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| **SUBMISSION TO THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE****ON****THE FIGHT AGAINST CORRUPTION IN ZAMBIA****DECEMBER 2023****Contact:**Jovina NawenzakeInterim Country DirectorP.O. Box 51407LusakaCell: 09770806309 |

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# 1.0 Background

## 1.1 About ActionAid

ActionAid Zambia (AAZ) is a part of the ActionAid Global (AAG) Federation, sharing common values and aims to drive social change towards a just, equitable and sustainable world. The ActionAid Federation builds the active agency of people living in poverty, their organizations, and movements, to address the structural causes of social injustice, gender inequality and poverty. This is in line with the United Nation’s Sustainable Development Goals (SDGs) which have identified the importance of addressing poverty and inequality.

## 1.2 Vision

Our vision is to have a just equitable and sustainable Zambia in which every person enjoys freedom from poverty and oppression for enjoyment of their right to a life of dignity.

## 1.3 Mission

Our mission is to promote Social Justice, Gender Equality & Poverty Eradication for the people Living in Poverty, Exclusion and Marginalized in Society by working with the people living in poverty their communities, organizations, Activists & Social Movements for a Just sustainable Zambia.

# 2.0 Introduction

ActionAid’s definition of corruption “involves the act of dishonestly obtaining an advantage from a third party by abusing an entrusted power for private gain.” Corruption is not to be understood as restricted to monetary or material benefits but could also include intangible benefits such as status or information. Corruption and other irregularities include but are not limited to; fraud, theft, embezzlement, bribery, extortion, collusion to obtain unfair advantage, money laundering, terrorist financing, cybercrime, misrepresentation of facts, withholding of information, foreign exchange fraud, nepotism, sextortion, other activities criminalised by state and local law, as well as concealment of, aiding and abetting or attempting any of the conducts above.[[1]](#footnote-1)

Overall, corruption erodes trust and civic participation, compromises on the rule of law, hinders opportunities for growth and development. Given that corruption evolves over time, there is need for regular reforms to mitigate and combat its practice.

Zambia has been no exception to the problem of corruption. The President in Inaugural speech and first address to Parliament indicated his commitment to fighting corruption and curbing illicit financial flows (IFFs). The fight against corruption, requires bold legislative and policy reforms aimed at strengthening the autonomy and independence of the law enforcement agencies that are tasked with the responsibility of fighting corruption and financial related crimes. In a subsequent speech the President further pledged to use financial systems to combat corruption[[2]](#footnote-2)

In 2022, AAZ outlined its expectations of the Zambian government, calling for the President to set the tone in terms of development of the Anti-corruption Strategy accompanied by the much-needed amendments in the Anti-Corruption Act, Drug Enforcement Act as well as the Financial Intelligence Centre Act, the amendments should provide for the security of tenure for the officers at these institutions and provide prosecution powers to Anti-Corruption Commission among others.[[3]](#footnote-3)

Public procurement in Zambia accounts for an estimated 15% of gross domestic product (GDP)[[4]](#footnote-4) and is governed by the Public Procurement Act No. 8 of 2020 and the Public Procurement Regulations of 2022[[5]](#footnote-5) that were published in fulfilment of the IMF’s prior actions for an Extended Credit Facility (ECF).[[6]](#footnote-6) As indicated and/or confirmed by annual Financial Intelligence Centre (FIC) reports, public procurement remains to be one of the most vulnerable Government activities to corruption. The FIC have stated that “cases of corruption continue to be linked to public procurement contracts and are often perpetrated by Prominent Influential Persons (PIPs) or their associates.”[[7]](#footnote-7)

The IMF’s Diagnostic Report on Governance and Corruption highlighted that the 2021 report of the Auditor General (AG) identified several incidents of public procurement irregularities, questionable contract prices and failure of suppliers, including the ones contracted through direct bidding, to deliver goods and services as per contracts.[[8]](#footnote-8)

In the fight against corruption the government has therefore moved to review the legal framework guiding anti-corruption in Zambia, scaled up the use of technology and has revised public finance policy at national and subnational levels to curtail corruption and enhance the efficiency and effectiveness of the limit public resources.

The objectives of the submission are therefore to:

1. Assess the efficacy of the legal policy framework relating to the fight against corruption in Zambia;
2. Appreciate the operational and administrative capacity of the institutions involved in the fight against corruption in Zambia;
3. Learn the challenges, if any, in the fight against corruption in Zambia; and
4. Make recommendations on the way forward.

# 3.0 Our Approach

ActionAid Zambia has in recent years undertaken several analyses assessing on corruption in Zambia. Consequently, our reflection on this subject matter is informed by our cumulative analysis, pervious parliament submissions, and current relevant policy changes.

To thoroughly reflect on the fight against corruption in Zambia, our submission will focus on the legal framework, institutional capacity - evaluating the challenges and opportunities in line with our previous submission and/or reflections on the corruption in Zambia – providing relevant and actionable recommendations for the way forward.

# 4.0 Policy and Legal Framework

The fight against corruption in Zambia is governed by several pieces of legislation that are evaluated against the standards set by international conventions and best practices at regional, continental, and global levels.

## 4.1 Primary and Secondary Legislation

The Anti-Corruption Commission is mandated under the Anti-Corruption Act No. 3 of 2012 which is the primary law and provides for its powers functions to spearhead the fight against corruption in Zambia. The Commission therefore has a mandate to:

* Investigate and prosecute cases of suspected corruption.
* Conduct public sensitization on the dangers of corruption and fostering public support in the fight against corruption.
* Put in place mechanisms for preventing the corruption scourge.[[9]](#footnote-9)

The Anti-corruption Act is under review with revisions to be made in 2024 that would inform the development of the Anti-corruption Policy.

There are also secondary pieces of legislation that support the fight against corruption. These include the Financial Intelligence Centre (Amendment) Act of 2020, The Narcotic Drugs and Psychotropic Substances Act of 2021, the National Prosecution Authority Act of 2023, the Public Interest Disclosure (Protection of Whistleblowers) Act of 2010, The Plea Negotiations and Agreements Act of 2010, and the Forfeiture of the Proceeds of Crime Act of 2010, and the Public Procurement Act of 2020.

There are notable areas for improvements in the legal framework relating to the fight against corruption. Forinstance, while the Anti-Corruption Act (ACA) of 2012 provides that employees of the Anti-Corruption Commission are required to declare assets, here is however no enforcement mechanism for this requirement. The Act does not specify what measures to take against non-compliance.

Section 26 of the ACA cover corrupt practice with, and by foreign public officials. Further section 3 of ACA - 2012 defines foreign public officials, among other things, to be any person performing public functions for a foreign State, or any board, commission, corporation or other body or authority performing a duty or function on behalf of the foreign State or an official or agent of a public international organisations formed by two or more States or two or more public international organisations; Thus, it can be said that the section does not cover private international foreign officials as it deals only with public foreign.

Section 51 (1) A person who alleges that another person has engaged or is about to engage in a corrupt practice may lodge a complaint with the Commission in the prescribed manner and form. Furthermore, 52 (1) provides that the Director General of the ACC may upon receipt of a compliant examine each corrupt practice and decide whether investigations should be instituted. The concern relating to 52(1) is that the Act specifies no timeframe for the handling of complaints, which might be harmful to the Commission’s efficiency. Additionally, there is no prescribed feedback mechanisms for complaints.

Section 13 (3) of the Public Interest Disclosure provides for criminal liability for

filing frivolous, vexatious, or malicious complaints. This is provision should be amended to consider perhaps warning as a punitive measure for malicious accusations. However, continuous malicious accusations should have stronger punitive actions. This is will ensure that there is no limitation on whistleblowing.

## 4.2 International Conventions

Zambia is also signed on to various international and regional commitments. Regional and global anti-corruption instruments that Zambia has ratified or is a party to, including, the Southern African Development Community (SADC) Protocol Against Corruption of 2001,[[10]](#footnote-10) African Union (AU) Convention on the Prevention and Combating of Corruption of 2003,[[11]](#footnote-11) and the United Nations Convention against Corruption.[[12]](#footnote-12)

Recent developments have also seen COMESA initiate the development of a Regional Model Code on Anti-Corruption Compliance to help enterprises in the region improve their business environment with the objective to build the capacity of the private sector to stem corruption and enhance their participation in transparency and reform initiatives in the region.[[13]](#footnote-13)

# 5.0 Administrative and Operational Capacities of Institutions

Zambia has several institutions that contribute to the fight against corruption – each of which have varying capacities. These include the following:

## 5.1 Auditor General’s Office

In fulfilling its role of promoting transparency and accountability, the Office of the Auditor General audits Ministries, Provinces, and Other Spending Agencies (MPSAs) and reports to Parliament as required by the Constitution of Zambia. The Auditor General’s annual reports reveal widespread corruption and misuse of Government resources by civil servants.[[14]](#footnote-14) From these reports however, many reports are not resolved for several years indicating the need for collaboration among institutions.

## 5.2 The Financial Intelligence Centre (FIC)

The Financial Intelligence Centre (FIC) The Financial Intelligence Centre (the Centre) is the Financial Intelligence Unit (FIU) of the Government of the Republic of Zambia which was established in November 2010 by the Financial Intelligence Centre Act, No. 46 of 2010. The Centre is the sole designated National Agency mandated to receive, request, analyse and disseminate disclosure of information concerning suspected Money Laundering (ML), Terrorist Financing (TF) and other serious offences to competent authorities for investigations. With over a decade of operations, the FIC still face the challenge of inadequate human resource. The adverse effects of the Covid-19 pandemic which impacted the normal operations of the FIC in recent years.[[15]](#footnote-15)

## 5.3 The Anti-Corruption Commission (ACC)

The Anti-Corruption Commission (ACC) is the Agency that is mandated to spearhead the fight against Corruption in Zambia. It was established in 1980 under an Act of Parliament, the Corrupt Practices Act No. 14. Since its establishment, the commission has adapted guided by subsequent revisions to the law. However, there are still challenges of inadequate funding for the commission which limits the number of cases that can be investigated and pursued, insufficient staff capacity, and political interference.[[16]](#footnote-16)

## 5.4 The Drug Enforcement Commission (DEC)

Established under the Narcotic Drugs and Psychotropic Subsistence Act, the DEC has a mission to prevent and control illegal cultivation, production, trafficking and abuse of narcotic drugs, psychotropic substances and **money** **laundering** activities in order to contribute to socio-economic development. However, challenges such as the increased use of cyberspace and technology has brought challenges to the administration of justice against transnational crimes. As technology evolves the complexity of money laundering crimes also evolves posing a challenge for the fight against corruption.[[17]](#footnote-17)

## 5.5 Other Law Enforcement Agencies (LEAs)

As defined by the FIC Act other LEAs in Zambia include:

* The Zambia Police Force, established under the Constitution;
* The Zambia Security Intelligence Service, established under the Zambia Security Intelligence Act;
* The Immigration Department, established under the Immigration and Deportation Act, 2010;
* The Anti-Money Laundering Investigations Unit, established under the Prohibition and Prevention of Money Laundering Act, 2001
* The Zambia Revenue Authority, established under the Zambia Revenue Authority Act; and
* Any other Investigative Institution that the Minister may, by statutory Instrument designate.

Transparency International Zambia (TI-Z) in their Bribe Payers Index of 2022 found that Zambia Police Service ranked top of the list of 22 public institutions in terms of probability of bribery[[18]](#footnote-18) and indicated the prevalence of corruption in LEAs. In 2022 the FIC also found that LEAs lacked adequate technical capacity to effectively investigate TBML. Further, there was limited inter agency cooperation and coordination on TBML cases.[[19]](#footnote-19)

# 6.0 Challenges in Fight Against Corruption

**Asset Disclosure by Public Officials**

 The lack of a comprehensive and effective framework for asset disclosure by public officials limits the integrity, accountability and prevention of corruption in public service. The Constitution under article 263 requires a person holding public office to disclose assets and liabilities, before assuming or leaving office. The option to disclose assets either at the time of assuming or leaving the office renders the system ineffective, as assets verifications require initial, exit and periodic.

 According to the current Parliamentary and Ministerial Code of Conduct Act of 1994 only requires Ministerial office holders, the Speaker and Deputy Speaker to disclose assets, liabilities, and interests within thirty days after their appointment and within thirty days after each anniversary of the appointment and all members of the National Assembly, the Vice-President, Ministers, or Deputy Ministers are to disclose any interest in government contracts. Failure to disclose interests, assets, liabilities, and incomes or making a false declaration amount to a breach of the Parliamentary and Ministerial Code, yet it does not provide sanctions or a mechanism to monitor the accuracy of the disclosed information. In addition, there is poor adherence to the provisions of asset declarations. For instance, according to the Diagnostic Report on Governance and Corruption, only 21 assets and liabilities declarations were filed in 2019-2020 and 64 in 2021. As of May 2022, only the Speaker, two Deputy Speakers and 17 Ministers complied. Employees of the ZRA, the ACC and the DEC are required to file assets and interest disclosures, but enforcement is very limited.[[20]](#footnote-20)

**Databases and information sharing** - The FIC found that LEAs can increase cooperation in identifying and investigating trade-based money laundering through integrating their database with customs database. The FIC also found LEAs experienced difficulties in the acquisition of evidence from foreign jurisdictions whenever cases involved multiple jurisdictions.[[21]](#footnote-21)

**Beneficial ownership and asset declaration** – FIC has over several years highlighted how legal arrangements such as trusts, and legal persons (Local and Offshore companies) were used in money laundering schemes. The figure below illustrates the use of law firms, shell companies, and lawyers in corruption, fraud and money laundering.



*Source: FIC Trends Report 2021[[22]](#footnote-22)*

Organisations such as the Zambia Extractive Industries Transparency Initiative (Z-EITI) have been advocating for and supporting the need for beneficial ownership declaration and transparency as a tool for greater accountability.

**Low levels of funding of AML Units dedicated to combating corruption, illicit financial flows**

The underfunding of the Units may lead failure to: (a) Fill the full staff establishment; (b) Upgrade the ICT systems; and/or (c) Acquire fit-for-purpose office space and equipment. At FIC, according to the FIC 2022 Annual Report, out of the approved staff establishment of 62 personnel, filled up position as of December 2022 amounted to about 37 without a substantive Director General (DG) 14. The DG was only recruited and appointed in 2023.

The requirement to get Director of Public Prosecution (DPP) consent delays prosecution of ML and corruption cases. Too much discretionary authority/power for DPP to issue consent will lead to selective prosecution of corruption cases. It is important to dispose of ML/corruption cases in timely manner, otherwise there is high risk of failure to convict criminals.

**Women and Sextortion** – Transparency International Zambia’s (TI-Z) latest Bribe Payers Perception Survey (2022) found that incidences wherein an individual is coerced into paying a bribe with sexual acts have increased. Applying a gender dimension to experiences of bribery show that, U4 found that in Zambia women are more affected than men when it comes to the growing phenomenon of "sextortion" where sex is used as an informal currency in exchange for favours and economic opportunities.

# 7.0 Recommendations

* **Align Amendments to the Public Procurement Act** - The Public Procurement Act is currently under review. We recommend that the proposed amendments address the challenges that facilitate corruption, taking into consideration the input of all stakeholders.
* **Raise Awareness on Sextortion** - There is need for more awareness and dedicated channels to report sextortion that has been a rising trend in Zambia and disproportionately affects women. We recommend that ACC utilises its mandate for public sensitisation targeted at women.
* **Lifestyle Audits and declaration of assets** – We recommend for comprehensive lifestyle audits to complement asset declarations for those who hold political office. The lack of action in this regard will extend the risks of corruption through the aforementioned vessels and deteriorate public trust further.
* **Information sharing** - We recommend that the government develops a standardised method of maintaining and developing databases across all PMSAs and that they utilise international conventions and RECs to facilitate country-by-country reporting. Additionally, we recommend that the government priorities the investigation of cases emerging from subsequent FIC reports that highlight the use of trusts and legal personnel to facilitate money laundering.

# 8.0 Conclusion

In Zambia's fight against corruption, collective efforts from government, civil society, and citizens are paramount. Despite legislative reforms and awareness campaigns, corruption's entrenched nature persists as a significant obstacle to Zambia's progress. Addressing this problem demands sustained political will, transparent governance, and robust anti-corruption frameworks. Collaborative measures, including enhanced accountability mechanisms and a culture of integrity, are vital.

Active citizen involvement and adequate support for anti-corruption agencies are key to success. Zambia's journey toward a corruption-free society necessitates a unified commitment to upholding ethical standards, reinforcing institutions, and fostering transparency and accountability for sustainable growth and equitable development.

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