

ANALYSIS OF THE 2021 AUDITOR GENERAL'S REPORT



REPUBLIC OF ZAMBIA



PROCEDURES
ACCOUNTING
AUDIT
RECORDS
DEPOSITS

NOVEMBER 2022

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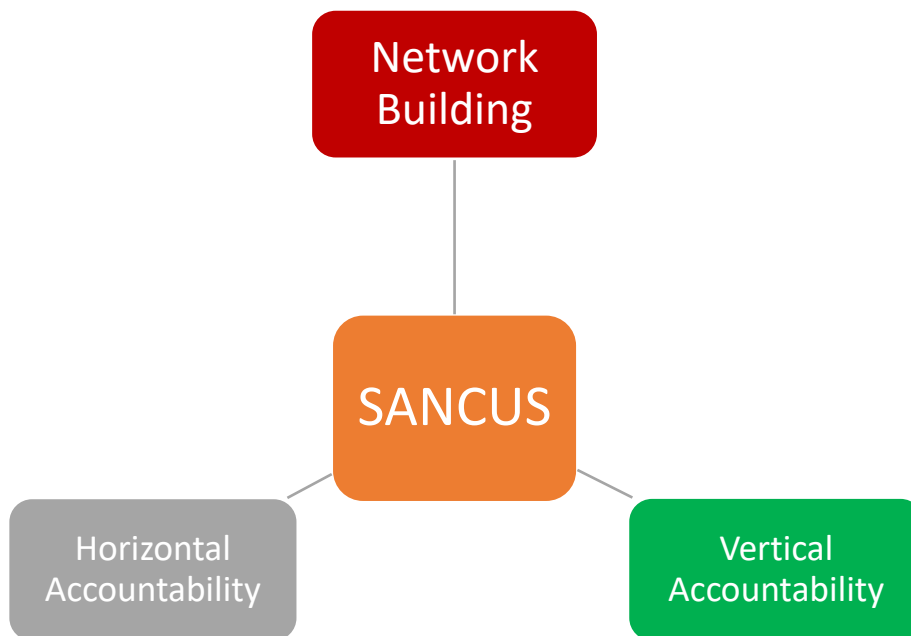
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Foreword

This report has been developed as part of evidence generation under the SANCUS project conducted by Transparency International Zambia. Strengthening Accountability Networks Among Civil Society (SANCUS) is a global project being implemented in 17 countries with the support of the European Union.

It aims to improve democratic accountability of public institutions globally by empowering CSOs to demand systematic change to address accountability and anti-corruption deficits. In Zambia, its main objective is to strengthen public participation and consultation as well as oversight in the policy and budget cycle through a three pronged approach of network building, vertical and horizontal accountability. In this context, vertical accountability is accountability between the government and citizens, whereas horizontal accountability is accountability between different branches of government.

The project is running from June 2021 to November 2023. Project approach:



1. Background to the OAG, AG's report and their relevance

As an organization, Transparency International Zambia (TI-Z) is dedicated to the fight against corruption and the promotion of transparency, integrity, accountability and good governance in the discharge of public functions, which includes the use of public resources. In addition, TI-Z has also embarked on a project on strengthening accountability networks among civil society (SANCUS) with the aim of strengthening public participation, consultation as well as oversight in policy and budget processes. This project includes a particular focus on horizontal accountability and working to strengthen oversight on the use of public resources.

In Zambia, the supreme audit institution is the office of the Auditor General which is established by Article 249(1) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 which states that there shall be an Auditor General who shall be appointed by the President on the recommendation of the State Audit Commission, subject to ratification by the National Assembly.

The main functions of the Auditor General are outlined in Article 250 of the Constitution, and are as follows:

- Audit the accounts of state organs, state institutions, provincial administration and local authorities and institutions financed from public funds.
- Audit the accounts that relate to the stocks, shares and stores of the Government.
- Conduct financial and value for money audits, including forensic audits and any other type of audit, in respect of a project that involves the use of public funds.
- Carry out special, environmental, procurement and contract audits or reviews of the state organs, state institutions and private institutions.
- Recommend to the Director of Public Prosecutions or law enforcement agency any matter within the competence of the Auditor General that may require to be prosecuted.

It is also provided for in Section 73(1) of the Public Finance Management Act No. 1 of 2018 that the Auditor General and an office holder, agent or specialist consultant authorized by the Auditor General, shall in the performance of duties under the Constitution, the Public Audit Act No. 29 of 2016 or any other law:

- Have access to all the books, records, returns, reports, other documents and financial management systems, in electronic or any other form, relating to the accounts of public bodies as the Auditor General considers necessary
- Access at any reasonable time of the day to the premises of any public body under audit examination or inspection.
- Power to call for relevant information from persons responsible for the financial administration of any public body under examination or inspection and;
- Access to all information, communication technology systems used in the management of public monies.

The importance of the Auditor General's report for transparency and accountability in the use of public resources cannot be overemphasized. In the absence of the Access to Information legislation in Zambia, only the Auditor General has complete access to financial records of public bodies and institutions in addition to the capacity to conduct comprehensive audits to determine how public funds have been utilized. This remains a key component of horizontal accountability whereby state institutions such as the

Auditor General's Office hold the Executive and Ministries, Provinces and Spending Agencies (MPSAs) accountable on how public funds are used on behalf of the citizens. Their work also provides the backdrop for oversight functions of the Public Accounts Committee of the National Assembly as well as provide critical information to citizens to exercise vertical accountability in demanding for explanations, justifications and corrective action regarding public funds used on their behalf.

Despite the legal provisions supporting the functions of the Office of the Auditor General and the consistent publication of the annual Auditor General's report, in practice there remain a number of challenges in holding public officials accountable for the use of public resources. These challenges include inadequate punishment for public officers found wanting, and lack of uptake of recommendations made by the Parliamentary Public Accounts Committee, among others. By the time of the publication of the 2021 Auditor General's report, these challenges had not changed, thereby necessitating an analysis to better understand the financial irregularities highlighted by the Auditor General's report, what the opportunity costs of not addressing these irregularities are, and what can be done to reverse the status quo.

2. Objectives

The objectives of this analysis are:

1. To provide an overview of the key issues stemming from financial irregularities in the Auditor General's report of 2021
2. To obtain an analysis of the social sector institutions and the financial irregularities plaguing them in 2021
3. To ascertain some of the socio-economic opportunity costs of the financial irregularities in revenue collection of public funds
4. To provide recommendations to stakeholders

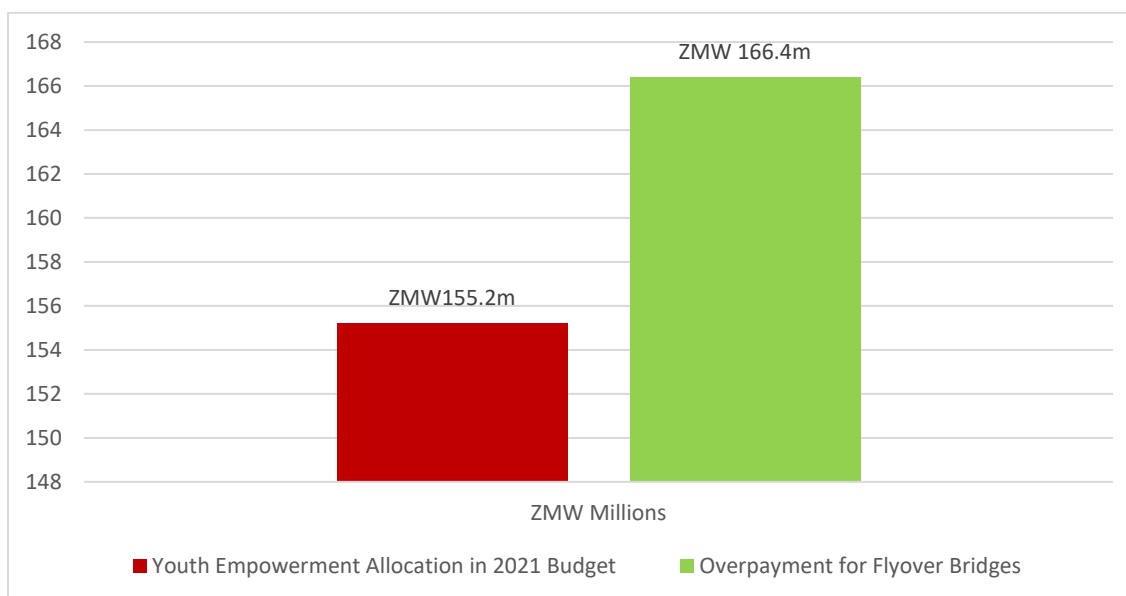
3. Methodology

The study used analytical research methods and mixed qualitative and quantitative approaches. This analysis was conducted purely as a desk review relying on secondary data mainly being drawn from the Auditor General's report of 2021. Other sources of information were pieces of legislation which form part of the legal framework for public financial management as well as official Government documents such as the yellow book of estimates for the national budget. The data collected was analysed using Microsoft Excel as well as content and discourse analysis on the qualitative front.

4. Key Issues Emanating from the Report

- a) **WEAK TAXATION SYSTEM IN THE MINING SECTOR.** This is evidenced, among others, by Declaration of Nil Return for Mineral Royalty Tax, amounting to ZMW140,585,099; Irregular Refund of VAT, amounting to ZMW3,562,136,950; and Failure to Collect Taxes on Various Imports, amounting to ZMW1,237,753,306.
- b) **PROCUREMENT REMAINED A CONDUIT OF CORRUPTION AND RESOURCE MIS-MANAGEMENT.** This is evidenced through construction in new districts under the Ministry of Infrastructure, Housing and Urban Development where there was over commitment on contract procurement amounting to ZMW1,375,923,365 as well as over commitment and lack of confirmation of availability of funds for feeder roads amounting to ZMW9,433,913,996 under the Ministry of Local Government.
- c) **PLANNED/INSTITUTIONALISED RESOURCE MIS-MANAGEMENT.** For example, Lusaka City Decongestion Project had a scope of works which included the construction of four (4) flyover bridges at a cost of US\$29,922,436. However, a review of payment schedules revealed that a total of US\$40,243,508.84 had been paid against the US\$29,922,436 without justification, entailing an excess of US\$10,321,072.84 (ZMW166,357,116). The illustration in figure 1 below compares the over payment that went to the construction of the flyover bridges and how it was even greater than the allocation towards youth empowerment in the 2021 national budget by ZMW11 million.

Figure 1: Overpayment for Selected Infrastructure vs Youth Empowerment Allocations in 2021



- d) **NON ENFOCREMENT OF THE PUBLIC PROCUREMENT ACT;** For example, Government acquired a loan of US\$48,000,000 to finance construction of a hospital in Lusaka against which it signed a

contract of US\$146,478,535.51 with a contractor resulting in a shortfall of US\$98,478,535. Information on how the shortfall would be resolved was not availed.

- e) **MANIPULATION OF TREASURY AUTHORITY.** For example, during the financial years 2020 and 2021, the Ministry of Local Government signed a total of 190 feeder road contracts in amounts totaling ZMW9,835,013,156 against a total budget provision of ZMW401,099,160 resulting in over commitment of ZMW9,433,913,996. In addition, there were forty-two (42) contracts on feeder roads that had been brought forward prior to 2020, with contract sums of ZMW2,895,224,963, bringing the total contract sums to ZMW12,730,238,118 as at 31st December 2021.
- f) **POLITICALLY MOTIVATED PROCUREMENT.** This is evidenced through irregular engagement of contractor without specific past experience, failure to establish price reasonableness and questionable project cost estimates, all amounting to US\$22,169,758 (ZMW358, 484,987).
- g) **INADEQUATE TRANSPARENCY AND ACCOUNTABILITY THE SUBSIDY PROGRAM.** This is evidenced by weaknesses in payments in the Social Cash Transfer Scheme. It was observed that amounts totaling ZMW232,200 were irregularly paid to ineligible beneficiaries in five (5) districts while 431 beneficiaries were overpaid a total of ZMW567,300 due to duplication of names and NRCs. Further, one hundred and seventy-seven (177) beneficiaries who were paid amounts totaling ZMW615,600 had no Disability Medical Assessment Forms or Certificates.
- h) **SUMMARY TOTALS.** The manner in which the full report has been produced does not give totals for financial irregularities, which are useful to conduct trends analysis of the irregularities over time and isolate which types of irregularities seem to be increasing. This current format goes against the tenets of transparency through which publicly available information must be produced in a user friendly format.
- i) **OUTSTANDING ISSUES.** Currently, there are still 702 (48%) pending issues out of 1,452 audit issues raised between 2009 and 2018. This number of unresolved issues over the span of a decade is completely unacceptable. This is indicative of a gap in identifying and addressing bottlenecks in their resolution and a lack of effective coordination of Law Enforcement Agencies, the Public Accounts Committee of the Zambia National Assembly and Cabinet office.

4.1 Zambia Revenue Authority

The Zambia Revenue Authority (ZRA) was established in 1994 under the Zambia Revenue Authority Act, with the mandate to collect various taxes on behalf of Government.

Most analyses on the auditor general's report focus on the expenditure side of the public resource envelope. In this segment, the financial irregularities in revenue collection under ZRA will be scrutinized in more detail. Below is a table highlighting the significant financial irregularities that occurred under the ZRA during 2021.

FINANCIAL IRREGULARITIES UNDER ZAMBIA REVENUE AUTHORITY IN 2021		
Type	Issue	Amount
Overpaying contract for Tax Online II Tax Management System	Contract was revised to USD 3.25 million but as at end of March, 2022, USD 3.59 million or 110.49% of the contract sum had been paid. The overpayment for this contract was USD 341,475.50 (ZMW 5,521,659)	ZMW5,521,659
Failure to relate payments to tax period	Payments for 1,356 taxpayers were not being matched with specific tax periods cause a challenge in doing reconciliations for these tax payers	ZMW56,737,881
Unapproved Tax returns	Tax returns are submitted to ZRA through an Tax Online System with features to validate tax returns for errors. In 2021, significant amounts of tax returns remained unapproved or validated meaning no tax liabilities were created or payments made. This accounted for 12% of all tax returns submitted in 2021.	ZMW173,991,870.60
Irregular awarding of CMS contract without clearance and questionable suspension of contract	ZRA awarded a contract to Copperbelt University (CBU) for a Customs Management System for Border management for the amount of K90 million while CBU had no track record for such a contract and ZRA did not obtain any non-objection from ZPPA. After 11 months of implementation, ZRA suspended the contract due to unresolved issues in a different contract involving CBU. This was questionable considering the completion certificate for the project under contention and further 60% of the CMS had been developed and K52 million already paid.	ZMW52,019,277
Questionable supply of ICT equipment	Against regulation, ZRA added an addendum to its CMS contract with CBU to also supply ICT equipment such as cameras and street lights to be used in operationalization of the CMS.	ZMW5,010,040
Failure to withhold and remit tax on consultancy fees	Contrary to Section 82A of the Income Tax Act, ZRA did not withhold and remit tax on consultancy fees on the Customs Management System development	ZMW5,461,708

Declaration of Nil Return for Mineral Royalty Tax	207 tax clearance certificates were issued by ZRA to 31 mining firms that made 383 nil declarations on mineral royalty returns despite having obtained export permits and having exported minerals worth K2.8 billion	ZMW140,585,099
Questionable Mineral Royalty Returns	Contrary to the law, four submissions for mineral royalty returns had negative balances indicating the need for a refund.	ZMW403,559
Failure to reconcile tax arrears	Due to inefficiencies at ZRA to pursue tax debtors. In 2021, tax arrears totaled as high as K85.78 bn.	K85,780,000,000
Irregular VAT refunds	Contrary to the Value Added Tax Act No. 44 of 2016, ZRA irregularly paid VAT refunds to various tax payers on invoices that were expired as they date as far back as six years in some cases.	ZMW3,562,136,950
Loss of Tax Revenue due to Expired Temporary Importation Permits	In 2021, 10 Temporary Importation Permits that had expired were registered under Road Transport and Safety Agency (RTSA) resulting in revenue lost through uncollected taxes	ZMW1,729,443
Total (Excluding failure to reconcile tax arrears)		ZMW4,003,597,487

The table above showcases the financial irregularities in revenue collection and under the Zambia Revenue Authority as an institution. It indicates that apart from the K85 billion standing as uncollected tax arrears, other financial irregularities amounting to K4 billion could be identified through the Auditor General's report. This amount came about due to various irregularities including: Loss of revenue due to expired temporary importation permits, overpayment for contracts, unapproved tax returns, failure to withhold and remit tax on consultancies and irregular tax refunds.

4.2 Case Studies from Health and Agriculture Sectors

Institution	Type of irregularity	Issue	Amount
Ministry of Health	Failure to establish price reasonableness.	The Ministry procured un-competitively 10,000 Oxygen Cylinders at contract sum of US\$13,000,000 from Accute Investments Limited in that other suppliers were not considered.	US\$13,000,000 (ZMW 210,210,000)
Ministry of Health	Questionable Project Cost Estimates.	Government acquired a loan of US\$48,000,000 to finance	US\$98,478,535 (ZMW 1,592,397,911)

		construction of a hospital in Lusaka against which it signed a contract of US\$146,478,535.51 with a contractor resulting in a shortfall of US\$98,478,535. Information on how the shortfall would be resolved was not availed.	
Ministry of Agriculture.	Continued Procurement through Direct Bidding (Single Source).	During the farming seasons 2021/2022, the Ministry had continued awarding contracts for inputs through direct bidding.	US\$430,336,620.18 (ZMW 6,958,543,148)
Ministry of Agriculture.	Questionable Payments.	As at 31st October 2021, three (3) months after the expected delivery date of 31st July 2021, the Ministry had paid between 60% to 100% of the contract sums to four (4) suppliers that had partially delivered contracted quantities in ranges of 34% to 83%.	US\$272,812,320 (ZMW 4,411,375,214)

4.3 Social Economic Costs from Irregularities in Revenue

The function of the ZRA to collect revenue and pursue tax debtors is cardinal to ensuring that domestic resource mobilization is effective and adequate to supply the treasury with required resources to provide social services and amenities required for the welfare of citizens. Without this function being executed effectively, domestic resource mobilization and the available funds under the treasury are negatively affected. This section looks at the socio-economic costs arising from financial irregularities in revenue; what could have been done with those funds to meet the needs of citizens in various social areas.

Figure 2: Tax Arrears vs Health and Education Allocations

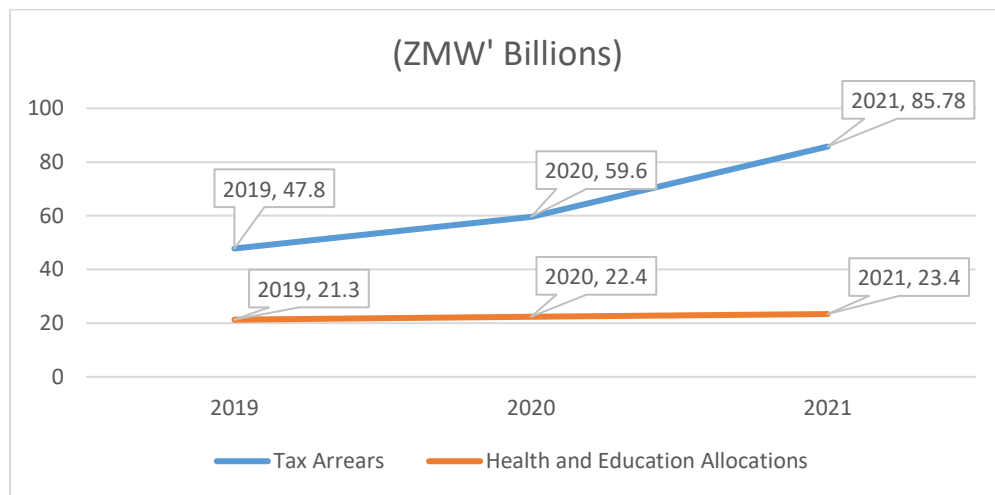
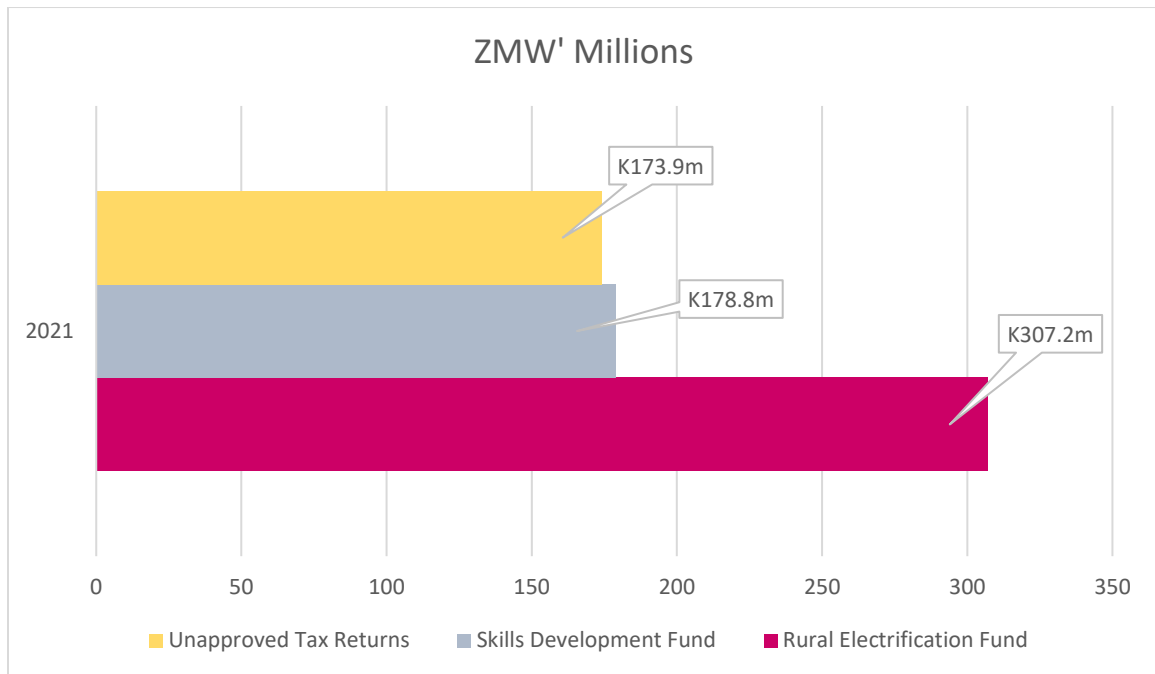


Figure 2 above highlights the extent to which public service delivery and social sector spending on health and education are hampered by inefficiencies in domestic revenue collection by the ZRA. The illustration indicates that health and education allocations have grown only marginally from K21.3 billion in 2019 to K23.4 billion in 2021. These social sector allocations were dwarfed by the opportunity cost of unpaid tax arrears that rose from K47.8 billion in 2019 to an almost double, K85.78 billion in 2021. This exponential rise in tax arrears cannot be allowed to continue given its harsh effect on the treasury and what could be achieved for social amenities to raise the standard of living of citizens.

Figure 3: Unapproved Tax Returns vs Comparable Budgetary Allocations in 2021



One of the significant irregularities under ZRA was the unapproved tax returns, which amounted to K173.9 million loss in revenue resulting from the inability of the Authority to validate and approve tax returns submitted through the On-line tax system. This can be compared to allocations to the Rural Electrification Fund and the Skills Development Fund in the 2021 National Budgets which stood at K307.2million and K178.8 million respectively, as depicted in Figure 3 above. As the illustration shows, if validation and approval of the returns had occurred, the amounts allocated to Skills Development under the Education Sector could have been doubled. Alternatively, the amounts allocated to alleviate the suffering of citizens in rural areas without electricity could have been increased by 50%.

The inefficiencies in Zambia’s revenue collection clearly pose significant opportunity costs for addressing the needs of citizens where access to basic needs and social services is sorely inadequate. It is evident from this report that Zambia’s Public Finance Management systems remains weak in many respects. These are weaknesses that need to be addressed in the systems for tax collection but further drawing from earlier sections, there is also a clear need for legal and structural reforms and changes in approaches to address the numerous issues highlighted by the Office of the Auditor General.

5. Recommendations

Given the issues highlighted stemming from the analysis of the 2021 Auditor General's report, TI-Z identifies a number of areas that Government ought to address in order to curb the vices of financial irregularities and the subsequent deprivation of public amenities as a result

- Government should refine and further ensure greater enforcement of the Public Procurement Act No. 8 of 2020 to provide for greater autonomy of ZPPA and allow it to run independently rather than under Ministry of Finance and with sufficient authority to sanction those abrogating procurement procedures and processes.
- Zambia Institute of Purchasing and Supply (ZIPS) must play a greater role in regulating the professional conduct of procurement professionals and revoke licenses/membership where gross misconduct is detected.
- The Government should make provision of sufficient ICT infrastructure for Ministries and Spending Agencies to fully execute the e-procurement systems.
- The Executive should reform Government human resource structures on procurement to provide for a Directorate for procurement in the various Ministries and Agencies in addition to an overall figurehead equivalent to the Accountant General for them to ultimately report to in order to reduce them being completely under controlling officers.
- The Ministry of Finance through the Zambia Revenue Authority must improve the efficiency of tax collection and domestic resource mobilization for reconciliation of tax arrears as a core function of ZRA.
- Zambia Revenue Authority must strengthen on-line tax systems to ensure timely validation and approval of submissions.
- There is need for Government to coordinate a shift from audits to action! This means a combination of actions from Cabinet Office and Law Enforcement Agencies to take concrete actions to either prosecute or resolve the 48% of unresolved issues which is currently unacceptable.
- The Office of the Auditor General must ensure that all future reports are produced with summaries of the various types of financial irregularities and their totals. This provides clarity and comparability with previous reports, allows for better analysis of the report and is in line with the tenets of transparency by ensuring that reports are published in user friendly formats.



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