



Public Procurement Governance: Toward an Anti-corruption Framework for Public Procurement in Uganda

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INTRODUCTION

The quest for good governance appears to have tormented humankind for several hundred thousand years and this threatens to remain so for the next several years. The greed by people against fellow people and the broader collective interests of society seem to be unending. Indeed, corruption has remained a key roadblock to the quest for good governance and it remains a thorn unless concrete actions are undertaken. The quest for good governance will not be possible unless renewed coordinated efforts on the fight against corruption are initiated and implemented. Corruption takes many forms and a bribe (which is one of the forms) corrupts the conscience of humankind (Exodus, 23:8) to do acts that benefit only self at the expense of society. Bribes bring chaos (Amos, 5:12) and they thus merit punishment (Amos, 2:6).

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The citizens and inhabitants of every country and generation deserve good public services from their governments. However, the occurrence of corruption makes governments fall short of the citizen's expectations. In this chapter, the call for good governance generally and specifically in public procurement is not only a legitimate concern but also it is a moral obligation. Since the inception of the state, the task of government has been to govern and to cater for the needs of society (Mukherjee 2010, p. 53). Governance has been a concern to humankind throughout the journey of civilization, although the dawn of globalization has recently tended to bring upon governments the need to adopt good governance and the phrase has tended to appear to be a new development. Good governance has tended to be associated with much recent efforts by multinational organizations like the World Bank, the International Monetary Fund, and United Nations Development agencies and within public administration discourses, it is associated with the post New Public Management (NPM) ideology of the late 1990s. Good governance and Good government have sometimes been confused to mean the same thing.

Hughes (2003, pp. 76–77) attempted to differentiate government and governance by stating that government was the institution itself while governance was a broader concept describing the forms of governing which are not necessarily in the hands of formal government. Governance need not be exclusively conducted by governments (Keohane and Nye 2000, p. 12). Private firms, associations of firms, non-Governmental organizations (NGOs), and associations of NGOs all engage in governance. The long historical context of governance is pertinent as it enables one to have a comprehensive debate on developing a framework for anti-corruption efforts in public procurement. From ancient time through medieval, industrial revolution, and contemporary times, the role of government in society and service deliver in particular has not been uniform (Basheka 2018a, p. 1). Anghi (2000, p. 1), in his synthesis of the relationships between civilization and commerce, placed the concept of governance in a historical perspective and suggested that there ought to be a need to always excavate such history and connect the good governance debate with earlier, colonial enterprise. In this regard, the works of John Locke, an ancient social contract theorist in the Two '*Treatises on Government*,' is pertinent. The author indicated in the *Treatises* that there were great questions, which in all ages had disturbed humankind and brought on them the greatest part of mischiefs. Such mischiefs had

in turn ruined cities, depopulated countries, and disordered the peace of the world. The key struggle was the question of ‘whether there be power in the world, nor whence it came, but who should have it’ (Hoff 2015, p. 4).

Corruption and the governance questions appear to have occupied humankind more than any other activity. Governance, which from a conceptual context, is about power distribution and who controls it, is relevant to a debate on public procurement governance frameworks. Vyas-Doorgapersad and Aktan (2017, p. 30) have exceedingly acknowledged the historical origin of the concept of good governance from ancient times. The authors extensively give the Indian examples of how ancient societies conducted themselves regarding the ideals of good governance. According to them, good governance first appeared in the 1990s within the World Bank, the United Nations (UN), and the International Monetary Fund (IMF), who largely used the governance concept to depict how public organizations best conducted public affairs and deliver public goods and services.

A debate on what public procurement governance entails would imply how best public procurement acquisitions processes are conducted within public organizations and agencies as they attempt to facilitate the delivery of public services. Good governance succeeded the New Public Management (NPM) doctrines, which had themselves replaced the ‘old public administration’ (Basheka 2018a, p. 4). To be in the good books of the multilateral funding agencies, governments in Africa had to undertake several reforms in their governance arrangements. In defending this change, Ergun (2011, p. 130) suggests that ‘public administration is a combination of theory and practice. In an age of globalization, the traditional role of government has to be changed accordingly. Rapid changes create new challenges to and opportunities for public administration.’ Good governance was thus introduced as part of the Third World countries project (Anghi 2000, p. 8). Developed countries in the West have tended to be associated with good governance while those of other continents like Africa have been labeled to have bad governance characterized by lack of rule of law, corruption, corruptive police force and judiciary, lack of participation and involvement, poor transparency, and accountable leadership and several ills.

Despite its apparent long history, good governance tends to be labelled as a new paradigm within public administration (Doorgapersad and Aktan 2017, p. 30; Ikeanyibe et al. 2017, p. 3). The advocates of this reasoning

tend to depict good governance as a replacement to the New Public Management (NPM) philosophies that characterized most governments in the 1980s. While terms like good governance could be of recent, the ideals and intentions of managing better the public resources through dispersed power centers beyond one individual or organ has been in existence. This was indeed the preoccupation of earliest philosophers when they conceived the concept of government. Good governance is not the same as good government, but good government can be a condition for attaining good governance. Good governance is now a theme in most public administration discourses and as an extension in public procurement issues that is concerned with efficient and effective ways of doing public service delivery.

It is no longer contestable that the African continent in its diversity faces complexities in the delivery of public services and one major area widely fingered as the cause for this malaise is corruption. While good governance is seen in contemporary times as a solution to the problems of most African societies, there is an apparent absence of analytical frameworks to guide how best the good governance prescriptions can be applied in addressing corruption, which remains a biggest threat in the management of most public sector functions. In the context of the current debate a framework for addressing corruption to better improve public procurement governance is presented. While corruption appears in every sector and government function, the corruption in public procurement is much more detriment. This is for a number of reasons which are the attention of the next section of this chapter.

WHY A CONCERN FOR PUBLIC PROCUREMENT GOVERNANCE?

Public procurement is part of the public fiscal management function of government but on the expenditure side. Hughes (2003, p. 165) once describes financial management as the most important part of the internal management of government as any activity of government needs money in order to operate and that the ability to raise taxation and to spend distinguishes the institution of government from other parts of the society. Public procurement is such a vital activity of government that facilitates government operations. To argue, therefore, that public procurement is central to the architectural design of democratic governance structure should be uncontested. The question before us is whether corruption in

the public procurement function has negative implications to the good governance agenda of any government.

Public procurement has its origins in the fiduciary obligation of government administrations to deliver goods and infrastructure (Odhiambo and Kamau 2003, p. 10). African governments thus need to accept the fact that increasing the efficiency and transparency in the use of public funds requires the existence of an adequate national procurement system that meets both national and international standards and operates efficiently (Ameyaw et al. 2011). For most developing countries, public procurement is a fertile ground for corruption in Government. In Uganda, specifically, corruption in public procurement, which involves the abuse of the procurement processes and diverting from established legal frameworks, has been a common challenge and it takes a multitude of forms. Public procurement corruption is perpetuated through procurement planning distortions, supplier collusion and suppliers-government officials' collusion, unrealistic computation of contract award or variation costs by evaluation teams, poor quality goods and services delivered, poor performance of civil and construction works, and outright bribery before contracts are awarded among others. There are numerous reasons why there is a need for heightened concern about corruption in the public procurement function.

Key to Delivery of Public Services

Public procurement has important economic and political implications. Ensuring that the process is economical and efficient is crucial. This requires in part that the whole procurement process should be well understood by the actors: government, the procuring entities, and the business community/suppliers; and other stakeholders including professional associations, academic entities, and the public (Odhiambo and Kamau 2003, p. 10). Public procurement is a channel through which other public services are delivered. Public procurement through its acquisitional function facilitates how well or badly other functions of government can be undertaken. It tends to be placed at the center of all government service delivery system, and if well undertaken can promote aims the development goals of government.

Arguably, one of the secondary aims of procurement has always been to use procurement to promote social, industrial or environmental policies (Bolton 2006, p. 193). Public procurement (PP) is a core government

function that can positively equalize opportunities of Women-Owned Businesses (WOBs). This function of government can address the barriers that affect women's participation in tendering processes at both the central government and local government levels (Basheka 2018, p. 87). Roads, hospitals, water systems, defense installations, oil discoveries, and exploration, running public administration systems among other at all levels of government require public procurement.

Resource Magnitude Involved

The size of public procurement has always varied between 5 and 8% of the gross domestic product (GDP) in most industrialized countries (Basheka 2017). In the Middle East and Africa, central government purchases range from 9 to 13% (Gul 2010, p. 1). This indicates that public procurement plays a vital role in a country's economy (Odhiambo and Kamau 2003, p. 10). The procurement budget in Uganda estimates that over 60% of government resources are spent on the public procurement function and this estimate only excludes moneys spent on salaries (Basheka 2017; Obanda 2010).

Private Sector Role

The debate on whether public services should be provided by the government or the private sector became a battle ground of scholarly and policy arguments during the 1980s. This was a time when governments were accused of being part of the old public administration and the private sector was argued to be much more efficient and effective in public service delivery (Basheka 2018, p. 1). While it should not be construed that the private sector is the bedrock of corruption, what is uncontested is that the private sector is profit oriented. In the quest to make these profits, practitioners in the private sector are often associated with unethical business practices. They offer bribes and inducements to whoever can receive them as long as they get an opportunity to make profits. When this goal meets with the often heavily underpaid public officials, the appetite for fraud is ignited. Public procurement is easy to build a network through which corruption is orchestrated. Most of the goods and supplies needed by government are obtainable from the private sector who have a natural fear of government machineries and often want to use unethical practices to get business.

Lack of Robust Procurement Systems

Public procurement has not yet built robust systems to withstand the blowing thirst for money among politicians and those who run the bureaucracies. The function has had an unfortunate trend of its systems being subjected to reforms regularly before they have matured. Compared to other government functions, like finance, auditing, and personnel, reforms in public procurement often take a shorter gestation period of not more than 10 years. While some commendable effort has been made through public procurement reforms, the systems for managing public procurement are not stable compared to other well-established disciplines like accounting and finance.

Lack of Procurement Capacity

There are capacity gaps regarding the management of public procurement, and this creates a conducive environment for corruption. Capacity building efforts have tended to target individual capacities not organizational capacities. Staff in procurement functions once trained leave their work stations for other organizations and tend to move with their skills. Yet, research has shown that practitioners with high skills levels and knowledge have significant impact on financial performance and operational efficiency in terms of quality improvement, design, and reduction of lead times (Cousin et al. 2006). While at a technical level some capacity among the procurement officials exists, there are serious challenges for the policy makers (the politicians). The capacities also differ, depending on the level of government each country adopts. Central agencies tend to post better capacities than local or regionally based agencies.

Absence of Policy Framework

Public Procurement reforms are expected to be undertaken after a relevant policy framework. Public procurement reforms in most African countries were undertaken without such policies. The laws and institutional frameworks undertaken in many countries lacked a policy anchor. In such an environment, there is a danger of every actor claiming adequate understanding of the direction of public procurement and this environment has made corruption flourish. Public procurement is thus one of the most reformed functions of government. When approved, legal

and institutional reform frameworks create roadblocks for accumulation of wealth by those who anticipated the reform to benefit them, then a new initiative is introduced to make new reforms. In 2003, Uganda made a new Public Procurement and Disposal Act. This was reformed in 2014 and the same Act is currently under review.

PUBLIC PROCUREMENT GOVERNANCE: A CONCEPTUAL FRAMEWORK

The quintessence of good governance appears to be a set of principles toward maximization of citizen welfare—efficiency, effectiveness, participation, accountability, rule of law. With political scientists, economists, policy makers emphasizing on different criteria of good governance and with burgeoning scholarly discourse on it, courtesy, the World Bank funding different projects for good governance, it is widely contemplated that the notion is both Western and modern. This is more so because, presumption was that ancient governments were mainly monarchical and the times did not favor good governance rather it was all dependent on the will of the king, law was the command of the sovereign, the king personified the state. And citizens had no role in rule making. The government consisted of numerous organs, but the king was supreme. It is strongly contended that citizen responsive administrative is a Western model and a product of globalization (Mukherjee 2010, p. 53).

Public procurement is increasingly recognized as a professional area of practice that plays a key role in the successful management of public resources for any country. While a number of countries have become increasingly aware of this fact, the procurement area has become vulnerable to mismanagement. Corruption makes it hard to integrate procurement into a more strategic view of government efforts (Ambe and Bandenhorst-Weis 2011, p. 244). Quinot (2013, p. 405) reminds us that governments have long used public procurement as a tool to promote socio-economic objectives, which are sometimes referred to as ‘horizontal’ or ‘collateral’ because they are ancillary to the primary purpose of PP—acquiring goods and services for the government. Indeed, as part of these efforts to adopt a long-term and strategic view of their procurement needs and management, most countries now use their annual procurement plans as possible problem solvers (Mahmood 2010, p. 103). This is not strange given the origins of public procurement.

A well-functioning public procurement system is the one that is governed by a clear legal framework which establishes the rules for transparency, efficiency, and mechanisms of enforcement, coupled with an institutional arrangement that assures consistency in overall policy formulation and implementation (Hunja 2003). This system needs to be supported by strong systems of monitoring and evaluation and a value-based belief system driven by the core traditional public service values of the need to serve a broad citizen audience than individual interests. Most donors have, for sometimes, considered that a well-functioning procurement system is an essential requirement of government reform efforts if their funds are able to be used effectively to promote development (Abeille 2003). Most of these expectations are unfortunately not always met because of many problems of inefficiency and the malaise of corruption.

Dza et al. (2013, p. 1) remind us of the state of public procurement more than 16 years ago to the effect that while procurement reforms in Africa had to some extent brought modernity, transparency, competition, as well as fairness in the procurement process, the improved administrative and structural systems put in place to enhance efficiency in public procurements, have not gone without blemish. Indeed, the implementation of procurement reforms in Africa has been fraught with cultural insensitivity, the disregard for countries' political, socio-economic, ethical, and environmental structures and systems.

In most African countries, the aim of accepting and instituting public procurement reform programs was to establish a strong and well-functioning procurement system, governed by a clear legal framework and established rules for transparency, efficiency, and mechanisms of enforcement, coupled with an institutional arrangement that ensured consistency in overall policy formulation and implementation (Hunja 2003). African countries had various reasons for wanting to undertake such procurement reforms. Some countries undertook reforms to support essential internal administrative improvements, while others accepted reform programs to help qualify for international financing from multilateral institutions, or to help integrate a country into the multilateral trading system. Despite these goals, procurement reforms were also often seen as an important feature of anti-corruption efforts that could help promote good governance (Thai 2008).

Besides the fiduciary obligation to deliver goods and services to the constituents of the particular government administration, public

procurement addresses a wide range of objectives. It has been used by governments to achieve socio-economic objectives such as stimulating economic activity; protecting national industries from foreign competition; improving the competitiveness of certain industrial sectors; and remedying national disparities (Bolton 2006; Thai 2006). The objectives of public procurement are achieved through various means, and legal and regulatory rules on conducting public procurement (Arrow-smith 2010, p. 4). With changes in Information and Communication Technology (ICT) within and between organizations occurring at a fast pace (Zsidisin and Ellram 2001), it is imperative that African governments keep pace with modern approaches to information management in order to be competitive and the use of e-procurement systems which have had varying levels of success stories comes into perspective.

The overall conceptual exposition in this chapter is that public procurement governance needs to be anchored on an elaborate policy framework. The legal and institutional reforms that come along this framework need to adopt flexible approaches with deliberate efforts directed at the areas that have the greatest dividends to deliver the required results. Principles like transparency, accountability, value for money, competition and transparency need to be supported by public service wide culture; and, the societal foundational values are vital to the creation of a mass of champion leaders. Monitoring and evaluation will be critical; and with the emergence of technical solutions, there will be a need to imbed ICT in the structures. The citizens have to be brought into the picture. Rule of law and respect for functional systems and structures will be critical.

THE INFRASTRUCTURE OF PUBLIC PROCUREMENT CORRUPTION

The constitution of any country establishes the executive, judiciary, and legislature and allocates powers and responsibilities to each of these organs of state (Funk 1972, p. 296). The functions of law are often defined with respect to one type of society and it is inaccurate to say that law may serve exactly the same function in another type of society. Dicey (1885, p. 1) in his classical book entitled 'Introduction to the study of the law of the constitution,' is credited for having introduced the concept of rule of law. Law aspires to create social order and social order is an important prerequisite for development. It can also, however, be argued that the attainment of development is a key factor in creating an orderly society.

Societies, which have prioritized orderly styles in the management of government affairs have produced greater development trajectories unlike those countries which have opted to be governed under disorder, anarchy, and confused systems. Laws are established to regulate the governance of the state and each country's supreme law (the Constitution) sets the parameters for the operation of each branch of government.

Adamolekun (2002, p. 2) reports that rule of law, underpinned by an independent court system, which implies a predictable legal framework helps to ensure settlement of conflicts between the state and individuals on the one hand and among individuals or groups on the other. An administrator with sound understanding of law is likely to apply fair and just reasoning in the execution of their mandate compared to those who are only schooled in the specific fields of public administration. This is possibly why some schools of public administration have tended to encourage the teaching of administrative law, although the depth and coverage missed the foundational pillars.

While generally engaging in a debate on whether corruption in public procurement does exist is an unproductive venture; it is worth understanding the infrastructure of this corrosive undertaking. It is probable that if corruption did not exist, possibly, countries in Africa would have attained some development trajectories. A review of reports on resources wasted in public procurement undertakings makes one wonder what countries would have attained if the public procurement function was efficiently and effectively managed. Attention needed to be directed toward the understanding of the environment which created the loopholes for corruption. This would provide the opportunity to identify and implement the appropriate anti-corruption frameworks and measures to deal with the loopholes. Only then can the citizens feel they have functional governments in place.

Public procurement takes place within the law and most African countries have, since the 1990s, passed new public procurement laws, which have established new institutional arrangements for the management of public procurement. Public procurement in some countries like South Africa has been granted constitutional status and is used as a policy instrument for addressing past discriminatory policies and practices (Bolton 2006, p. 193). Most of the public procurement reforms decentralized public procurement management to what are called Procuring and Disposing Entities (PDEs) in different Ministries, Departments and Agencies (MDAs). Corruption appears to have correspondingly been

decentralized. Good governance is based on respect for rule of law and since public procurement has been described as a highly regulated function of government (Thai 2008), it is imperative to venture into some classical dispositions on the importance of rule of law in governance of the state and by extension such rule of law needs to apply to public procurement. On the broad purpose of law, Schubert (2012, p. 6) suggests that law exists for resolving disputes and for controlling government officials.

New institutions such as the public procurement authorities and the procurement appeals and complaints handling panels, which have been set up to formalize and improve procurement performance (Honkaniemi 2010); need to operate in strict compliance to the procurement laws but also the general principles of fairness and justice. Cooper (1997, p. 118), a notable leading public administration scholar, had earlier cynically reported that the grounding of public administration in law was a ‘simple truth’ and that ‘the law provides the tools that are used to make the most important, and often the most challenging public decisions.’ Public procurement officials who manage the technical processes of government acquisition are expected to undertake their professional mandates in complete regard to the provisions of public procurement laws but also broader laws that guide conduct of public management. In countries like Kenya and South Africa, where public procurement has been elevated to be a constitutional matter, public officials managing public procurement have a better latitude to operate within the ambit of the law and subjected to constitutional protection.

Public procurement arguably operates in an environment of increasingly intense scrutiny and driven by technology, as well as program reviews, public and political expectations for service improvements (Bolton 2006; Eyaa and Oluka 2011). Most procurement literature tends to suggest that public procurement is a highly clerical or a tactical function (Snyder 2010, p. 275), and is a function highly regulated functions of government (Thai 2008). There, however, exists a number of loopholes which have always been exploited by corrupt people to manipulate the procurement process. Better public procurement governance and addressing corruption’s real or actual negative and detrimental effects requires an understanding of the ideals of good governance and its philosophies, which by coincidence appear to relate to the well-known principles of public procurement. Mukherjee (2010, p. 53) reports that the quintessence of good governance is a set of principles toward maximization of citizen welfare—efficiency, effectiveness, participation,

accountability, rule of law. Efficiency, effectiveness, value for money, competition, transparency, non-discrimination, and fairness, are some of the key principles of public procurement.

Both public procurement professionals (procurement officers in their various categories) and non-professionals, who get involved either as the users of the required procurements or as part of the decision-making actors, manage public procurement. All this fall under what are called public administrators who drive the machinery of government in their thousands and at different ranks. Basheka (2014, p. 655) asserts that public administrators (including public procurement officials) either can enable the effective functioning of government or can even lead to the overthrow of government. Legitimate governments are run on institutionally strong, efficient, effective systems, anchored on publicly determined, predictable, and increasingly rational rules of behavior. In such a system, the public service becomes a central pillar of the government as it regulates, administers, executes, mediates, invests and delivers the construction, operations, maintenance and servicing of service delivery infrastructure, and ensures that the public service machinery is oriented to diligently serve the citizens.

In one of his works on Uganda, Basheka (2013a, p. 45) has raised a concern of how corruption continued to poison any efforts to provide members of society with better services and that the marriage between public administration and corruption seemed to be a forced one. The two functions seem to have evaded ‘any judicial separation or divorce.’ As Shafritz et al. (2011, p. 19) have observed, public administrators tended to the public’s business-like building bridges and highways, collecting garbage, putting out fires, plowing snow, spraying for mosquitos, and providing essential social services for the less fortune. In provision of water, defense services, education, health, and agricultural services by public administrators, they need procurement services. Where there is corruption in any of the processes for the acquisition, the ultimate burden lies on the doorsteps of the common citizen. Such is the danger of allowing corruption in public procurement function. Basheka (2013a, pp. 50–51) exemplifies the dangers of corruption through the following examples:

- **Education:** Children in schools lack essential facilities and are forced to study under difficult situations, yet government budgets for the sector and those facilities keep on increasing. Teachers remain

primitively underpaid, and even the little they expect is sometimes swindled or delayed by those running the bureaucratic system. The quality of education at all levels become compromised.

- **Health care:** Health facilities are underutilized, doctors are not paid, the little allowances are delayed and the only language that seems to awaken government to pay them is the threat of violence of strike. Drugs are openly stolen by people working in hospitals and poor citizens cannot get what they expect.
- **Roads and Transport:** Roads are either nonexistent, where they ought to have been, or if in existence, are poorly constructed even after millions of taxpayer's money has been spent. Roads are completed with potholes.
- **Water and electricity:** Getting adequate water and electricity supplies in all the parts of the country become a problem. Foreign private companies awarded contracts for electricity installations and supply contracts through faulty processes continue to do a very poor job; but government pays for these inefficiencies.
- **Minerals and resources:** Oil contracts are reportedly awarded in complete disregard of the existing procurement regulations and only companies connected to powerful politicians tend to have the perfect criteria for winning the sector lucrative contracts.
- **Governance:** Ineffective but politically connected managers poorly run the corporations. Well-connected business people continue to get high compensation from government and top government officials openly and approve such payments in complete disregard of public financial management regulations.

The 2019 governance and architectural environment through which corruption prevails in Uganda is not any different from that described in 2013 above. In fact, the environment has become more too complex to understand, and corruption now has a fertile ground through which it thrives. The architecture of public procurement runs through many layers and each of these layers is an avenue for fraud. Moreover, the actors are many and play varying roles. Akullo (2013, p. 47), identifies political and technical staff as major actors in procurement corruption in Uganda. She scaled these two broad categories to specific players who included political leaders at all levels, Engineers, accounting officers, internal and external auditors, head teachers, procurement officers, heads of departments, accountants, store-keepers, lower cadre staff involved in

implementation activities, service providers/contractors, members of the contract committees/evaluation committees, private individuals who buy favor, and those conniving with public officials.

It has been argued (Lau 2010) that in the face of mounting economic uncertainty, huge expectations are placed on procurement practitioners to source the best business solutions from their supply network partners, and to achieve the innovation, value and services that their customers are looking for. However, these officers do not act alone. While corrupt procurement officers can, in their own interest, chose to violate procurement procedures, they work in most cases under the influence of powerful politicians (Akullo 2013, p. 48). By their design and procedural requirements, public sector organizations or agencies identify their required needs, which are essential for attainment of the organization's mandate for a financial year. These needs are integrated into the organization's planning and budgeting activities where resources to be spent on each need are allocated. Government entities usually classify their needs into goods/supplies, services and works. The budget and procurement plan are taken through relevant approval processes until entities are now ready for implementation. This starts at the beginning of the new financial year and it is possible only after the approval of the Government budget by the Legislature of the country.

As part of the procurement cycle requirements and in preparation for the invitation or solicitation of bids, organizations develop specifications (for procurements classed as goods or supplies), terms of references (for consultancies) and Bills of Quantities (for works). They undertake a process of prequalification of providers, which generates a shortlist of bidders for the needed items. Through the respective procurement methods, which are a function of the legal regime and thresholds, organizations through the procurement and disposal unit, working with the contracts committee and accounting officers solicit for bids. This can be done either through selective means where prequalified lists exist, or it could be with competitive methods. Still, there can be a use of direct procurement method or micro-procurements depending on the nature of what is to be procured and the value of money involved. Bids are received, evaluated, and a report prepared by the evaluation teams and contract award approval is now sought from the contracts committee and the accounting officer. A communication is made to the winning provider. There is, however, a window for raising complaints against the entire

procurement process by dissatisfied actors. This is termed administrative review, which runs throughout the various institutional arrangements. Assuming there is no complaints and the procurement decision has been accepted, then implementation is expected to start.

The procurement laws in each country create the above procedures and the various stages managed by different categories of officers. They are in the context of our debate *layers of enrichment and eating!* This is the chain of corruption. Each of these stages is susceptible to fraud and depending on the nature of the procurement and the resources involved, the levels of corruption are likely to differ. The corrupt tendencies likely to be exhibited at the stage where bids are submitted and where agencies have to evaluate the bids received through an evaluation process and prepare a report of this evaluation process to the contracts or tender committees is likely to be different from corruption likely to be exhibited at prequalification of providers. There are approval levels by those in charge of agencies who have been given a nomenclature of accounting officers. The corruption magnitudes are likely to be expanded as the levels of approval scale up.

Corruption in public procurement involves the abuse of the procurement processes and diverting from established legal frameworks and it takes a multitude of forms and takes place at each of the stages of public procurement. Both senior and junior bureaucrats are involved, covertly or overtly, in public procurement corruption. Covertly, those with interests often appoint those to manage the processes and they remotely manipulate the processes to their favor because of the influence they preside over. Politicians and administrators are heavily involved in public procurement contracts. Lucrative contracts, that often involve huge finances, are usually direct preferences for senior politicians and bureaucrats. Hardly can a minister of government or a Permanent or chief secretary of a ministry get crazy about moneys involved in acquisition of stationeries. There are however some exceptions. A ministry involved in national examinations systems, for example, would deal with stationery of a huge budget and this makes it lucrative. It is perpetuated procurement planning distortions, through supplier collusion, dodgy computation of costs by evaluation teams, poor quality goods and services delivered, pitiable performance of civil and construction works, etc.

THE EXTENT OF PUBLIC PROCUREMENT CORRUPTION IN UGANDA

Public procurement corruption in any country is influenced by the magnitude of the procurement spend. Worldwide, governments have been estimated to spend approximately US\$11 trillion per annum on procurement (Hetland 2012). In absolute terms, annual federal procurement in the United States was estimated to be about US\$250 billion previously while in the United Kingdom, annual procurement expenditure was estimated to be around £240 billion (US\$367 billion). In South Africa, one of the strong economies on the African continent, public procurement spending was estimated to be R600 billion in the 2010/11 financial year. According to the International Trade Centre (ITC) research (2014), public procurement constitutes 10 to 15% of the GDP of developed countries and up to 30 to 40% of the economies of least developed countries, but women-owned businesses receive only a tiny (and frequently undocumented) share of that market.

In Uganda, The New Vision (2005) cited the Executive Director of the PPDA as stating then that the Government would save 330 billion Uganda shillings by eliminating losses incurred through corruption in public procurement. Mahmood (2010) reports that public procurement represents about 18.42% of the world's gross domestic product. It had also been estimated that Uganda lost 600 billion shillings in corruption related to procurement in a single financial year and this was only half of the budget for the ministry of education (Obanda 2010). A proxy measure of the magnitude of corruption can be derived from analyzing the trend of government financing of the Inspectorate of Government (IG) which is an institution mandated to fight corruption. The increasing funding government has allocated to the inspectorate of government in the last five years as seen in the table below suggests an annual increment which could be an indicator of the increasing corruption generally. Because public procurement takes place in a broader environment of government operation, where there is an increase in general corruption occurrence, corruption in public procurement is also certainly to be rising (Table 7.1).

In the last five years, as seen from the above table, the income to IGG has nearly doubled. From 27.7 billion shillings, in 2012/2013, it had increased to 45.4 billion shillings by the 2016/2017 financial year. It is

Table 7.1 IGG Financial Resources/Income

<i>Source of income</i>	<i>2012/2013</i>	<i>2013/2014</i>	<i>2014/2015</i>	<i>2015/2016</i>	<i>2016/2017</i>
Consolidated funds	27.741	33.559	36.142	38.72	43.441
Non-tax Revenue	0	0	0	0	0
Donor Funds	1.87	1.87	1.98	1.301	1.98
Total	29.611	35.429	38.122	40.021	45.421

Source Compiled by author from the Inspectorate of Government Annual Reports

also pertinent however to analyze the expenditure patterns of the same financing period (Table 7.2).

The inspectorate of Government is spending an average Shs3 billion in allowances alone, Shs2.7 billion on local travel, Shs2.5 billion on rent in a year and Shs565 million in car maintenance. These costs highlight the lack of strategic planning on the part of IGG as the high costs of vehicle maintenance is attributed to the fact that IGG is operating a very old fleet of cars. Also, the high rental costs could be avoided if IGG prioritizes construction of her own premises. In the FY 2016/17, the Inspectorate introduced an Online Declaration Portal code named IG-ODS. Using this portal, a total of more than 22,000 leaders were able to declare their income, assets, and liabilities. However, annually the IG has capacity only to verify 65 declarations with an average cost of UGX 3,000,000 per verification. This figure can increase up to UGX 50,000,000 if there is need for valuation and investigation into breach of the Leadership Code of Conduct.

It is estimated that nearly 40% of public resources in Uganda are swindled and a need to strengthen the anti-corruption forces and agencies including ombudsman (Inspectorate of Government-IGG). The fight against corruption also suffers from some mandate overlap among agencies like State House, the Judiciary, Auditor General, and PPDA. Public procurement in Uganda is highly susceptible to corruption. Several high-profile governmental tenders for infrastructure projects have in recent past been suspended or delayed as a result of allegations of corruption. The prevalence of bureaucratic influence, which causes a contract to be awarded because of subjective or unannounced criteria to an apparently specially favored contractor, has also been evident in some cases.

Table 7.2 IGG Financial Resources/Expenditure

<i>Budget line</i>	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Salaries	13,178,520,643	15,177,046,920	16,760,495,416	17,494,138,869	20,174,540,710
Allowances	2,303,105,029	2,549,828,501	3,023,364,360	3,281,845,581	3,427,493,696
Local Travel	1,066,483,376	1,582,748,798	2,422,645,232	2,758,952,672	2,727,912,769
Intl Travel	191,306,535	198,689,801	212,900,900	124,608,000	137,069,446
Workshops & Conferences	7,827,276	8,696,000	5,000,000	74,770,098	49,998,999
Rent	1,692,257,280	1,786,878,370	1,656,872,455	2,360,379,040	2,565,302,137
Building Maintenance	25,339,200	46,540,000	42,890,000	45,800,000	62,118,800
Car Maintenance	290,800,760	362,202,879	408,582,819	428,082,882	564,966,028
TOTAL	18,755,640,099	21,712,631,269	24,532,751,182	26,568,577,142	29,709,402,585

Source Compiled by author from the Inspectorate of Government Annual Reports

The stringent rules and regulations that have become a part of the battle against corruption complicate the procedure for securing government contracts. For example, simply qualifying to bid for a contract requires an individual or company to meet certain criteria. According to Akech and Karanja (2005), ‘the person has necessary qualifications capability, experience, resources, equipment and facilities to provide what is being procured; the person has the legal capacity to enter into a contract for procurement; and the person is not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing’ (Aketch and Karanja 2005).

TOWARD A FRAMEWORK FOR PUBLIC PROCUREMENT GOVERNANCE

Governance of public procurement undertaking demands application of well-known best practices and principles of public procurement and these have to be implemented alongside the governance benchmarks. While public procurement continues to evolve both conceptually and organizationally (Thai 2007, p. 1) and at times tends to be much more complex than ever before implying officials must deal now with a broad range of issues to fulfill government objectives in procurement and meet the professional expectations of the field; an agreed framework to guide both the academic study and professional practice is necessary. It is appreciated that public procurement is a lucrative academic field and area of practice, which has increased debate among policy makers (Basheka 2013b, p. 290).

Public procurement supports all government functions (McCue and Gianiks 2001) and if the procurement function fails to deliver quality goods and services in a timely fashion and at an economical price, the performance of government suffers (Coggburn 2003). Corruption in public procurement, therefore, undoubtedly affects every function of government and its corrosive effects can be felt beyond the walls of the procurement process. It affects the young or the old, the highly connected and the less connected members of society, women and men, the educated and the uneducated; the living and those yet to be born. Corruption stands on the way of every effort to ensuring effective service delivery. Society at the broader level thus suffers from the activities of few individuals who engaged corrupt public procurement processes.

The framework intended to address corruption in public procurement needs to adopt a network-based system that includes laws and policies as well as the various players who have a role to play. The framework needs to be grounded in cultural beliefs and values attitudes and practices that ensure every member of society has a shared understanding of the dangers of corruption. The community generally would need to play a key role in ensuring a cultural mindset. The framework must acknowledge that government through its agencies remains the legitimate institution to manage the affairs of society. Government, working through its three arms of the legislature, the judiciary, and the executive, establishes the rules and processes through which public procurement policies are implemented. An effective governance framework requires fairer rules and those that encourage competition, value for money, participation and those that are transparently undertaken, and are subject to public scrutiny. The government as the primary agent of the people has a role to create systems and structures, which are intended to serve the greater common good.

Most public procurement systems in Africa were conceived and implemented based on the models that had presumably worked or experimented in the developed world and now needed to be benchmarked to Africa. While indeed, public procurement systems in different countries share some common knowledge and practices (Thai 2007, p. 12), the environment in Africa presents its own circumstance due to among others absence of strong systems and political interferences. In developing a public procurement governance framework, which addresses the gaps that create a fertile ground for public procurement corruption, development partners who have always been the major supports of most public procurement reforms in Africa will need to nurture and develop procurement systems that take into account the African context. Most governance projects have failed to attain the intended goals because the 'one-size fits all' syndrome, which has been applied to Africa, did not take cognizant of the African context factors. While development partners can help in building transparent procedures that can help attract more investment by lowering risks and the resulting transparent procurement system which should allow competing private enterprises to judge the risk of doing business with the government; they need local partners who have an understanding of the unique and country-specific challenges and opportunities that could promote or inhibit procurement efficiency.

To address public procurement corruption, government actors need to have a strategic view of the public procurement function. Despite its

potential to assist in the attainment of government goals (McCue and Gianiks 2001), very few governments have always used public procurement as a tool to unleash the vast economic potential to a number of actors including women entrepreneurs (International Trade Centre 2014). To harness the potential of women-owned businesses, procurement policies must be gender sensitive (Basheka 2017). Governments need to structure, carefully, the rules that govern Procurement processes to achieve various policy objectives (Anderson 2013). An increased emphasis on the rules focusing on encouraging participation of women entrepreneurs in public procurement is a key policy agenda. The argument is that while the main goal of public procurement is to buy goods and services that governments need it procurement should be used to promote socio-economic objectives (Quinot 2013).

Public procurement laws and policies are critical for a governance framework intended to address public procurement corruption. Procurement law will need to be highly imbedded in the teaching of public procurement courses and in professional workshops. Procurement policies and laws should aspire to create institutions, processes, and systems that are driven by the need to meet the goals of government but also the professional standing of the public procurement profession. Such institutions, processes, and systems should be based on public service values which champion the greater common good and harmony of society. The public procurement governance framework presented in Fig. 7.1 should be based on sound systems of monitoring and evaluation and ought to have reliance ICT technologies.

Procurement practitioners need to play a central role in creating confidence among the different players that the rules of public procurement can be made fairer and that every provider who competes for a government tend is assured of competitively participating and to be assured that market-based systems work best with less pressure or inducements from corrupt tendencies. The state and its subsidiary organs need to oblige to public procurement domestic laws and various international agreements to transact procurement in a fair, transparent, and non-discriminatory manner. The role of procurement association and capacity building interventions will be central in creating a cultural shift of thinking among the professionals.

Academia and think-tanks will be fundamental in undertaking regular research and managing the knowledge systems created from such research findings. Public procurement needs to be divided into the academic study

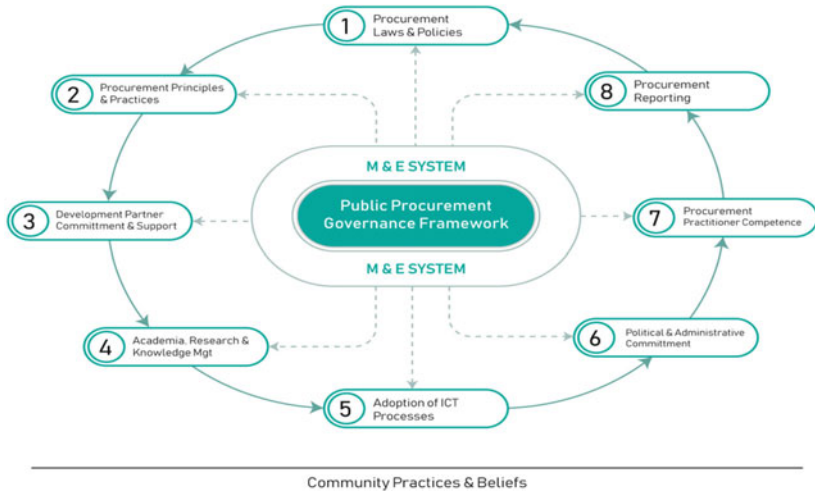


Fig. 7.1 Public Procurement Governance Framework *Source* Created by the author

and the area of practice (Basheka 2013b, p. 292) and the two should be reinforcing each other. The academic study should advance knowledge and impart skills necessary for making the public procurement function work better. It is this academic part that prepares and grooms people from the education systems to work in public procurement. The practice component implements the policies of government regarding public procurement. The practice translates theory into practice.

Addressing public procurement corruption requires accountability of all actors and a good framework of the procurement system should be based on adequate procurement reporting which promotes information sharing. Reports should be prepared and disseminated to various stakeholders on progress being made to fill the loopholes of corruption and fraud and how agencies of government have used public procurement to achieve government economic objectives. The reports should capture the extent to which public procurement has been used to involve the participation of marginalized groups like women.

The procurement governance framework will need champions who have to be in both the academic sphere and practice areas. The politicians,

providers of goods and services, the procurement professionals, bureaucrats, and development partners will be key in working toward creating such a system of public procurement. The private sector, the Civil Society Organizations (CSOs), religious, and cultural institutions will all need to work to this collective goal. This is what governance entails—shift from reliance on government to all other players.

As seen in Fig. 7.1, there are 8 elements proposed for the governance framework with the 9th element of monitoring and evaluation being imbedded in each of the other elements. The elements reinforce each other. There is a need for appropriate procurement laws and policies which are driven by the desire to address corruption in public procurement. The laws and policies need to be supported by internationally recognized procurement principles and practices. The system will need champions and committed political and administrative actors and will need support from academia, development partners, and the community. The system should adopt ICT and the competence of the procurement professionals in terms of skills, knowledge, and attitudes will be critical. Good procurement reporting systems will be critical.

The framework is based on the underlying philosophy that the corruption problem in public procurement is built on a broader systems of corruption within the entire administrative system of government but efforts to improve the efficiency and effectiveness of the public procurement function has potential in generating broader dividends given the criticality of the public procurement function to the performance of government. The framework further has its foundations in understanding and use of the cultural norms of society which when effectively nurtured can produce well-groomed public procurement process actors.

POLICY AND LEGAL IMPLICATIONS

A framework is used as a guiding analytical tool on how the corruption problem can be addressed through making improvements in the conduct of the public procurement function. It does not offer necessarily the one single prescription for terminating corruption in the public procurement chain. It only suggests areas which need attention to addressing the challenge. Such a framework needs to be accepted, understood and then implemented, and monitored to assess the extent to which it is helping in the fight against corruption. Evaluations of this nature would result in necessary modifications.

Scholars of our times are often called upon to address their minds to the needs of policy makers. Policy makers need to make policies and laws aimed at tackling the corruption problem in a much collective and networked approach. Leadership is critical and evidence needs to be adduced to support decision-making. Research and knowledge management practices will offer useful guiding principles only if policy makers can appreciate their role. Laws need to be amended where necessary and new one developed as long such a move aims at addressing a new emerging loophole due to the changing nature of the public procurement function. Policy makers will need to concern themselves with understanding the likely Critical Success Factors (CSFs) for implementing the framework. First, there will need to be a renewed commitment by the political and administrative actors from the highest levels of government to address corruption in public procurement. Second, there will be a need to invest resources to implement agreed upon actions and strategies by all the players. Thirdly, there will be a need for encouraging networks and collaborative approaches in the fight against corruption in public procurement. Fourthly, investing in capacity building especially organizational capacity building will need emphasis. Fifthly, Monitoring and evaluation systems will need to be adopted and strong reporting systems will need to be broadened and scaled across various levels. Such can be ICT enabled systems to achieve this goal.

CONCLUDING REMARKS

Governance: be it in public procurement or any other area is about who has power to make decisions and how this power should either be concentrated or dispersed in one institution or individual. Public procurement governance would thus constitute the entire apparatus through which procurement decision-making is distributed among institutions and actors who are a creature of a law. The lack of effective coordination of anti-corruption efforts within the public sector and among the various state and sector actors is presumably the main reason why the corruption battle is almost lost. A framework that could be applied in addressing the public procurement corruption malaise has been developed and this proposed framework has a set of critical success factors (CSFs) that ought to be applied by government in striking hard against the corruption dilemma.

The views in the chapter have been shaped by three main disciplines of law, public administration, and public procurement. Law provides the

overriding framework for management of society. It accordingly enables government structures in the executive, judicial, and legislature to function. It is through these structures that public administration takes place. Public administration preoccupies itself with the management of public affairs. To manage these public affairs needs services provided by the procurement function. Each of these three disciplines are both areas of study and practice. They all advocate for their disciplinary parameters, but the multidisciplinary approach is adopted in this chapter for one to have a deeper appreciation of the proposed governance framework. Corruption and the public procurement function are rather becoming much more complex that a single viewpoint is unlikely to lead to a useful analysis and prescription of a monster like corruption.

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