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Abstract

Public procurement plays a pivotal role in the economic development of any country. In Kenya, it is the means through which government spends revenue raised annually, for the implementation of public service delivery. As such, a public procurement system that is economically inefficient invariably undermines the government programs for economic growth. However, the scourge of corruption in public procurement for a long time has bedeviled Kenya. The problem has passed on from one government to the next but no serious effort has been put in place to fighting the vice. This study sought to examine the causes, consequences, challenges and cures of corruption in public procurement in Kenya. Broken Windows Theory of International Corruption and The Ethical Theory guided the study. The study used a desk study review methodology where relevant empirical literature was reviewed to identify main themes. A critical review of empirical literature was conducted to establish the causes, consequences, challenges and cures of corruption in public procurement in Kenya. The study concluded that a range of economic, political, administrative, social and cultural factors, both domestic and international in nature, characterizes causes of corruption in public procurement. The study recommended on adoption of open contracting principles and data standard, transparency and fairness in access to information on public procurement. The Government should implement stiff penalties for breaches to procurement requirements and capacity strengthening of procurement practitioners on adherence to procurement regulations. There is need for instituting proper records management tools for public procuring entities and more robust mechanisms should be implemented in e-procurement to enhance its functionalities at all the stages of the public procurement cycle. Lastly, government should place more investments in enhancing the capacities of internal audit processes within Ministries, Departments and Agencies.

Keywords: *Corruption, Public Procurement & Kenya.*

1.0 Introduction

Public procurement plays a pivotal role in the economic development of any country. In Kenya, it is the means through which government spends revenue raised annually, for the implementation of public service delivery. As such, a public procurement system that is economically inefficient invariably undermines the government programs for economic growth. Public expenditure through procurement of goods and services is an important avenue for ensuring the provision of public services in Kenya. The integrity of the entire process from tendering all the way to provision of the same services or delivery of the goods and their use is an indispensable indicator of the robustness of management of public resources and fidelity to the constitution of Kenya. However, the scourge of corruption in public procurement for a long time has bedeviled Kenya. The problem has passed on from one government to the next but no serious effort has been put in place to fighting the vice. This study sought to examine the causes, consequences, challenges and cures of corruption in public procurement in Kenya.

1.1 Background of the Study

Government procurement is necessary because governments cannot produce all the inputs for the goods they provide themselves. Governments usually provide public goods, e.g. national defense or public infrastructure (Muange & Chirchir, 2016). Public goods are non-rival and non-excludable, which means that one individual's consumption does not diminish the quantity or quality of the commodity available to others, and individuals cannot be prevented from freely consuming the commodity, or free riding (Weeks & Namusonge, 2016). Consequently, private markets cannot provide public goods. Instead, the government provides those goods and finances them by raising taxes from all citizens. In addition to public goods, governments often also provide merit goods, such as education or health care. Merit goods are private goods which are rival and excludable and are therefore provided by private markets. In addition, governments also provide merit goods because of reasons of equity and fairness and because they have positive externalities for society as a whole. In order to provide public and merit goods, the government has to buy input factors from private companies (D'Arcy & Cornell, 2016; Odhiambo, 2015).

Government procurement involves a high risk of corruption because of the great size of financial turnover and the complexity of many procurement processes in which businesses interact very closely with politicians and civil servants (Burbidge, 2016). Often the personal interests of the public officials are not the same as the interests of the public. Such a conflict of interest problem, known as the principal-agent-problem, increases the risk of corruption. In Africa, the highest percentage of bribery cases occur in the area of public procurement to influence the awarding of public contracts (Authority, 2017). Corruption in public procurement causes inefficiencies and high costs to the public. In order to prevent corruption and to ensure transparency and competition among suppliers, public procurement is subject to legal regulation. Government procurement is a fertile ground for corruption, and not simply because of the sheer magnitude of procurement activities. It is also because the area of government procurement has a series of unique features and participants that make it prone to corruption. First, government procurement involves the use of financial resources belonging to largely invisible stakeholders. Procurement activities both utilize taxpayers' monies and divert them from other government programs and activities.

Kenyan public procurement is subject to rampant corruption and bribery. Companies report that bribes and irregular payments are highly common in the process of awarding public contracts (GCR, 2016-2017). Tendering fraud is the fastest growing economic crime in Kenya: One in every

three companies reports experiencing fraud in procurement during the past two years (PwC, 2017). Businesses report that the vendor selection stage is most likely to be subject to fraud (PwC, 2017). Allegations exist that high-level corruption takes place in energy, airport construction, and infrastructure procurement processes; a number of contracts were awarded to foreign firms that allegedly did not comply with public procurement laws in Kenya (ICS, 2016). Furthermore, the process of devolution has led to an increase of patronage in county-level procurement processes (BTI, 2017). A survey among government officials concluded that procurement fraud is prevalent, particularly on the county level (EACC, 2017). Companies report diversion of public funds and favoritism in the decisions of public officials to be common (GCR, 2016-2017). According to the Ethics and Anti-Corruption Commission (2017), Kenya loses an estimated Kshs 608.0 bn to corruption yearly, which is 7.8% of Kenya's GDP.

The Kenyan procurement process as detailed in the Public Procurement and Assets Disposal Act and Regulations involves several steps. This includes identification of requirements; procurement planning; definition of requirements; determination of source; evaluation and selection of vendor; contract award; contract implementation; payment for goods and services; and disposal (EACC, 2017). However, corruption networks in public procurement have spread their tentacles nationally. With the assistance of high profile politicians, government bureaucrats especially those involved in public procurement and high profile lawyers, citizens of these countries are robbed with impunity, of their hard earned taxes, natural resources and the future of their children (EACC, 2017). The scourge of corruption for a long time has bedeviled Kenya. The problem has passed on from one government to the next but no serious effort has been put in place to fighting the vice. This is particularly so where political protection of corruption perpetrators thrives and where anti-corruption czars become the hunted rather than the hunters. Illegal conversion of public resources to personal use, embezzlement of funds through public procurement, and the proliferation of high level as well as petty bribery to facilitate escape from justice, among other vices, has correlation to dismal growth in many sectors of the economy and to under-development of the nation as a whole. Public procurement reforms in Kenya have to some extent improved financial management, transparency and fairness among government agencies in most of the implementing countries (Muange & Chirchir, 2016). The existing literature acknowledges the different temporal moments when the procurement process can become corrupted and suggests that a combination of prevention and detection activities is the best way to reduce corruption.

1.2 Statement of the Problem

Fraud and corruption are a widespread problem in procurement all over the world. To a very big extent the impact of procurement fraud and corruption to public procurement performance can be substantiated. The World Bank had estimated that roughly \$1.5 trillion in public contract awards are influenced by corruption, and that the volume of bribes exchanging hands for public sector procurement alone, estimate to about US\$ 200 billion per year (EACC, 2017). Kenyan public procurement is subject to rampant corruption and bribery. Companies report that bribes and irregular payments are highly common in the process of awarding public contracts (GCR, 2016-2017). Tendering fraud is the fastest growing economic crime in Kenya: One in every three company's reports experiencing fraud in procurement during the past two years (PwC, 2017). The process of devolution has led to an increase of patronage in county-level procurement processes (BTI, 2017). Kenya loses an estimated Kshs 608.0 bn to corruption yearly, which is 7.8% of Kenya's Gross Domestic Product (GDP) (PWC, 2018). This study therefore sought to examine causes, consequences, challenges and cures corruption in public procurement in Kenya.

1.3 Objective of the Study

The general objective of the study was to examine causes, consequences, challenges and cures corruption in public procurement in Kenya.

1.4 Research Question

What are the causes, consequences, challenges and cures corruption in public procurement in Kenya?

2.0 Literature Review

2.1 Theoretical Framework

2.1.1 Broken Windows Theory of International Corruption

This theory conceptualizes corruption through the lens of broken windows theory of community policing, focusing on the root consequences of corruption as well as its secondary effects. The theory posits that corruption is a broken window that signals the breakdown of community controls necessary for the maintenance of social order (Roger, 2013). A government that abuses its power for private gain is a government that cannot be trusted to pursue its general welfare. Corruption negatively alters the public's perception of government and society. Corruption is inextricably linked to many other public concerns. Empirical evidence finds a positive relationship between a county's corruption ranking and its ranking on other major indices measuring public welfare. Communities that are perceived to take corruption seriously score well on their commitment to other social goods, such as, global competitiveness, productivity, increased standards of living, enhanced children's health, and the safeguarding of civil liberties (Alford, 2013)

2.1.2 The Ethical Theory

According to Manuel Velasquez and Claire Andre Being (1996), ethics have to do with what one's feelings tell him is right or wrong, ethics have to do with one's religious beliefs, and being ethical is doing what the law requires. Ethics consists of standards of behavior a society accepts. The ethical theory places emphasis on the concept of justice, truth and fairness. Ethical theory provides that each person has a sense of what is right and wrong and therefore one should follow his conscience when faced with a compromising situation. Increased contact between buyers and sellers has been noted to lead to higher incidences of corruption. ICT reduces such contact and opportunities for corruption by automating the procurement process and facilitates the tracking of those who transact through it.

2.2 Empirical Review

2.2.1 Causes of Corruption in Public Procurement in Kenya

A range of economic, political, administrative, social and cultural factors, both domestic and international in nature (Muange & Chirchir, 2016), characterizes causes of corruption in public procurement. Corruption is not an innate form of behavior, but rather a symptom of wider dynamics. It results from interactions, opportunities, strengths and weaknesses in socio-political systems. It opens up and closes down spaces for individuals, groups, organizations and institutions that populate civil society, the state, the public sector and the private sector. It is, above all, the result of dynamic relationships between multiple actors. However, Weak governance is one of the fundamental causes of corruption (Weeks & Namusonge, 2016).

Where corruption persists, as it does in Kenya, it is an indication of things (such as governance institutions) falling apart. Corruption in Kenya is systemic and goes beyond individuals to the structural and institutional levels. The primary cause of corruption in Kenya is therefore related to a societal state of being whereby the basic institutions that underpin and support the rule of law and good governance have been deliberately undermined or neglected to the point where they can no longer uphold the rule of law or act in the best interests of the nation (Odhiambo, 2015).

Corruption is persistent in Kenya primarily because institutions such as the legislature and the judiciary, and many executive entities have been both weakened and/or become major perpetrators of corruption themselves as well as conduits through which corrupt activities flow. In addition, the rule of law and adherence to formal rules are not rigorously observed, patronage has become standard practice, the independence and professionalism of the public sector have been eroded, and the average Kenyan has come to see corruption as an inevitable facet of life (Burbidge, 2016). Moreover, the culture of impunity encouraged, or led to, co-optation of others to participate. Other causes include Political patronage, lack of political will, breakdown/erosion/perversion of societal values and norms, non-enforcement of the law, tribalism, favoritism, nepotism and cronyism, weak or absence of management systems, misuse of discretionary power vested in individuals or offices, lack of professional integrity and greed.

2.2.2 Consequences of Corruption in Public Procurement in Kenya

Corruption in public procurement can have many detrimental effects. Corruption often increases the cost and lowers the quality of goods or services acquired while reducing the likelihood that the goods or services purchased will meet the public's needs. In sub Saharan Africa countries it is estimated that corruption drains off between 20 and 25% of national procurement budgets (Authority, 2017). Furthermore, corruption in public procurement may adversely shape a country's economy as corrupt officials allocate budgets based on the bribes they can solicit rather than the needs of the country. This often results in the approval of large-scale infrastructure projects because these projects provide many opportunities for corruption through frequent delays and the various levels of government approvals required. When public infrastructure projects are tainted by corruption, project owners, funders, employees, construction firms and suppliers, government officials, and the public suffer.

Corruption in public procurement can be profoundly harmful to a country's economy (Institute of Economic Affairs, 2018). High prices for consumers. Businesspeople have to pay back that which they lost through corruption and bribery. They view the bribe they pay to access permits as a cost of business hence the consumers have to cater for it Less investment as the cost of doing business is very high due to corruption. This leads to fewer goods hitting the market and highly inflated prices. When investors view corruption as a form of tax, their incentive to invest is lowered significantly. Donor agencies relax their commitment to funding economic projects due to corruption. Reduced foreign direct investments since the foreign firms view corruption as a cost of doing business, which sometimes becomes too high and unpredictable thus unattractive. Minimizes tax revenue as corruption fosters tax evasions. Deficit financing since the government's ability to collect revenue is hindered hence crippling its ability to finance crucial budget expenses. Inferior public infrastructure which hinders the good flow of business as systems are broken down with substandard materials being used for public amenities. The uncertainty of economic transactions. People fear to commit to future investment as they are not sure how things will turn out to be (Compact, 2016).

Corruption also affects the society in a number of ways. Backroom deals hinder public service delivery. As such people are denied access to basic services such as medical and school services in preference to those that can pay for them Lack of faith in institutions. People no longer trust institutions that are responsible for serving them. There is a general feel that without bribing officials, it would be impossible to access services. It promotes tribalism and ethnicity. Corruption has led to a society of who knows who. Opportunities are not given to deserving individuals but are offered to those who are known thus oppressing others Lack of trust in the government as the culture of corruption becomes the order of the day (Price water house Coopers, 2017).

Apart from its negative consequences on various governance indicators, corruption in Kenya has also induced cynicism as people now regard it as the norm. It has undermined social values because many people now find it easier and even more lucrative to engage in corrupt activities than to seek legitimate public service delivery. It has eroded governmental legitimacy by hampering the effective delivery of public goods and services. It has limited economic growth by reducing the amount of public resources available from both domestic and donor sources, by discouraging private investment, and by impeding the efficient use of government revenue and development assistance funds (Transparency International Kenya, 2017)

2.2.3 Challenges of Corruption in Public Procurement in Kenya

Another major challenge of current procurement reforms in Africa is the programs' opposition towards relational exchanges with key suppliers. The lack of these exchanges increases procurement costs through multiple contracts administration, monitoring many suppliers' performance, continuous education of suppliers on an institution's processes and requirements.

Political interference with the procurement process is also a big challenge to the successful implementation of public procurement reforms. A good number of politicians think that they have the right to intervene in the procurement procedures leading to capricious procurement decisions. It is not uncommon in most African countries for politicians to influence the tender process, insisting that particular contracts are awarded to individuals or companies of their choosing (World Bank, 2017).

2.2.2 Cures of Corruption in Public Procurement in Kenya

According to Institute of Economic Affairs (2018), different countries across the globe have adopted various tools to reduce corruption while reinforcing competition and efficiency in procurement procedures. Over 40 countries have commitments between civil society and government to make government procurement more open through the Open Government Partnership. Several countries including Colombia, Canada, Mexico and Romania are implementing the Open Contracting principles. Colombia, Georgia, Korea, Slovakia and the United Kingdom are innovatively using technology to increase the transparency and effectiveness of procurement processes through online platforms.

Several governments have adopted integrity pacts to instill integrity in public procurement when dealing with private companies. Integrity pacts are essentially an agreement between the government agency offering a contract and the companies bidding for it that they will abstain from bribery, collusion and other corrupt practices for the extent of the contract. To ensure accountability, Integrity pacts also include a monitoring system typically led by civil society groups. Only companies that certify that they meet anti-corruption commitments should be eligible for contract awards (Institute of Economic Affairs, (2018).

Among the prescriptions for sealing the opportunities for corruption in public spending are increased transparency in the entire public procurement tendering cycle, avoidance of broad confidentiality clauses in procurement mechanisms for raising alerts for complicated and huge variations in ongoing tendering projects (Transparency International, 2018). Kenya should adopt open contracting principles of disclosure and public participation and begin to publish and publicize government contracts throughout the procurement cycle, from the pre-tendering to the post award stage. Specifically for the post-award stage (stage three of the procurement cycle) where most procurement violations seem to occur, (relating to price variations, false accounting, costs migration between contracts) clear mechanisms should be instituted for tracking public contracts. The country should consider adopting the Slovakia model where a government contract is not legal until it is published. This includes putting an unambiguous public disclosure clause in all government contracts and publishing data on contract milestones and performance. Adopting open contracting, through all the stage of the procurement cycle should help the public including civil society and the private sector to analyze government spending and check that contracts are executed properly.

To address the issues arising in the tendering phase of the procurement cycle, all persons participating in a public procurement process for a specific contract should access the information relating to request for proposals, bids submission, bids evaluation and contract award at the same time. Some suppliers accessing crucial information on tenders earlier than their competitors have undue advantage over the other suppliers. The Government should implement stiff penalties for breaches to procurement requirements. Section 45 (2) of the of Anti-Corruption and Economic Crimes Act criminalizing the commission of breaches related to public procurement procedures as well as all other statutory prescriptions regulating the sector should be implemented effectively. The law regulating public procurement in Kenya should make it mandatory for all public institutions to undertake regular training of their procurement practitioners on procurement laws, regulations, record-keeping, and other procedures to improve adherence to procurement regulations (Institute of Economic Affairs, 2018),

Procurement violations related to the second stage of the procurement cycle (tendering phase) on lack of access to records on procedure can be cured by instituting proper records management tools and protocols for public procuring entities. In spite of the adoption of e-procurement by most Ministries, Departments and Agencies (MDAs), the strategy has not been completely effective especially at the post award stage in relation to contract management, riddled with supplier breaches in terms of product quality, price variations, adjustments to timelines and delivery of sub-standard work. Mechanisms that are more robust should be implemented in e-procurement to enhance its functionalities at all the stages of the public procurement cycle (Transparency International, 2018).

Government should place more investments in enhancing the capacities of internal audit processes within MDAs. Improved internal audit processes will promote strict adherence to procurement regulations at the various stages of the procurement cycle for MDAs and avert most of the gross violations to PFM leading to the OAG's expression of adverse and disclaimer of opinions. This will not only enhance accountability within the public sector but will also improve the quality of the MDA's outputs and overall performance.

2.3 Conceptual Framework

A conceptual framework is a road map that the study intends to follow with the aim of looking for answers to the problems raised by the research questions (Orodho, 2012). The conceptual framework is shown in Figure 1.

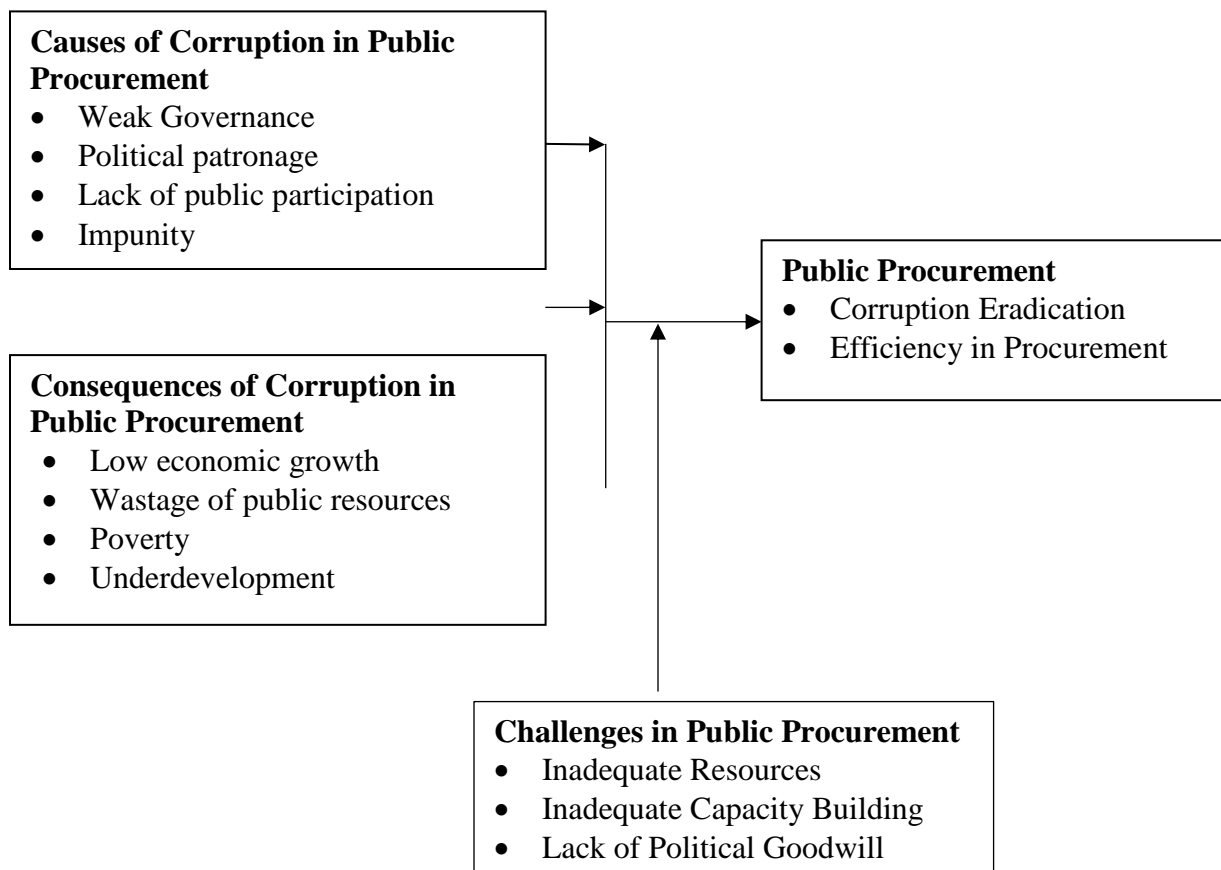


Figure 1: Conceptual Framework

3.0 Research Methodology

The study examined the causes, consequences, challenges and cures of corruption in public procurement in Kenya. The study used a desk study review methodology where relevant empirical literature was reviewed to identify main themes. A critical review of empirical literature was conducted to establish the causes, consequences, challenges and cures of corruption in public procurement in Kenya.

4.0 Results and Discussion

A range of economic, political, administrative, social and cultural factors, both domestic and international in nature, characterizes causes of corruption in public procurement. The primary cause of corruption in Kenya is therefore related to a societal state of being whereby the basic institutions that underpin and support the rule of law and good governance have been deliberately undermined or neglected to the point where they can no longer uphold the rule of law or act in the best interests of the nation. Corruption in public procurement can have many detrimental effects.

Corruption often increases the cost and lowers the quality of goods or services acquired while reducing the likelihood that the goods or services purchased will meet the public's needs. Corruption in public procurement can be profoundly harmful to a country's economy. High prices for consumers. Businesspeople have to pay back that which they lost through corruption and bribery. Political interference with the procurement process is also a big challenge to the successful implementation of public procurement reforms.

Among the prescriptions for sealing the opportunities for corruption in public spending are increased transparency in the entire public procurement tendering cycle, avoidance of broad confidentiality clauses in procurement mechanisms for raising alerts for complicated and huge variations in ongoing tendering projects. Different countries across the globe have adopted various tools to reduce corruption while reinforcing competition and efficiency in procurement procedures. Over 40 countries have commitments between civil society and government to make government procurement more open through the Open Government Partnership. Several countries including Colombia, Canada, Mexico and Romania are implementing the Open Contracting principles. Colombia, Georgia, Korea, Slovakia and the United Kingdom are innovatively using technology to increase the transparency and effectiveness of procurement processes through online platforms.

5.0 Conclusions

Corruption in public procurement is a global problem with devastating financial and ethical impact. While various players have a part to play a role in the fight against corruption in public procurement, governments have the most significant role. There is increasing concern over the effects of corruption and/or fraud on public procurement in many countries of the world. In developing and least developed countries the vices of corruption and fraud are more rampant today than before. Despite the public procurement reforms in Kenya geared towards the transformation of the public procurement process, the fraud and corruption social evils have been further aggravated. Fraudulent and corrupt procurement practices are more evident. However, strategies to curb these evils have been ineffective to a large extent, due to the fact that the effect of fraud and corruption on public procurement performance has not been substantiated yet. This paper provides a theoretically supported link that attempts to explain the relationship between fraudulent procurement practices and public procurement performance. The study also provides a good basis for the development of frameworks, which can be used to sealing the loopholes in public procurement that leads to corruption.

6.0 Recommendations

Among the prescriptions for sealing the opportunities for corruption in public spending are increased transparency in the entire public procurement tendering cycle, avoidance of broad confidentiality clauses in procurement mechanisms for raising alerts for complicated and huge variations in ongoing tendering projects.

The study recommends on adoption of open contracting principles and data standard, transparency and fairness in access to information on public procurement. The Government should implement stiff penalties for breaches to procurement requirements and capacity strengthening of procurement practitioners on adherence to procurement regulations. There is need for instituting proper records management tools for public procuring entities and more robust mechanisms should be implemented in e-procurement to enhance its functionalities at all the stages of the public

procurement cycle. Lastly, government should place more investments in enhancing the capacities of internal audit processes within Ministries, Departments and Agencies.

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