

EVOLVING CULTURAL NORMS AT CROSSROADS WITH LEGAL FRAMEWORKS IN REDUCING CORRUPTION IN THE PROCUREMENT OF CONSTRUCTION PROJECTS IN ZAMBIA

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Abstract: The construction sector in Zambia is riddled with bribery, extortion and fraud. Corruption has direct negative consequences on socio-economic development and quality of life. The purpose of this paper is to examine knowledge and effectiveness of core laws in Zambia and attempts to contextualize corruption in the socio-cultural environment where it is practiced. The sample consisted of 737 respondents who participated in the stakeholders survey conducted in five provinces of Zambia. Results of this study show that despite government efforts, corruption remains unabated in Zambia due to a myriad of prevailing socio-economic factors that thwart or contradict the legal framework and related interventions designed to prevent corruption in the Country. Positive traditional norms or practices which existed to support the extended family values system are now being misappropriated and 'new' norms are emerging to support corruption. If not checked these corrupt practices will be deeply rooted and jeopardize anti-corruption efforts in the country and seriously undermine development and perpetuate inequities in the distribution of the socio-economic resources in the country.

Key Words: National Council for Construction Act (NCCA), Anti-Corruption Act (ACC); Public Procurement Act (PPA); Public Interest Disclosure (Protection of Whistleblowers) Act (WB); Citizens Economic Empowerment Act (CEEA); Prohibition and Prevention of Money Laundering Act (PPML); Public Finance Act (PFA); and Competition and Consumer Protection Act (CCPA). Anti-Corruption Commission (ACC), Competition & Consumer Protection Authority (CCPA), Drug Enforcement Commission (DEC), Judiciary, Financial Intelligence Centre (FIC), National Audit Office (NAO), Zambia Police (ZP), Zambia Public Procurement Authority (ZPPA).

I. INTRODUCTION

Corruption abuse of entrusted power for private gain is a complex and evolving problem with many faces depending on who is looking at it (<http://www.transparency.org/>). Some corrupt practices may be viewed as "a normal way of life" in one society but scorned in another society. For example, in the United States of America (USA), the culturally perceived distinction between bribery and corruption is at crossroads with the art of guanxi in China. In the USA, bribery and corruption are derogatory, negative terms which connote crime, whereas in China, the practice of guanxi which could be viewed as corruption in the USA is considered as an image of people helping one another (Yang, Mayfair Mei-Hui, 1989 and Yang, Mayfair Mei-Hui, 1994). However, across all cultures, corruption has crippling effects on national socio-economic development and governance systems. Corruption contributes to poverty and inequitable delivery of infrastructural services in various socio-economic sectors and negatively impacts on the quality of life for populations (Lopes, 1998). Corruption has been reported to be widespread in Zambia. In 2016, Zambia scored 38 on a scale of 0 – 100 (representing highly corrupt to highly clean) in sub-Saharan Africa (Transparency International, 2016). Yet the construction sector is one of the key sectors driving development in the world over. Turin (1973), World Bank (1984), Wells (1987), Ofori

(1990) and Muya et al (2006) have all expounded the importance of the construction industry. As a result, in the recent years, the construction sector in Zambia has been gobbling 25% of the national budget for infrastructure development (Office of the Auditor General, 2016). Despite its central role, the construction sector which is the focus of this paper, is riddled with bribery, extortion and fraud. Consequently, every year, Zambia is losing colossal sums of money through corrupt practices by few scrupulous individuals and/or groups of people and UN Conference (2008) cited public procurement as the government activity most at risk of corruption. Hence, on May 25, 2017, when the President of Zambia was addressing the nation on Africa Freedom Day, he lamented about the high levels of corruption in the country and acknowledged that "corruption is among the key challenges that Zambia must confront with urgency" (The Post Newspaper, May 25, 2015). As a response to corruption and its devastating consequences on socio-economic development, the government of Zambia with support from its cooperating partners and civil society has put in place legal and institutional frameworks and implements various measures to combat the scourge of corruption. For example, the (ACT) domesticates a number of international conventions against corruption, reaffirming that international law norms and standards are part of Zambia's national legal system.

Zambia has an institutional system to combat corruption in public procurements such as the Anti Corruption Commission (ACC), Zambia Police Service, Auditor General's Office, the Ombudsman and the Zambia Public Procurement Authority. Furthermore, the National Council for Construction is mandated to monitor and regulate the construction sector.

These interventions are all aimed at preventing and reducing corruption and its negative consequences on national development and quality of life for the general population. However, despite these measures, corruption remains unabated in Zambia. A myriad of prevailing socio-economic factors thwart the expected effects of the anti-corruption measures being implemented in the Country.

II. METHODS

This paper is based on the results of the study on 'Options for Reducing Corruption in Procurement: The Case of the Construction Sector in Zambia'. The study was conducted in 12 districts drawn from five provinces of Zambia in December 2015. The overall objective of the study was to examine the extent and nature of corruption in the procurement of construction projects in Zambia. One specific objective was to identify contextual factors that facilitate corruption in procurement in the construction sector. The study used a cross sectional case study design. To allow for an in-depth investigation and understanding of complex and multiple factors associated with corruption in the procurement cycle of the construction sector, both qualitative and quantitative multiple but complementary research methods were used. The research protocol was approved by the Research Ethics Committee in Zambia. Specific methods were in depth interviews (IDI) with 137 informants, 12 focus group discussions (FGD) with community members within the vicinity of selected construction projects, stakeholders' survey covering a purposeful selected of 737 and review of project records. This was a very large study conducted over a period of 2 years from which several scholarly papers can be obtained and dissemination of the study results is an integral component of the study. This paper is based on the survey results and examines knowledge and effectiveness of core laws in Zambia and attempts to contextualize corruption in the socio-cultural environment where it is practiced and to elucidate what drives it

III. RESULTS AND DISCUSSION

3.1 Corruption and its Prevalence

Results of this study show that, corruption is perceived as a very serious problem in the

construction sector in Zambia, almost all (92%) of the respondents reported in the affirmative (Figure 1).

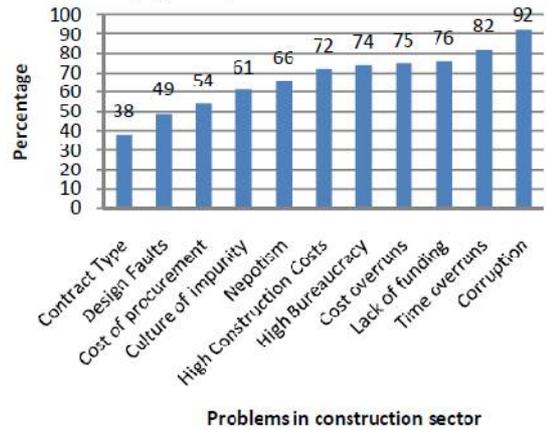


Figure 1: Which of the following is a very serious / serious problem in the construction Sector in Zambia?

Further, 63% of the sample reported that corruption is extremely common in procurement in the construction sector, while 26% said it was fairly common (Figure 2).

The study also observed some differentials in perceptions of corruption. A smaller proportion (59%) of the respondents in Lusaka, a metropolitan area with more people with authority and control over procurement of construction projects perceived corruption to be very common compared to 73% in Western province. This suggests that respondents from Lusaka are more tolerable of corruption and/or accept it as a way of life while those from other provinces largely rural may feel deprived of benefits of construction projects and more likely to report it.

Common types of corruption reported are bribery (48%), kickbacks (44%), duplicate payments (44%), pilferage of public resources (42%), tailored specification ((36%)) and collusion (22%). Results of this study are consistent with the, the Anti-Corruption Act No. 3 of 2012 Part III which outlines that corrupt practices include abuse of office; possession of unexplained property; and receipt of gratification for giving assistance with contracts.

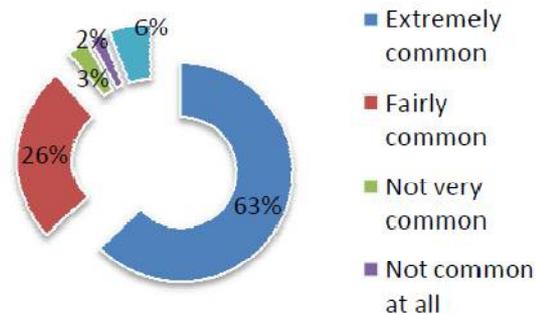


Figure 2: How common are corrupt practices in procurement of construction projects? (N= 737)

3.2. Knowledge and Effectiveness of Legal Frameworks

The study also assessed knowledge about anti-corruption laws in Zambia. Sixty three percent (63%) of the respondents were aware of all the eight key laws regulating corruption, procurement and construction in Zambia. This means that 30% of the respondents were not aware of any of these laws, hence, cannot stand up when violated. Figure 3 shows that ACC Act No. 3 of 2012 was the most known law reported by 81% of the respondents. The Public Procurement Act, which is the main law regulating procurement in Zambia and the National Council for Construction (ACC) Act No.3 of 2013 which is the main law which establishes the body empowered to regulate construction in the country and defines its functions were reported by 68% and 60% of the respondents respectively.

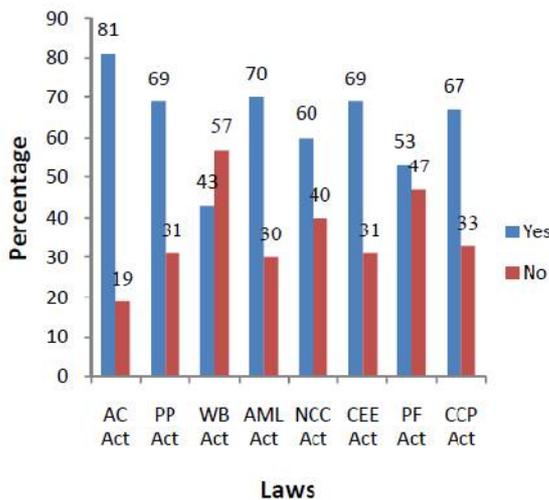


Figure 3: What are some of the laws that you know of that address corruption in procurement of construction projects? (N= 737)

The study also explored whether respondents were aware of the institutions responsible for fighting corruption in Zambia and whether these institutions are effective or not. Most (92%) of the respondents were aware of the Anti-Corruption Commission (ACC), followed by Zambia Police (ZP) (56%) and the Drug Enforcement Commission (DEC) (43%). Knowledge about all other institutions was low ranging between 9% for the Financial Intelligence Center (FIC) and 26% for the Judiciary (26%) (Figure 4).

Respondents who were aware of the anti-corruption institutions were further asked whether the institutions they reported were effective in fighting corruption. Table 1 shows that most (78%) of the respondents reported that the National Audit Office (NAO) was effective, followed by the DEC (71%), Zambia Public Procurement Authority (ZPPA) (68%) and Public Accounts Committee (PAC) (68%). The

ACC (48%) and the Zambia Police (45%) were reported to be the least effective.

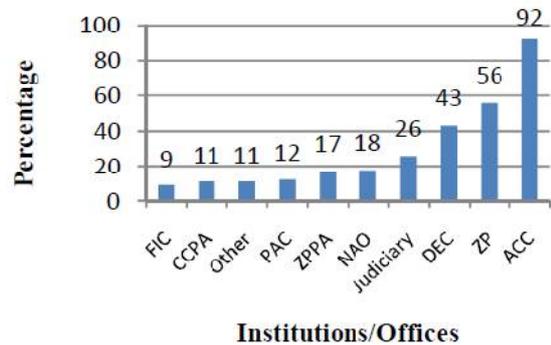


Figure 4: Which Institutions/Offices in Zambia Are Responsible For Fighting Corruption?

However, this fairly high level of awareness about laws and institutions fighting corruption do not seem to be adequately translated into “good” anti-corruption practices. The observed gap between knowledge and practice is attributed to failure by relevant institutions to effectively implement the provisions of the legal and instructional frameworks. These results are consistent with the Transparency International (TI) Report (2008) which indicates that out of the 880 corruption cases recorded by the ACC only 47% were re-investigated and that the outcome for more than 90% of the cases is unknown. While a clear trail of evidence is often difficult to trace, indicators point to corruption in procurement as evidenced in the Auditor General’s Report of 2000-2011. This may partially explain the persistent high level of corruption prevailing in the country.

| Institution | (N) | Effective | Not Effective | Don’t know |
|-------------|-----|-----------|---------------|------------|
| ACC | 680 | 45 | 44 | 11 |
| ZPPA | 123 | 68 | 27 | 5 |
| ZP | 416 | 48 | 47 | 5 |
| DEC | 318 | 71 | 19 | 10 |
| NAO | 130 | 78 | 12 | 11 |
| PAC | 89 | 68 | 16 | 16 |
| Judiciary | 191 | 64 | 23 | 13 |
| CCPC | 84 | 61 | 26 | 13 |
| FIU | 64 | 66 | 11 | 23 |

Table 4: Proportion of Respondents who Perceived anti-corruption institutions effectiveness of reported

3.3. Emerging socio-cultural norms that facilitate corruption

Corruption has been in existence since the beginnings of the human populations. In attempting to understand the link between culture and corruption in Zambia, reference is made to the question that Justine Amin asked to Ghanaians in 1970 “As people, do we frown upon and resist corruption or do we tend to regard them as natural and inevitable?” (Hope. R. Kempe and Chikulo C. Bornwell;

2000). This question is relevant and applicable to Zambia as the results of this study show that there is an association between socio-cultural norms and corruption occurrence in the construction sector.

In Zambia, some cultural norms or practices that have a bearing on corruption and / or efforts to prevent it were reported to be common in everyday life. The study revealed that some of these norms are not new, as they have a long historical context and some originated as positive practices. However, as the contemporary society evolved with the cash economy taking a center stage, the interpretation and application of these practices transformed while some emerged as intermediaries of corruption. Some of the common norms or practices being misapplied with a bearing on corruption include 'kwashamukwenu' in Luvale, meaning 'help your neighbor or friend', 'ukubosha' in Bemba, in the traditional system was intended to honor or show respect to Chiefs, village headmen, parents or other significant people and 'ubombamwibalaalyamwibala' which translates to 'you eat from where you work'. In the same space of time, some norms namely 'nchekelako' in Chinyanja or 'ndekulishamo' in Bemba which translates to 'cut a piece for me in return of a favor' and 'wakoniwako' in Chinyanjaan expression which means 'help your own', emerged as new norms that support corruption. Results of study show that these practices are widely practiced in Zambia.

In the traditional extended family set up 'Kwashamukwenu' which means help your neighbor, or friend, had positive attributes or was a well intended practice of extending a hand of support to one's neighbors or relatives in need. But today, 'kwashamukwenu' is being misinterpreted and/or misapplied to facilitate nepotism. In the construction sector, this means that tenders for construction works will not be awarded on merit, but to those who have socio-economic connections to; or relatives of the awarding authorities. This study, also found that nepotism is a problem in the construction sector. Sixty six percent (66%) of the respondents reported that, nepotism is one of the serious problems affecting the construction sector in Zambia.

Ukubosha in Bemba as indicated was used to pay homage respect and honor to people of significance and was not intended to solicit for favors or payments. Anecdotal evidence shows that when visiting a chief, colonial masters in Zambia will start by kneeling at the chief's palace and leave behind a piece of cloth or food stuffs as a way of introducing themselves and recognition of the traditional authority. Many people do not see anything wrong with this practice. But now this practice is used as a facilitation and inducement act in some socio-economic interactions. However, when applied to the construction sector, this practice translates to bribery,

why should a gift be given to the authority for doing their job? Imagine a client receiving gifts from a contractor who has submitted a bid before awarding of the contract. This practice has now grown into a systematic problem that qualifies as a culture with strong link to corruption. The gifts to people with authority in the construction sector are now intended to be inducement for winning tenders

Nchekelako in Chinyanja or Ndekulishamo in Bemba, (cut a piece for me in return of something), these are new norms which have emerged over time and are also reported to be quite common in Zambia. In the context of the construction sector, it means that if someone gives you a contract in turn you have to give them part of the payment. Results of this study show that this type of corruption occurs more at the tendering and sourcing stages with 48% of the respondents reporting its occurrence.

'Ubombamwibalaalyamwibala' a Bemba idiom meaning 'you eat where you work'. In the Zambian traditional system, this idiom was used to underline the fact, that workers will benefit from the fruits of their hard work, or that those who work hard will be rewarded. But in the recent years, 'ubombamwibalaalyamwibala' is misinterpreted to aid the culture of stealing from one's workplace, impunity and corruption. When applied to the construction sector, this may result in a loss of project finances and materials such as equipment and building supplies. As the results of this study shows, 48% of the respondents reported that pilferage of public resources was common in the construction sector.

The culture of silence was also reported to be facilitating corruption. Employees or members of the public are intimidated or scared to report acts of corrupt practices. Kembe R. H. et.al (2000) noted that "publicizing accusations of corruption would be seen as politically embarrassing and as discrediting the public service." Further the Zambian culture socializes children generally not to question their elders and the prevailing management styles promote submission as a way to show loyalty to the authority. This translates to "silence" when employees see corrupt practices by people in authority they cannot question or report to relevant authority due to fear or lack of capacity to do so.

These cultural norms and / or practices are at variance with legal anti-corruption mitigation measures, therefore there is a need to consider socio-cultural factors when designing anti-corruption measures. These cultural norms are widely referred to; they have become a house household and/or street language in Zambia. Of concern is the culture of 'silence' that surrounds them. This implies tolerance of such corrupt practices and/or lack of capacity to

voice out against corruption and/or rally against the anti-corruption fight. If left unchecked, these norms could be deeply entrenched and institutionalized and their negative consequences on development will be devastating.

CONCLUSION

Corruption in the procurement of construction projects is very common and serious problem in Zambia. Corruption is not mainly due to gaps in the legal frameworks, overall, many laws exist and their provisions are adequate. Social and contextual factors such as the misinterpretation of the positive traditional practices and norms and the emergence of “new” norms that support corruption negatively affects the impact of mitigation efforts aimed at fighting corruption in Zambia.

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