**

The general overview when it comes to procurement corruption in the public sector is that all countries in the region are aware of it. The awareness is not only limited to the existence of the crime but extends to financial losses that negatively impact the fiscus while robbing the general populace of goods and services due to them. In response to this all governments in the region have adopted legislation that seeks to combat procurement corruption. In some jurisdictions in the region, the governments have even had to amend their legislation to ensure that they respond to the ever-changing methods that are used to engage in procurement corruption.

The manner in which corruption is defined differs from jurisdiction to jurisdiction, consequently leaving the region without a harmonized definition of corruption. Nonetheless the study noted that of the countries that responded four have opted to use a broad definition for what constitutes corruption, while the remaining respondents use rather narrow definitions. Only one country actually extends the definition to include the elements that are to be satisfied for the action to be considered as corruption. However, with the exception of one country, all responding jurisdictions have an exhaustive list of activities that could be classified as corruption.

The study found that the crime of corruption carries a rather hefty penalty in most responding regions, except for two jurisdictions. In the two jurisdictions prison terms are capped at five years and ten years. This is low in comparison to the average jail term that is levied in the region, which is anywhere above ten and thirty years. The kind of penalty that is carried by a crime of procurement corruption is yet another indication that most jurisdictions in the region perceive it to be a serious crime. To further substantiate this position, it should be noted that all responding jurisdictions list corruption as a predicate offence to money laundering. This indicates that all jurisdictions are aware of the connection between procurement corruption and money laundering and the possible threats that this connection pose.

In all jurisdictions the laws relating to corruption have been in existence for a period averaging 15 years and have been subjected to numerous amendments. These laws have been tested as evidenced through either finalized or pending cases related to corruption. This is the case in all but one jurisdiction where procurement corruption does not exist as a stand-alone offence.

While all jurisdictions have laws and guidelines that govern general public procurement, one jurisdiction in particular noted that there is a tendency to apply these selectively. Specific reference was made to instances where there is a pressing policy objective to be realized, then the law is not applied in full but compromised in order to meet the policy objective. In addition, while the legal framework is in existence in all but one of the responding jurisdictions, there are still areas of concern that need to be addressed to ensure that the existing legal framework is improved to successfully respond to curbing of the increasing crime of procurement corruption. It should be noted that the existing legislation does not only cover procurement corruption, but if effectively implemented could also positively respond to the existing link between procurement corruption and money laundering.

#### **4.2 Role of Law Enforcement Agencies**

The majority of jurisdictions have Anti-Corruption Agencies which are empowered by statute to combat (procurement) corruption. Apart from these, countries indicated the presence of other LEAs and regulatory agencies involved in the investigation of procurement corruption cases which included the Police, FIUs, Public Procurement Regulatory Authorities, Office of the Attorney General, Office of the Auditor General, Revenue Authorities, Competition Commission and Asset Forfeiture Units, among others.

The powers of the LEAs range from investigation, arrest, prosecution, seizure and forfeiture of proceeds of crime, to powers to restrain and conduct searches and other special investigative techniques.

Respondents identified various sources of information relating to procurement corruption activities and money laundering, thereof. These included FIUs, whistleblowers, procurement authorities, Auditor General's reports, Public Accounts committees, walk-in complainants, media, provincial and local government authorities and Civil Society Organizations. This information is useful to law enforcement authorities in carrying out investigations, identifying links between cases, identifying blacklisted entities, apprehending criminals, identifying and tracing financial flows and assets, confiscation, forfeiture, and exposing tax related offences.

The anti-corruption units in some jurisdictions have collaborated with the FIUs and other Law Enforcement Agencies in investigating ML related cases. However, with regard to parallel financial investigations most countries have not demonstrated that their investigative agencies actively conduct such investigations with every corruption investigation commenced.

The Mutual Evaluation Reports for the majority of countries confirm the fact that most countries do not conduct parallel financial investigations to identify and investigate potential money laundering cases. Inadequate institutional capacity amongst investigative agencies is a primary factor explaining the limited attention being paid to parallel financial investigations in the region. This generally has a negative impact as it limits chances to recover tainted property and to a certain extent evidence to prove the corrupt activity itself. The failure to appreciate the relevancy and need to conduct parallel financial investigation with every procurement corruption investigation started often leaves criminals involved with assets and other proceeds benefited from the commission of the crime which becomes an incentive to commit similar crimes again even where a term of imprisonment is imposed as a sanction.

The majority of respondents stated that they are capacitated to investigate procurement corruption in as far as investigative skills are concerned. However, they need to be capacitated further through the provision of requisite resources. Apart from one jurisdiction, the majority of jurisdictions that responded stated that they consider confiscation of proceeds of procurement corruption as a policy priority. This statement is however not supported by the findings (see figure 6) which show that only four jurisdictions confiscated proceeds of procurement corruption between 2013 and 2017.

The trends observed by Law Enforcement Agencies for the period 2013 to 2017 in the majority of cases indicate the abuse of power by public officials and politically exposed persons, connivance, collusion, flouting of tender procedures, inflated and false invoicing.

The majority of countries do associate proceeds from procurement corruption with money laundering. Almost all gratification received and offered as a result of procurement corruption is laundered in many different ways to disguise the origins of the funds. Most countries indicated that the proceeds were laundered through the real estate sector using cash as well as other intermediaries such as lawyers.

Overall, the Law Enforcement Agencies encounter various institutional, legal and general barriers when executing their duties in combating ML related to procurement corruption.

The majority of respondents indicated that their investigations have involved extra-territorial investigations. The nature of investigation assistance sought included extradition of suspects, collection of evidence, interviewing of witnesses, verification of transactions, tracing of fugitives and locating addresses of subjects. Furthermore, assistance was sought through mutual legal assistance (MLA) and Rogatory letters. Countries, however, reported challenges encountered when investigating cases spilling over into other jurisdictions. These included:

- Delayed or non-execution of requests for assistance
- Inadequate international cooperation
- Protracted investigations
- Communication/ language barriers and
- Legal hurdles

### **4.3 Role of Public Procurement Authorities**

Almost all jurisdictions confirmed the existence of a designated authority responsible for public procurement. These authorities have powers to collect data or reports on the procurement process; access information, documents and reports of a procuring entity; monitor the execution of contracts entered into by a procuring entity; suspend or debar any supplier from participating in any public procurement; access the premises of any procuring entity for purposes of accessing data; audit public institutions and impose administrative sanctions on erring entities.

However, only four countries reported cases of administrative sanctions being imposed by the authorities during the period 2013 to 2017. In the case of Uganda over 100 entities/ suppliers had been suspended by the Public Procurement and Disposal of Public Assets Authority (PPDA), while the authority in Eswatini enforced administrative sanctions on 3 procuring entities between 2016 and 2017.

Also, between 2013 and 2017, 187 bidders (procurement officers) were debarred from participating in the public procurement process in Rwanda. In Malawi, the Cashgate



matter involving the construction industry resulted in 6 out of the 27 companies involved being deregistered, while 21 were suspended pending prosecution results in the courts. In another matter, 1 contractor was deregistered in January 2017 after it was found guilty of submitting fake documents for a contract. Also, in Malawi the Office of the Director of Public Procurement (ODPP) struck off one supplier of the farm inputs subsidy in 2017 for alleged involvement in the Maizegate scandal.

Responding jurisdictions highlighted the following controls and mechanisms to deal with vulnerabilities in the public procurement process:

#### **Controls and Mechanisms in the Procurement Process**

- Enactment of relevant legislation and establishment of public procurement authorities
- Introduction of e-procurement systems to reduce direct interaction between procurement officials and suppliers and to enhance transparency.
- Issuing of thresholds so that procurements above the set thresholds are subjected to further review before award of contract.
- Training and capacity building for all stakeholders in the public procurement process
- Involvement of civil society organizations to monitor contracts and report corruption cases
- Appointment of ad hoc committees to supervise the bid evaluation and contract supervision
- Appointment of integrity committees in procuring entities
- Monitoring by public procurement authorities through the review of procurement committee minutes, audits and investigations. Bidders/ suppliers are also investigated for possible suspension or debarring.
- Publishing of tender estimates and opening tenders publicly
- Establishment of internal procurement committees in all public institution to

approve all important stages of the procurement process.

- The establishment of a forensic unit to train staff from the public procurement authority and law enforcement agencies in forensic auditing and investigation.

#### **4.4 Role of Financial Intelligence Units**

In the fight against procurement corruption, FIUs serve to receive suspicious transaction reports (STRs), analyse and disseminate intelligence information on potential money laundering cases to LEAs. The STRs could be used to initiate investigations related to procurement corruption. An analysis of member country responses found that out of 14 respondents, 7 stated that their FIUs had established trends of suspected money laundering based on the analysis of STRs connected with procurement corruption. One country, however, indicated that it had not received any STRs relating to procurement corruption.

The trends observed were:

- i. Investment of proceeds of procurement corruption in the real estate and hospitality industries, as well as in political party activities
- ii. Trade based money laundering
- iii. Undeclared funds moved across borders (capital flight)
- iv. Use of legitimate and front companies to conceal beneficial ownership and to move funds
- v. Former government employees setting up companies which were used to receive funds from the government
- vi. The use of forged and fake contracts

Statistics on STRS related to procurement corruption were provided by eleven (11) respondents.

Country	2013	2014	2015	2016	2017
Malawi	3	6	3	6	4
Eswatini	0	0	0	0	6
Uganda	0	0	0	1	2
Zambia	0	1	5	3	1
Botswana	0	0	2	1	1
Madagascar	5	14	11	6	6
Tanzania	2	2	3	2	5
Mozambique	3	2	2	6	6
Namibia	3	1	0	1	0
Ethiopia	2	0	1	3	2
South Africa*	665	1,608	1,257	778	1,749
	<b>683</b>	<b>1,634</b>	<b>1,284</b>	<b>807</b>	<b>1782</b>

Figure 9: STRs on Procurement Corruption

\* These statistics reflect all STRs received, relating to suspected procurement corruption, tendering irregularities and related financial crimes.

Only four jurisdictions indicated that they had developed and shared typology reports with LEAs which included procurement corruption cases and associated money laundering. Although the reports were general and not specific to procurement corruption, the recipient entities were able to use them to detect tax fraud and to improve the quality of their own investigations.

Whilst Zimbabwe, Botswana and Namibia stated that they enjoyed support and cooperation from stakeholders during intelligence gathering, the majority of respondents highlighted significant challenges faced in seeking and collecting information such as the lack of information on beneficial ownership, inadequate

information held by Company Registries, Land Registries and other administrative sources. Furthermore, the lack of access to data bases, lack of statistics and inadequate resources made it difficult to quantify the volume of proceeds, while cash-based transactions made it difficult to trace proceeds due to absence of transactional records. In addition, following the funds transferred to off shore companies was hampered by the lack of co-operation by authorities in destination countries. Respondents were also of the view that reporting entities filed reactive or defensive reports after they had become aware that law enforcement was investigating a case of procurement corruption. In some jurisdictions, KYC conducted by reporting entities was thought to be inadequate as customer records were outdated and did not contain vital information such as the customer's source of income or beneficial ownership information.

The aforementioned challenges were said to be hindering the FIUs in executing their duties in combating ML related to procurement corruption. Challenges in identifying linkages and associations resulted in delays in processing STRs and in conducting both operational and strategic analysis in a timely manner. Further, in countries where the mandate of the FIU includes seizures, it was found that the FIUs were unable to effectively seize/recover proceeds suspected to be linked to procurement corruption.

The respondents all indicated that there were mechanisms in place to facilitate the exchange of information domestically. These included MOUs between different agencies, information exchange between LEAs and FIUs, information sharing through national task forces and designated committees. The majority of FIUs had also received requests to share information pertaining to procurement corruption activities with both domestic and foreign competent authorities.

#### **4.5 Domestic and International Cooperation**

The FATF Corruption Reference Guide (2012) notes the need for countries to have mechanisms at policy and operational levels that facilitate domestic co-operation and co-ordination for all authorities, including policy makers, the FIU, law enforcement, supervisors and other competent authorities. Furthermore, in order to fight cross-border corruption, countries need to implement effective laws and mechanisms which enable them to provide a wide range of mutual legal assistance, execute extradition requests and otherwise facilitate international co-operation. In responding to this pandemic of corruption, co-ordination between law enforcement agencies at domestic and international level is paramount.

In as far as domestic coordination is concerned a general conclusion is that it can be rated as medium, meaning that there is some level of coordination. However, it can still be improved to optimize its effectiveness. At the time of the study, one positive characteristic that was found to be present in all responding jurisdictions was that agencies could share information much easier. However, inadequately skilled personnel; scarce resources; lack of clarity as to which agency would take the lead and in two jurisdictions the absence of anti-corruption agencies hampered the coordination. Nonetheless, all jurisdictions indicated that their FIUs were able to cooperate with LEAs in investigating cases related to procurement corruption and money laundering. Evidence of this claim was given in the cases that were provided by all except one jurisdiction. The FIUs however indicated that while they participated in the investigations, they did not receive feedback from the LEAs. This could be partly because most jurisdictions in the region did not have a national coordination mechanism. These were the facts as related to domestic cooperation.

From an international cooperation perspective, jurisdictions indicated that they were able to share information with other jurisdictions and they shared mainly intelligence and evidence related information. The information sharing was done through the use of various instruments which included but were not limited to the regional framework at SADC and East African Community (EAC) level, international framework provided for by Interpol and the use of Egmont facilities. In addition to this, countries also made use of existing bilateral Mutual Legal Assistance agreements (MLAs) and other Memoranda of Understanding (MOUs). In general, the existence of the aforementioned instruments had created an enabling environment for coordinating with foreign LEAs on cases related to procurement corruption. This cooperation was however said to be limited, as the choice to evoke an instrument was dependent on the urgency of the case and therefore worked on a case by case basis.

This in essence shows that when it comes to procurement corruption authorities will explore all possible instruments and frameworks to give effect to either assisting or seeking assistance from their counterparts in the region. Furthermore, data provided by jurisdictions shows that there is commitment to respond to received requests. Those that provided data also affirmed that in the past five years they had received responses from the requests that they had sent. Even though the rate was not at 100% of requests sent, there was an indication of the intent and will to respond.

It is important to note that in trying to give effect to international cooperation, all jurisdictions indicated in their responses that there were challenges. The mostly cited challenge was the difference in legal systems in the regions that made it difficult for seamless implementation of requests as constitutional and other legal considerations had to be made. Secondly, bureaucratic delays at domestic level also hindered speedy responses to international requests for assistance and this was further complicated by the fact that these international requests also used diplomatic channels which could be slow. These challenges have however not failed cooperation efforts within the region as responding jurisdictions could cite a number of cases where they requested assistance and the information that they received was indeed helpful.

The findings of the study undertaken showed that there is domestic and international cooperation and these are yielding results. However, this can be improved so as to enhance effectiveness.

## **CHAPTER 5 – FINDINGS AND RECOMMENDATIONS**

The study was undertaken with an objective to provide the contextual understanding of the relationship between public procurement, corruption and money laundering in the ESAAMLG Region. This chapter serves to summarize the findings of the study and offer recommendations for implementation by member countries.

### **5.1 Summary of Findings**

- a) The study confirms the existence of a link between procurement corruption and money laundering which is confirmed by empirical evidence obtained from member countries in regard to suspicious transaction reports, investigations, prosecutions and convictions. The statistics that were provided by 6 jurisdictions placed the total value of funds involved in ML cases linked to procurement corruption to be over US\$ 260 million for the period 2013 to 2017. While this monetary value can be seen to be supporting evidence to the cost of ML related to procurement corruption, it is not a true reflection of the state of affairs in the region because most jurisdictions did not provide amounts related to ML cases. Failure to record and keep precise statistics on this subject matter means that jurisdictions will not be able to accurately determine the extent of this practice.

This will therefore make it difficult for jurisdictions to respond adequately to procurement corruption.

- b) At national level, the legal framework relating to procurement corruption and money laundering exists in all responding countries. However, at regional level, harmonization efforts are still needed to increase the ease of international cooperation.
- c) Efforts are made to investigate and prosecute, cases of money laundering related to procurement corruption with the intention to convict perpetrators and recover ill-gotten assets. However, these are hindered by the lack of financial and human resources, the lack of specialized skills required to investigate and prosecute procurement corruption cases and the lack of an effective domestic cooperation framework. Most respondent countries cited delayed disposal of procurement corruption cases along the chain of investigation, prosecution and court judgements as a major drawback. Findings of the study further pointed to political interference in the prosecutorial process as evidenced by the number of PEPs that are either acquitted or have their cases set aside based on lack of evidence or other technicality.
- d) The study noted that the offence of money laundering is not pursued in all cases as demonstrated in the case studies provided by the respondents. It was further established that limited parallel financial investigations are conducted in cases of procurement corruption, which contributes to the low rate of seizures, confiscations and money laundering convictions.
- e) The study found that the main perpetrators of procurement corruption are public officials at all levels, who are linked to the procurement process. Politically Exposed Persons who have influence or power over decision making are also found to be involved in these activities.
- f) The study established that procurement corruption proceeds are mostly invested in the real estate and motor vehicle sectors. The fact that these sectors are preferred areas of investment indicates the level of ML vulnerability of these sectors in the region. This vulnerability can be attributed to factors such as the presence of unregistered market players, levels of informality in these sectors and inadequate AML/CFT supervision.
- g) The most vulnerable procurement methods identified in the study were direct bidding and limited bidding. These methods are susceptible to abuse given the

reduced levels of transparency and the possibility of tailoring specifications to favoured suppliers.

- h) The procurement process is viewed in some jurisdictions as an administrative process and therefore the involvement of specialized personnel in the procurement process is limited, which allows for manipulation of the process by service providers. The overall view, however, is that there is a lack of proper supervision of procurement officials and insufficient monitoring of procurement contracts.
- i) There is a lack of beneficial ownership information as a result of inadequate requirements for company registries, land registries and other administrative sources to obtain adequate and accurate information on beneficial ownership.
- j) Whilst the study noted that the majority of jurisdictions had established a designated authority responsible for public procurement, only 28% of respondents provided cases of administrative sanctions being enforced by these authorities on erring suppliers.

## **5.2 Recommendations**

- i. Countries should put proper case management systems in place to enable information on the different types of predicate and ML offences pertaining to procurement corruption to be easily retrievable.
- ii. ESAAMLG member states should have a policy dialogue on how to increase information sharing in the region in order to improve international cooperation. While it may not be possible to change legal systems used, harmonisation can be achieved through the adoption of a regional instrument that will facilitate information exchange and assistance. This instrument should seek to address existing gaps and, in this regard, ESAAMLG could explore the possibility of learning lessons from other regions that may have such instruments. The presence of this instrument should also seek to create a platform for quick exchange of information. Lessons could be learnt from what the EU is doing in its efforts to enhance access to financial information by LEAs and FIUs. The



current proposals within the EU seek to give law enforcement the possibility to access information from national FIUs and also improve information exchange between FIUs for the performance of their tasks. It is believed that this measure will speed up investigations and enable authorities to combat cross border crime more effectively.

- iii. Countries should allocate more resources to improve human resource capabilities in the AML value chain system that is both in numbers and skills.
- iv. Countries should try to improve the effectiveness of the domestic cooperation frameworks in order to combat AML/CFT. At a domestic level it is important for government to make the necessary investment in the establishment of agencies that will be responsible for the coordination of all activities related to corruption. In addition to establishing these agencies they should be supported with the required personnel and financial support. This will serve to improve domestic coordination as well as the ability to respond to all corruption cases.
- v. There is need for member countries to open a parallel financial investigation with every procurement corruption investigation and expedite investigations and the prosecutorial processes of procurement corruption cases.
- vi. Member countries are advised to conduct lifestyle audits on officials involved in public procurement;
- vii. Countries should increase the AML/CFT knowledge in the real estate and motor vehicle sectors and improve the capacity of the sector supervisors/regulators to undertake effective AML/CFT supervision.
- viii. It is important that people with technical expertise form part of the procurement process to give guidance and strengthen internal controls through proper supervision and monitoring in the procurement process.
- ix. Globally, the subject of ultimate beneficial ownership (UBO) is a new concept within AML/CFT which most countries globally are still battling to understand.

ESAAMLG member states are however encouraged to improve requirements for obtaining UBO information by registries (e.g. company registries, land registries) that could assist in the identification of UBOs.

- x. Member countries that have not implemented effective administrative sanctions on erring suppliers and contractors should begin to enforce such sanctions to deter perpetrators of procurement corruption.

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## ANNEXURE A - CASE STUDIES

### Case 1

The accused were arraigned in the High Court, with various counts of fraud, corruption and money laundering. Accused 1 was indicted in his personal capacity and representative capacity for Accused 2, 3, 4, 5, 6 and Accused 7 (legal entities). Accused 2 – 7 were used as conduits at one time or another in some of the transactions to which the charges related.

Accused 9 was a Politically Exposed Person and was indicted in his personal and representative capacity for Accused 10 (legal entity).

Accused 11 was a member and Deputy Secretary of the ruling party. From May 2009 Accused 11 served as a government official (member of executive council) for one of the Provincial Departments. Accused 11 was indicted in his personal and representative capacity for Accused 12 (legal entity).

In a summary, the allegations against the Accused were, *inter alia*, that Accused 1, holding company of Accused 2 – 7, secured lease agreements with various Provincial departments for office accommodation by engaging influential government officials and or politicians (Accused 9 and 11 included) to influence the process, who in turn received some undue form of benefits from Accused 2. The State maintained that the contracts awarded to Accused 2 and its related entities were entered into without following the proper procurement procedures.

All the Accused were convicted of offences involving corruption and money laundering involving US\$42,680,700. Accused 1 was sentenced to an effective 15 years imprisonment. Accused 1's companies being Accused 2 – 7 were convicted of corruption and money laundering and sentenced to fines of US\$5,335 and US\$10,670. Accused 9 was sentenced to an effective 15 years imprisonment.

The Asset Forfeiture Unit secured confiscation orders of US\$ 4,481,470 against Accused 1 – 7 and US\$ 177,836 against Accused 9 and 10.

Perpetrators:	Politically Exposed Persons, political party members, private companies
Type of procurement corruption:	Biased supplier selection
Red flags:	Trading in influence - people connected to PEPs wielding immense power;  Conflict of interest
Methods of laundering:	Use of corporate vehicles

**Case 2**

Company S Ltd is a State Owned Enterprise (‘SOE’) and the complainant herein. Accused 2 was the sole director of Accused 1 and also the employee of Company S. The allegations against Accused 1 and 2 were, *inter alia*, that they misrepresented to Company S and its employees that Accused 2 had disclosed his conflict of interest in the outsourcing of work as contemplated in Company S’s integration and decorporatization plan of Accused 1 at the appropriate time. During the period February 2009 to July 2010 Company N, a subsidiary of Company S, paid Accused 1 US\$4,636,850.

Accused 1 and 2 were convicted of fraud and money laundering. Accused 1 was sentenced, in respect of the count of fraud, to US\$42,680 and US\$28,450 in respect of the count of money laundering, all wholly suspended for five years. Accused 2 was sentenced to an effective 15 years imprisonment.

Perpetrators:	Employee of procuring entity
Type of procurement corruption:	Biased supplier selection
Red flags:	Conflict of interest  Use of corporate vehicle to commit fraud or facilitate fraudulent payments

Method of laundering:	Use of corporate vehicle
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### Case 3

At one of the District Councils in the jurisdiction, two senior council officials engaged a contractor associated with them to supply and deliver furniture for the offices of the District. The cost of the furniture was beyond the threshold of the officials. The officials received the bids, evaluated and recommended the most responsive bidder and the same officials considered the recommendations and awarded the contract. The same officials approved payments to the supplier in instalments involving amounts slightly below their threshold. The officials were arrested and charged for the offence of willful failure with any law or applicable procedure or guideline relating to the procurement, allocation, sale, or disposal of property, tendering of contracts, management of funds or incurring of public expenditure contrary to Section 34(2)(b) of the Anti-Corruption Act No 3 of 2012. They were prosecuted in the subordinate court of the jurisdiction of that District Council. The duo was convicted and sentenced to seven years imprisonment with hard labour. The value of the transactions was about \$10,500.00.

Perpetrators:	Employees of procuring entity
Type of procurement corruption:	Biased supplier selection
Red flags:	Conflict of interest and corruption in the evaluation and approval processes;  Same officials involved in awarding contract and approving payments to supplier;  Over-priced contract;  Structured payments to supplier
Method of laundering:	Unknown

#### Case 4

A syndicate of more than ten Ministry of Health Officials engaged in a scheme of procuring goods and services which were either not supplied or under supplied or paid for twice. The source of the funds was various donors for various programs and activities of the Ministry. During the period the syndicate engaged in bogus procurements and members of the syndicate amassed wealth in the form of high value motor vehicles and real estate. The syndicate was investigated by a Joint Team of law enforcement agencies. At the conclusion of the investigations members of the syndicate were arrested and charged for various offences of corruption, abuse of authority of office, theft by public servant and money laundering in connection with either goods and services not supplied, supply of substandard goods double payments for single supply. The syndicate was prosecuted and the master mind along with 3 others were convicted and sentenced to 18 years imprisonment with hard labour.

The amount involved was about \$3,125,000 and the value of the property forfeited to the state was US\$ 2, 288,750.

Perpetrators:	Employees of procuring entity
Type of procurement corruption:	Over payment and false payments
Red flags:	Duplicate payments; Goods and services not supplied; Goods and services under supplied; Sudden enrichment or possession of unexplained property among public officers involved in procurement.
Method of laundering:	Use of associates Use of domestic financial institutions



### Case 5

A government official using the Constituency Development Fund (CDF) influenced the District Council to procure hammer mills, a seven-ton truck and solar panels for the benefit of club members of the constituency. The procurement was single sourced from one supplier who was paid accordingly by the District Council using the CDF. The goods were not delivered to the District Council instead they were delivered to the premises of the government official distributed the hammer mills to his relatives and associates. The government official registered the truck in his name and kept the solar panels at his premises. The official was investigated, arrested and charged for the offences of corruption, abuse of authority of office and theft by public servant. He was convicted and sentenced to imprisonment with hard labour for five years in respect of theft by public servant. He was convicted and sentenced to two years in respect of corruption and abuse of authority of office and the hammer mills, truck and solar panels were forfeited to the state. The convict was however pardoned after serving a one year sentence due to poor health. The value of forfeited property was \$14,000.

Perpetrators:	Politically Exposed Person
Type of procurement corruption:	Eliminating or reducing competition
Red flags:	No public tenders or selected invitation of tenderers/bidders;  Lack of proper justification for the use of a non-competitive procurement method

### Case 6

A parastatal organization single sourced accommodation procurement for its Chief Executive Officer without recourse to tender as the contract sum was beyond the threshold of the procurement unit of the parastatal organization. The case was

investigated and at the conclusion of the investigations it was established that the Chief Executive Officer had directed the procurement unit to procure accommodation at a place of his liking. The Chief Executive Officer and one senior officer of the parastatal were arrested and charged for the offence of abuse of authority of office in respect of the procurement. The two were prosecuted in the Subordinate Court where the Chief Executive Officer was acquitted whilst the Senior Officer was convicted and sentenced to two years simple imprisonment.

Perpetrators:	PEP; Employees of procuring entity
Type of procurement corruption:	Eliminating or reducing competition
Red flags:	No public tenders or selected invitation of tenderers/bidders;  Lack of proper justification for the use of a non-competitive procurement method;  Over-priced contract

**Case 7**

The Ministry of Local Government identified a need to empower local authorities with the means of transporting the remains of the deceased to burial sites. The Ministry invited bidders and evaluations were done following established tender procedures. The successful bidder emerged to be a local company that was sourcing the motor vehicles from outside the country. The supplier of the motor vehicles provided two invoices of about \$2,900 and \$27,000 for each vehicle. The successful bidder based its contract sum of over \$100,000 on \$ 27,000 per motor vehicle. The contract was signed on behalf of the Ministry by a person who was acting as controlling officer at the time. The person who signed the contract had a borehole drilled at her residence at the cost of the contractor. The contractor and the person who signed the contract were arrested and charged for the offence of corrupt practices. The two were prosecuted, convicted and sentenced by way of fine or simple imprisonment for two years.

Perpetrators:	Politically Exposed Person; private company (local supplier)
Type of procurement corruption:	Over-payment for goods provided
Red flags:	Overpriced contract;  Possession of unexplained property by public officer involved in procurement

### Case 8

The Entity used the direct procurement method without justification in thirteen (13) procurements of legal services for election petitions worth USD 401,798. Additionally, retrospective approvals were granted by the Contracts Committee after the process was concluded, there was failure to conduct evaluation of bids, there was a failure to conduct proper and adequate market price assessment and failure to prepare bidding documents. Firms were contracted directly without due-process.

Perpetrators:	Employees of procuring entity
Type of procurement corruption:	Eliminating or reducing competition
Red flags:	Failure to conduct evaluation of bids;  Failure to conduct market price assessment;  Failure to prepare bidding documents;  Retrospective approval of contracts
Method of laundering:	Unknown

### Case 9

A commandant at a military institution directed a foreign company to supply military garments to the institution at an inflated price. The company supplied the garments and they were paid after the execution of the contract. In turn one of the Directors in the contracted company transferred US\$ 15,000 from the company account held in another jurisdiction to the account of the son of the commandant who was studying abroad. The commandant and the supplier were prosecuted for engaging in corrupt practices in connection with the procurement of military garments. They were convicted of corrupt practices and sentenced to five years imprisonment with hard labour.

Perpetrators:	Politically Exposed Person; foreign supplier
Type of procurement corruption:	Eliminating or reducing competition; Overpayment for goods supplied
Red flags:	Lack of or inadequate justification to use the direct procurement method; Overpriced contract
Method of laundering:	Use of off-shore jurisdiction

### Case 10

Accused 1 was the Principal Secretary (Controlling Officer) in a Government Ministry and owned a company called VS. She was one of the Perpetrators' of the 2013 Cash gate scandal. She was lured and convinced by Accused 2, Accused 3 and Accused 4. Accused 2 was an Accounts Assistant working with the Department of the Accountant General but was on interdiction while Accused 3 was a Chief Accountant and Accused 4 was the Assistant Director in the same Government Ministry where Accused 1 worked.

The Government Ministry did not advertise to invite bids / tenders from companies neither did it send a request for quotations to VS to supply goods or services.

Accused 1 volunteered to use her company to receive two government cheques amounting to US\$ 147,640.29. The two cheques were received by Accused 1 in the name of her company on the pretext that it was a single sourcing procurement. However, there was no contract between the Ministry and her company, neither did the company supply goods or services to the Ministry.

All the four individuals were arrested. Accused 1 was charged with the offence of Theft and Money Laundering. She was convicted and was sentenced to 3 years and 9 months imprisonment (3 years for Money Laundering and 9 months for Theft).

Accused 2 and 4 were convicted and sentenced, while the case for Accused 3 is still under prosecution.

Perpetrators:	Politically Exposed Persons; employees of procuring entity
Type of procurement corruption:	False payment
Red flags:	Lack of or inadequate justification to use the direct procurement method or any other inappropriate method;  Use of corporate vehicle to commit fraud or to facilitate fraudulent payments
Method of laundering:	Use of domestic financial institution

**Case 11**

Accused 1 was a businessman by profession. He owned several companies among them being IPS and OG. These two companies’ bank accounts were used to siphon money from the Government for goods and services not provided.

IPS and OG had no contracts with the Government neither did these two companies supply goods or services to the Government. IPS and OG companies did not receive requests for quotations from any Government Ministry, Department or Agency (MDA).

Accused 1 confessed to using these two companies to receive and cash fraudulent cheques drawn on the Central Bank. IPS received 11 cheques while OG received 5 cheques, all 16 cheques amounting to US\$ 4,879,518.87.

Accused 1 was arrested and charged with the offence of conspiracy to defraud the Government and money laundering. He was convicted and was sentenced to 11 years imprisonment with hard labour.

Perpetrators:	Employees of procuring entity; private companies; local business person
Type of procurement corruption:	False payment
Red flags:	Use of corporate vehicles to commit fraud or to facilitate fraudulent payments
Method of laundering:	Use of domestic financial institutions

## ANNEXURE B – QUESTIONNAIRES



### *EASTERN AND SOUTHERN AFRICA ANTI-MONEY LAUNDERING GROUP (ESAAMLG) TYPOLOGIES PROJECT ON ML/TF OF PROCEEDS FROM PROCUREMENT CORRUPTION IN THE PUBLIC SECTOR IN THE ESAAMLG REGION*

*Questionnaire (to be filled by Private Sector/Civil Society Organizations)*

#### *Introduction*

ESAAMLG is the Southern African region's Financial Action Task Force (FATF)-style body, which aims to implement the FATF Anti-Money Laundering and the Combating of the Financing of Terrorism standards in its eighteen member countries.

ESAAMLG is currently undertaking a *Typology on Money Laundering through proceeds of Procurement Corruption in the Public Sector*. The overall objective of this typology is to examine the magnitude of procurement corruption in the public sector in the ESAAMLG region and identify linkage with Money Laundering (ML)/Terrorist Financing (TF) as well as actual activities that are being funded by proceeds of the predicate offence. The typology seeks to assist member countries in identifying methods and techniques used to launder the proceeds generated from procurement corruption in the public sector.

A questionnaire was developed to solicit information on the topic from ESAAMLG members. The information collected from member countries will be used to compile a report for use by the member countries to develop measures and policies against laundering of the proceeds generated from procurement corruption in the public sector as well as the use of these proceeds for terrorist financing. The overall objective of the typology project is to understand the laundering activities, examine the magnitude and quantify proceeds being generated from procurement corruption in the ESAAMLG

Region. In this context a decision was taken to approach civil societies/private sectors operating in the ESAAMLG region to obtain their views and experiences as a means to enrich the content, findings and recommendations of the final Typology report.

ESAAMLG reserves the right, at its sole discretion, to decide on the use of the information. However, the information supplied by civil societies/private sectors will be used on an anonymised basis.

**Respondents are requested to return their completed questionnaires by 20 February 2018** to the ESAAMLG Secretariat.

THANK YOU FOR PARTICIPATING IN THE PROJECT.

December 2017

## QUESTIONNAIRE: PROCUREMENT CORRUPTION IN THE PUBLIC SECTOR AND ASSOCIATED MONEY LAUNDERING IN THE ESAAMLG REGION

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### QUESTIONNAIRE FOR PRIVATE SECTOR/ CIVIL SOCIETY ORGANIZATIONS

Name of organization (optional)	
Sector (Private or CSO)	
Jurisdiction(s) of operation	

1. What are the major forms of procurement corruption in the sectors(s) in which you operate? Tick the ones that apply to you.
  - Technical specifications tailored for a specific company
  - Selection criteria is not objectively defined and not established in advance
  - Requesting unnecessary samples of goods and services
  - Divulging information on cost estimates to preferred bidders.
  - Lack of proper justification for the use of non-competitive procedures
  - Abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modifications
  - Absence of public notice for the invitation to bid
  - Evaluation and award criteria are not announced



- Lack of competition or cases of collusive bidding
- Conflict of interest and corruption in the evaluation process (ie. familiarity with bidders over time, personal interests such as gifts)
- Vendors withhold accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing)
- Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities)
- Substantial change in contract conditions to allow more time and/or higher prices for the bidder
- Product substitution or sub-standard work or service not meeting contract specifications
- Theft of new assets before delivery to end-user or before being recorded
- Deficient supervision from public officials and/or collusion between contractors and supervising officials
- Subcontractors and partners chosen in an un-transparent way or not kept accountable
- False accounting and cost misallocation or cost migration between contracts
- Delayed payments of invoices leading to inducement
- False or duplicate invoicing for good and services not supplied
- Payment for sub-standard goods/services
- Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, the same procurement entity bidding in different names, contractual and project authorities)
- One contractor using different supplier/company names
- Overstocking of unnecessary goods
- Tender rigging / bid rigging

2. Of the above listed methods, what are the five most commonly used in your jurisdiction?
3. In your opinion, why are these methods the most commonly used?
4. Does your country have a legal framework that regulates public procurement?
  - a) If yes, is the legal framework adhered to?
  - b) If not, are the criminal sanctions provided for? Are the sanctions effective, proportionate and dissuasive?
5. Does the legal framework provide for administrative sanctions? If so, are the administrative sanctions effective, proportionate and dissuasive?
6. Have administrative sanctions been enforced by the designated authority against erring procurement entities between 2013 and 2017?
7. What agencies or sectors in your jurisdiction provide most of the information on procurement corruption?
8. Are there areas in your legal framework that need improvement to ensure maximum combating effort against procurement corruption?
9. Are law enforcement officers in your jurisdiction well trained and skilled to detect procurement corruption?
10. Which law enforcement and regulatory agencies are involved in the investigation of procurement corruption cases? Please list them.
11. What challenges are faced by law enforcement agencies when executing their duties in combatting procurement corruption?

**Institutional barriers**

- Inadequate financial resources
- Inadequate technical resources
- Inadequate human resource
- Inadequate coordination and cooperation between domestic agencies
- Lack of comprehensive public procurement policies
- Lack of trust between authorities
- Inadequate training and expertise
- Compromised institutions

**Legal barriers**

- Laws deterring institutions from sharing information
- Lack of Non-Conviction Based confiscation mechanisms
- Inability to enter into plea agreements
- Immunity laws that prevent prosecution
- Inability to enforce foreign judgements
- Delays in court process

**General barriers**

- Inadequate or no reports and other information being escalated to LEAs concerning procurement corruption cases
- Inadequate coordination and cooperation with international stakeholders
- Transnational nature of the crime
- Difficulty in bringing masterminds to book
- Interference by PEPs
- Leakage of information
- Self-censorship
- Abuse of security veil
- Abuse of corporate veil
- Other (*specify*) .....

12. According to general reports who are the main perpetrators of procurement corruption in your jurisdiction?

- Politically Exposed Persons
- Suppliers

- Public procurement officials
- Investors
- Others (specify).....

13. In order of magnitude, list the sectors in your jurisdiction that are most affected by (most vulnerable to) procurement corruption.

- Mining
- Energy (Oil, Electricity and gas)
- Construction
- Agriculture, forestry and fishing
- Manufacturing
- Health
- Education
- Water supply
- Public administrations
- Defence and security
- Information and communication
- Transport and storage
- Tourism and Hospitality
- Other (specify).....

14. Give two examples of some the vulnerabilities you have observed in the procurement process.

15. In order of magnitude, list the industry in your jurisdiction in which procurement corruption proceeds are invested.

- Real estate
- Education
- Motor vehicles
- Hospitality
- Retail
- Securities
- Agriculture
- Mining

Others (specify).....

16. List the top 5 foreign jurisdictions to which procurement corruption proceeds from your jurisdiction are invested?

17. Has your country developed controls and mechanisms to address the vulnerabilities in the procurement process? What are the mechanisms?

18. In your opinion, what are the gaps or weaknesses that are being exploited by perpetrators of procurement corruption? How can these be improved?

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