



## Assessing Namibia's performance against the **LUANDA DECLARATION COMMITMENTS**

**Namibia is party to efforts to fast-track the implementation of the UNCAC provisions on public procurement, and it should be noted what progress, if any, has been made**

At the end of May 2023, governments and civil society representatives from across the Southern Africa Development Community (SADC) met in the Angolan capital, Luanda, for a week-long conference on fast-tracking the implementation of specific parts of the UN Convention Against Corruption (UNCAC).

The conference, which ran from 29 May to 2 June 2023, was titled "The

Challenges of Regional Cooperation in the Implementation of the United Nations Convention against Corruption (UNCAC)".

The gathering was focused on encouraging SADC member states to implement their commitments under two broad thematic areas, namely national and regional cooperation and public procurement.

At the end of the week-long conference a statement, known as the Luanda Declaration, was issued that summarised the discussions and captured the recommendations made.

With regard to public procurement, the conference made recommendations

under five broad objectives, specifically:

- **Objective 1:** Increase transparency in public procurement systems;
- **Objective 2:** Increase citizens demand for accountability in public procurement;
- **Objective 3:** Strengthen institutional mechanisms for public procurement oversight;
- **Objective 4:** Increase professional standards for public procurement officials;
- **Objective 5:** Enhance regional cooperation in public procurement management.

Collectively, these objectives have been broken down into 23 activities that states have been encouraged to undertake.

What follows is an assessment of the implementation status of these activities by Namibian authorities.

This assessment found that while, in general, Namibia looks to be doing well on paper in terms of the Luanda Declaration commitments, it should be noted that compliance and practice remain serious concerns and challenges.

### Objective 1: Increase transparency in public procurement systems

Activity	Status
<b>Activity 1.1:</b> Encourage Member States to establish mechanisms to conduct periodic studies on vulnerabilities in public procurement systems	The Procurement Policy Unit (PPU) is mandated to “conduct periodic studies”, as well as audits, and has done so over recent years.
<b>Activity 1.2:</b> Encourage the use of E-Government Procurement systems	The PPU has set up the <a href="#">e-Procurement Portal</a> and the <a href="#">e-Procurement Client System</a>
<b>Activity 1.3:</b> Adopt open contracting data standards and implement the open contracting principles	Open contracting practices are not evident in the Namibian public procurement system
<b>Activity 1.4:</b> Launch public awareness initiatives to improve public perception of the integrity of the public procurement systems	Both the PPU and the Central Procurement Board of Namibia (CPBN) are mandated to engage in public awareness initiatives with regard to integrity of the system. Public awareness raising material is available to the public via the <a href="#">e-Procurement Portal</a>
<b>Activity 1.5:</b> Make beneficial ownership information accessible	At the time of this publication, processes were underway to legislate for making beneficial ownership information accessible

### Objective 2: Increase citizens demand for accountability in public procurement

Activity	Status
<b>Activity 2.1:</b> Establish effective whistle-blower reporting and protection mechanisms in public procurement	Namibia enacted a Whistleblower Protection Act in 2017, which had not been implemented by mid-2023. However, budgetary allocation had been made for the initial establishing phase of the whistleblower protection framework in 2023/24
<b>Activity 2.2:</b> Include non-state actors and private sector in public contract monitoring	Non-state and private sector actors are not officially included in public contract monitoring
<b>Activity 2.3:</b> Establish an electronic portal of public contractors for due diligence reference checks	There is no electronic portal of public contractors for due diligence reference checks
<b>Activity 2.4:</b> Educate citizens on their rights to demand accountability	There is no official coordinated, continuous programme to educate citizens on their rights to demand accountability. Procurement Tracker Namibia, as a non-state actor initiative, is the the only project doing this type of work

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### Objective 3: Strengthen institutional mechanisms for public procurement oversight

Activity	Status
<b>Activity 3.1:</b> Monitor and enforce audit recommendations on public procurement	While the PPU is mandated to monitor all aspects related to public procurement, it has no enforcement mandate. Enforcement of audit recommendations internal structures in public entities
Activity	Status
<b>Activity 3.2:</b> Strengthen inter-governmental coordination between procurement and anti-corruption agencies	Mechanisms exist for cooperation and coordination between procurement and anti-corruption agencies, as well as other law enforcement actors. How effective such mechanisms are is questionable
<b>Activity 3.3:</b> Strengthen partnerships between state and non-state actors in capacity building	There are no coordinated initiatives to strengthen partnerships between state and non-state actors in capacity building
<b>Activity 3.4:</b> Conduct Methodology for Assessment of Procurement Systems (MAPS) for procurement reform	At the time of publication it was understood that the PPU was in the initiating phase of conducting a <a href="#">Methodology for Assessment of Procurement Systems (MAPS)</a> for procurement reform process

### Objective 4: Increase professional standards for public procurement officials

Activity	Status
<b>Activity 4.1:</b> Enact legislation or other measures as relevant to provide for declaration of assets and interests for public officials involved in public procurement	<a href="#">The Public Procurement Act of 2015</a> , as amended, in Part 10 (Procurement Integrity) and Part 12 (General Provisions) contains clear and strengthened provisions on declaration of assets and interests for public officials involved in public procurement. There is no overarching, state-wide legislation on declaration of assets and interests for public officials
<b>Activity 4.2:</b> Introduce professional certification for public procurement officials and a requirement to subscribe to a professional body, when applicable	PPU, in collaboration with NUST and UNAM, is introducing professional certification and accreditation programmes
<b>Activity 4.3:</b> Develop a Code of Conduct and Ethics for public procurement officials that includes a policy on conflict of interests	Part 10 (Procurement Integrity) of the Act deals with conflict of interest of public procurement officials. Section 76 (Disclosure of interest by members of Board and Review Panel) of Part 12 (General Provisions) also deals with this. In terms of a Code of Conduct, there is the <a href="#">Public Service Code of Conduct, Integrity and Ethics</a> to which all public servants have to adhere. The PPU has also developed a Public Procurement Code of Ethics and Conduct for officials involved in public procurement
<b>Activity 4.4:</b> Criminalise abuse of duty and conflict of interests by public procurement officials	Sections 66 (Conduct of staff members of public entities) and 66A (Disclosure of interest by staff members of public entities) of Part 10 (Procurement Integrity), and Section 76 (Disclosure of interest by members of Board and Review Panel) of Part 12 (General Provisions) criminalise abuse of duty and conflict of interests by public procurement officials.
<b>Activity 4.5:</b> Conduct periodic training of public procurement officers	The PPU is mandated to conduct training and has engaged in training of public procurement officers over the years

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**Objective 5: Enhance regional cooperation in public procurement management**

Activity	Status
<b>Activity 5.1:</b> Publish information on public contractors who are blacklisted	Section 68 (Suspension, debarment and disqualification of bidders and suppliers) of the Act and all of Part 9 (Procurement Integrity) of the Public Procurement Regulations deal with blacklisting of contractors. There is a <a href="#">Debarment / Suspension page</a> on the e-Procurement Client Portal where blacklisted contractors are listed
Activity	Status
<b>Activity 5.2:</b> Provide regional standards for blacklisting contractors and develop mechanisms for cross debarment in the region	No information on this
<b>Activity 5.3:</b> Publish international tenders on the SADC website	There are procurement webpages on the SADC website that could be used for this
<b>Activity 5.4:</b> Conduct regional benchmarking visits and exchange programmes for public procurement oversight bodies	The PPU has been conducting regional benchmarking visits and engaging in exchange programmes for public procurement oversight bodies over the years
<b>Activity 5.5:</b> Encourage SADC Member States to establish an online registry for beneficial ownership	No information on this



Frederico Links, Procurement Tracker Namibia project coordinator, represented the Institute for Public Policy Research (IPPR) at the UNCAC conference in Luanda, Angola, from 29 – 31 May 2023.

# What’s happening with health ministry procurement?

**Once again the figures do not add up from the plan to awarded tender costs**

The health ministry has had a rough year so far on the public procurement landscape, and there’s still a lot left of the year to go.

Early in the year it was the controversies surrounding the clinical and pharmaceutical supplies tenders handled by the Central Procurement Board of Namibia (CPBN), and of late it’s been allegations of mismanagement of Global Fund contributions, including through procurement practices.

It has to be noted though that much of the criticism of the ministry appears to be well-founded, based on information that is available about its procurement practices and activities, even those it does not handle directly.

At the time that the clinical supplies tender (G/OAB/CPBN-02/2022) was a public relations headache for the ministry and the CPBN, [Procurement Tracker Namibia reported](#) that one of the aspects of the controversy that also raised questions was that the final cost of the tender did not correspond to the estimated amount budgeted for clinical supplies in the health ministry’s annual procurement plan for 2022/23.

When the clinical supplies tender was initially cancelled by the CPBN the justification used was that the estimated cost of the tender did not correspond to the ministry’s budgetary allocation for clinical supplies. This justification was of course declared unlawful by the Review Panel.

Around the time that all this was playing out, on 2 March 2023, head of the Procurement Policy Unit (PPU), Francois Brand, sent out [a guidance note](#) to the heads of all public entities, including ministers, on the roles of governance structures (ministers, boards, local and regional councils, etc.) in ensuring the proper implementation of and compliance with the Public Procurement Act of 2015.

First on the list of roles of such governance structures was “Approval of the Annual Procurement Plan / Business Plan including the budget for each financial year”, followed lower on by “To make sure all procurement are awarded within the approved budget estimate”.

Why this is significant is because in May this year the CPBN finalised the award of the pharmaceuticals supply and delivery tender (G/OIB/CPBN-01/2022) on behalf of the ministry, and once again there was inconsistency between what was planned, what was estimated, and what was awarded.

**Confusing sums**

According to the revised executive summary of the bid eval-

REVISED EXECUTIVE SUMMARY OF THE BID EVALUATION REPORT  
(SECTION 55(8))

1.	Name of Procurement	Procurement of Supply and Delivery of Pharmaceutical Products for the Ministry of Health and Social Services
2.	CPBN Procurement Reference No	G/OIB/CPBN-01/2022
3.	Date of Submission of Report	30 May 2023
4.	Contract Number	G/OIB/CPBN-01/2022
5.	Scope of Contract	Procurement of Supply and Delivery of Pharmaceutical Products for the Ministry of Health and Social Services
6.	Estimated Cost	N\$1,400,000,000.00
7.	Funding Agency	Ministry of Health and Social Services
8.	Procurement Method Used	Open International Bidding (OIB)
9.	Date of Invitation of Bids	29 April 2022
10.	Closing Date of Submission of Bids	08 November 2022
11.	Date and Place of Opening of Bids	08 November 2022, at Central Procurement Board of Namibia
12.	Number of Bids Received by Closing Date	Twenty-Six (26)

uation report, which was dated 30 May 2023, the estimated cost of the pharmaceuticals supply and delivery tender (G/OIB/CPBN-01/2022) was N\$1.4 billion.

Interestingly, the notification of award of this tender only happened on 3 August 2023, following a Review Panel consideration of the award.

Even though this tender was initiated in the 2022/23 financial year, it was awarded in the 2023/24 financial year.

According to the 2022/23 annual procurement plan of the health ministry, roughly N\$900 million had been allocated for procurement and supply of pharmaceuticals.

The 2023/24 annual procurement plan indicates that an estimated amount of N\$543 million was set aside for the procurement of pharmaceutical products over a three-year period.

Taken together these estimates come to just over N\$1.4 billion, but it is not clear that these two estimates in the two procurement plans speak to each other.

Making this picture even more confusing is that according to the health ministry’s own estimates (see image titled Table 3: Estimated cost of forecasted products) from March this year, it would need pharmaceutical products with an estimated value of just over N\$600 million in the 2023/24 financial year alone.

# Talk of debarment

**Blacklisting of bidders or suppliers has become topical lately, and it’s clear why it’s problematic**

The blacklisting of non-performing or transgressing bidders, contractors or suppliers within the public procurement system has become quite a significant talking point of late.

Reports on the issue have ranged from threats being issued to implicated bidders or suppliers through the media by high ranking government officials, to a CPBN representative recently stating that the Public Procurement Act of 2015 needs to be amended in order to strengthen blacklisting provisions.

From reports on the topic it has emerged that one of the major issues of concern is that non-performing or transgressing bidders, contractors or suppliers are not being held accountable by relevant authorities within public entities, such as executive directors, who appear not to be reporting such bidders or suppliers for debarment / blacklisting to the Review Panel.

This speaks to executive officers in public entities not complying with the law and regulations rather than there actually being a problem with the law and regulations regarding debarment / blacklisting.

The concern around executive officers in public entities not holding bidders, contractors or suppliers accountable through exercising and applying debarment / blacklisting provisions within the law featured in a guidance note sent to all procuring public entities on 2 March 2023 by the head of the Procurement Policy Unit (PPU), Francois Brand.

Brand made it clear that “governance structures” (ministers, boards, local and regional councils, etc.) at public entities had an obligation to “ensure that the Accounting Officer has reported all bidders that submitted false information or failed to execute the awarded contracts to the Review Panel for suspension, debarment and disqualification in terms of section 68(1)(d) of the Act, as well as the Instruction Note on Suspension and Debarment of Bidders dated 9 December 2022” (This instruction note could not be located in the file titled Instruction Notes on the e-Procurement Portal).

Against this backdrop, it appears that there are many non-performing or transgressing bidders, contractors or suppliers within the public procurement system, but at the time of publication [only three were blacklisted](#) on the e-Procurement Client System.

## What the law says?

Section 68 of Part 10 (Procurement Integrity) of the Public Procurement Act of 2015 deals with “Suspension, debarment and disqualification of bidders and suppliers”.

The provisions of Section 68 (below) should be read together with those of Part 9 of the Public Procurement Regulations, which spell out in detail the processes for blacklisting bidders or suppliers.

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**Table 3: Estimated cost of forecasted products**

Commodity Group	Value FY2023/24	Value FY2024/25	Value FY2025/26	Value FY2026/27	Total
Anti-Malarials/RTK	8,307,259	9,015,095	9,783,244	10,632,429	37,738,027
Anti-TB Medicines	21,160,053	22,985,394	24,966,240	27,133,310	96,244,997
ARV & RTKs	325,313,628	341,154,693	356,513,515	387,882,710	1,410,864,546
Clinical Supplies	247,155,041	269,284,886	293,482,292	318,956,555	1,128,878,774
Diagnostic Devices	3,465,077	3,760,321	4,080,722	4,434,928	15,741,048
EPI Vaccines	251,898,960	290,992,903	312,974,856	340,141,073	1,196,007,792
Family Planning/MCH	43,262,648	50,041,489	58,902,769	64,015,530	216,222,436
Pharmaceuticals	603,458,772	653,167,451	707,977,263	762,327,959	2,726,931,445
<b>Grand Total (N\$)</b>	<b>1,504,021,438</b>	<b>1,640,402,232</b>	<b>1,768,680,901</b>	<b>1,915,524,494</b>	<b>6,828,629,065</b>

The total cost of pharmaceuticals over three years, up to the end of the 2025/26 financial year is estimated to be almost N\$2 billion.

This is roughly 300% more than the estimated value of pharmaceuticals over three years reflected in the 2023/24 annual procurement plan.

These divergent estimates raise concerns about the state of procurement planning and budgeting within the health ministry, as the estimates in its procurement plans should clearly speak to each other, as well as to its own internal needs assessments and to the estimated values of tenders awarded. However, this is not the case.

**Suspension, debarment and disqualification of bidders and suppliers**

**68.** (1) Subject to subsection (2), the Review Panel, under the prescribed conditions, may suspend or debar a potential bidder or supplier from participation in procurement proceedings on the following grounds -

- (a) supplying false information in the process of submitting a bid or pre-qualification application;
- (b) bid rigging or collusion between the bidders or a bidder and a supplier, agent, or staff member concerning the formulation of any part of the bidding documents;
- (c) interference by a supplier with the participation of competing bidders;
- (d) misconduct relating to the submission of bids, including corruption, bid rigging, price fixing, a pattern of under-pricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;
- (e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract within five years prior to the bidding; or
- (f) conviction for an offence related to dishonesty or fraud or corruption in his or her professional activity within 10 years prior to the bidding and was sentenced to imprisonment without the option of a fine.

(2) A suspension or debarment of a bidder or supplier under subsection (1) may not be effected unless the Review Panel -

- (a) considers the factual record developed by the Board or public entity that proposes the action;
  - (b) gives reasonable notice to the bidder or supplier involved of the basis for the proposed action; and
  - (c) gives reasonable opportunity to the bidder or supplier to respond to the proposed action.
- (3) A period of debarment under subsection (1) may not exceed five years.

(4) A decision to suspend pending the completion of the disqualification or debarment proceedings is at the discretion of the Review Panel on the proposal of the Board or public entity when it is in the public interest.

(5) The suspension is terminated with the decision to debar, disqualify the bidder or supplier or to set aside the proposal or on the expiry of the maximum time prescribed for the Review Panel to issue a decision.

**Criticism of blacklisting provisions**

While the law and regulations make quite comprehensive provision for the blacklisting of bidders or suppliers, there is a loophole.

The law and regulations make provision for the public disclosure of the “name and address of a bidder or supplier suspended or debarred”, as well as the “grounds for debarment or suspension of a bidder or supplier” along with the “period for which the bidder or supplier is debarred from participating in procurement”.

This has actually only been applied to companies and not individuals.

To be clear, while a company is blacklisted, the principal officers or beneficial owners in that company can form another company and bid for government contracts.

The solution that has been voiced is that the law and regulations should be amended to make it clear that not only companies will be blacklisted, but also the beneficial owners and/or principal officers in those companies would be blacklisted from participating in public procurement processes.

# Public Procurement in the News

## Tax-evading company scoops road tender

In early August 2023 it was reported that a construction company, Zhong Mei Engineering Group, had been awarded the tender to upgrade the road between Karibib and Usakos in the Erongo Region. This was despite the company being implicated in tax evasion to the tune of tens of millions of Namibia dollars by the Namibia Revenue Agency (NamRA). At the time of publication this was still an unfolding story.

## Bidders submitting false information delay processes

In mid-August 2023 it was reported that the submission of false information and paperwork by bidders has been a major stumbling block for the Central Procurement Board of Namibia (CPBN) to issue awards within a reasonable time period. The submission of false information and paperwork has resulted in the CPBN having to spend a large amount of time to verify the information submitted by all bidders, which has caused delays in the handling or resolution of procurement matters, CPBN chairperson Amon Ngavetene was reported saying.

## Health ministry accused of grant mismanagement

Also in mid-August 2023, it was reported that the Global Fund was accusing the health ministry of having mismanaged the Global Fund Namibia grant over a number of years.

The Global Fund accusations follow a recent audit of its contributions to the health ministry. Among others, the ministry was accused of mishandling procurements under the Global Fund grant. At the time of publication the health ministry had yet to issue a comprehensive official response to the Global Fund accusations.

# Public procurement in numbers

The following data has been gathered from information available through the e-Procurement Client System

## Annual Procurement Plans

There are about

**190**

public entities with a procurement function. All of these entities have to submit an annual procurement plan to the Procurement Policy Unit (PPU), which then publishes the plan on the e-Procurement Portal.

By 23 August 2023, only

**53**

annual procurement plans were viewable via the e-Procurement Portal.

That means only about

**28%**

of public entities have submitted their plans to the PPU so far into the 2023/24 financial year.

The most downloaded plan is that of the Ministry of Health, with

**480**

downloads, followed by the Omusati Regional Council, with

**430**

downloads.

## 2023 Procurement Projects and Bid Activities

Activity	Jan.	Feb.	March	April	May	June	July
Bid adverts published	22	89	72	30	22	110	95
Bid opening reports published	17	48	34	23	17	74	36
Bid documents published	45	108	70	36	32	143	145
Bid Executive Summaries published	7	7	14	17	8	15	16
Notices of Selection of Award published	3	7	9	11	4	16	15