



AN EXAMINATION ON EVOLUTION OF ACCOUNTABILITY AND TRANSPARENCY PROCUREMENT PRINCIPLES IN MAINLAND TANZANIA

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Abstract:

Like in other African countries, the government of the United Republic of Tanzania has engaged and conducted a good number of procurement reforms. This has been carried out by the government since it attained its independence in 1961. It was an expectation of the public that all reforms that have taken place mainly aimed at ensuring that procurement system become robust and promising. This is because, in its day-to-day business, the government relies entirely on public purchasing in getting various commodities from bidders, both local and internationally. It is unfortunate, however, in all procurement reforms that have carried out by the government, with exception of 2016 procurement reforms, accountability and transparency procurement principles evolution was not given a deserving priority it deserved. Obviously, the 1977 Constitution of the United Republic of Tanzania, and all other previous Constitutions contained a provision relating to financial matters, yet it is unlucky that as of today, the same 1977 Constitution of the United Republic of Tanzania has not a single provision emphasizing or rather indicating on accountability and transparency procurement principles. This evidences clearly that procurement reforms seem to be not fruitful since accountability and transparency procurement principles evolution has slowly emerged and in previous procurement reforms, this was in fact, given little and less attention on various occasions when public procurement laws were reformed. In all procurement reforms, until 2016 procurement reforms that the government did, accountability and transparency procurement principles did not feature in any statute in Mainland Tanzania.

Keywords:

Evolution, Procurement, Procurement principles, Accountability, and Transparency

1. Introduction

Procurement is simply termed as the process sourcing, acquiring, and paying for goods and services from bidders that are contractually engaged in procurement undertakings. Every procuring entity requires having goods and services depending on its own procurement to achieve its plans. The primary aim of any procuring entity is to acquire goods and services that the procuring entity needs in respect of the contractual terms and conditions. With a streamlined procurement process, the procuring entities increase cost savings, and eventually minimize wasteful spending. This is only possible through consideration of accountability and transparency procurement principles. This research article discusses the evolution of accountability and transparency procurement principles in Mainland Tanzania. Because of its significance, and for purposes of enlightening the topic to future researchers in this area, the article also discusses this topic by tracing evolution of above-stated procurement principles under discussion from other jurisdictions. The jurisdictions that this research article covers include, but not limited to, United Kingdom and other countries in the world.

It is indisputable fact that procurement is not a Union matter. It is for this reason that each jurisdiction, forming the United Republic of Tanzania, has its own procurement regime, governing procurement matters, in each part of the Union. In each part of the Union, apart from existing legislation governing all procurement matters on each side, there are also regulations assisting application of the stated Parent Acts. In Mainland Tanzania, especially, procurement reforms have been conducted from time to time to ensure that the procurement system offers required outcome. In many procurement reforms that have been taking place, consideration of accountability and transparency procurement principles have become evident. It is a reality though; inclusion of these procurement principles has not been considered in all previous reforms. It is only in the last 2016 procurement reforms that

accountability and procurement principles have been finally considered. The current procurement reforms that have taken place in 2016, have considered accountability and transparency procurement principles.

2. Evolution of Accountability and Transparency Procurement Principles in the Ancient Era

Realisation and recognition of accountability and transparency procurement principles, especially in ancient times, was problematic and challenging in the field of procurement. These procurement principles were not recognized fully in the procurement system in all States. In some places, they were purposely associated with democracy helping to smoothly govern some issues. This was considered purposely to make and control leaders from enriching themselves in positions they hold. Basically, introduction of accountability and transparency principles was made to meet some specific objectives. It is argued that accountability and transparency principles were introduced in nearly many countries in the ancient era. In reality, the introduction of accountability and transparency principles was intended to curb issues such as personal enrichment for leaders, corruption, and other malpractices, that were evident in eroding the development of the societies.

Eminent authors such as Robert, Gilles, and many others, have discussed much on the implication of the accountability and transparency principles in the governance of the societies. As earlier stated, Roberts makes more emphasis on consideration of accountability and transparency principles as he believes that they help in the growth of societies, without which the societies will not prosper and citizen's development will be restricted. Gilles, on the other hand, focuses mainly on transparency principle in the French context. This author believes that recognition of the transparency principle was a milestone development of having a transparent government in France. This helped and marked a break from other previous legal system and frameworks in place. The transparency principle was, however, officially recognized and accepted in 1781.

3. The Evolution of Accountability and Transparency Procurement Principles in Global Perspective

Globally, procurement is regarded as an old profession as compared to another profession in the world. Being the old profession, it has also brought attention of historians. Among important questions that need ascertainment among historians is, first of all, what are the origin procurement and its two principles. The second issue to be resolved is how procurement is aligned with the growth of large organisation, and trade in the ancient context. At global level, the question as to when and how procurement principles under discussion started, largely depend on when it is officially commenced. It is argued that procurement activities commenced and emergence of trade and other procurement businesses began 5000 years ago. This has been evidenced by various eminent authors in procurement like Osei-Afoakwa, Baltos, and William-Elegbe, to mention a few. All these authors, though in different angles, trace and discuss on the origin of the procurement principles that are covered in this research article. To adhere with procurement principles under discussion, there is a need to put in place procurement policies and practice that familiarize the growth of various organizations and that will also discourage bureaucratic procedures and rules. It was emphasized further that these rules be linked with standardized procedures and procurement documents.

Some authors such as Wittig argue that for these procurement principles under discussion to be meaningful, should be linked to separation of owners and managers in business making, and this automatically necessitates the requirement of having transparency in public sector decisions and their operation in particular. As a result of existing diversity on activities related to procurements, some authors like Aigheyisi and Edore, are of the views that procurement originated from ancient China, Rome, Greece, Middle East, Britain, Sweden and even France. Other authors, with divergent views, such as Callender, argue that procurement resulted from industrial revolutions. In general terms, it is our views that, procurement principles under discussion were not much realized and emphasized in the ancient eras.

Panizza is also of the view that, in Western Europe especially, accountability and transparency procurement principles were regarded as essential and basic prerequisites of a democracy based on the rule of law. Britain, for example, has been a rich source of historical procurement in the world. Britain has engaged, on many occasions, in negotiation, strategic alliances, competitive pricing and supplier management. In a similar note, Carothers and

Brechenmacher have also discussed on importance of accountability and transparency procurement principles in the European context. The authors are generally of the view that in any procurement undertaking, there is a need for consideration of accountability, transparency, participation and inclusion for positive achievement of the value of money (VfM) in public procurement sectors. From Maine's view, the notion of contract in procurements has developed and associated with element of obligation. He is also of the view that the element of obligation contains ethical behaviors and this influence and becomes a foundation of legal relationships in public procurement. Such element of obligation is also associated and much closely related to accountability and transparency principles in procurement undertakings by procuring entities concerned.

Smith, as among prominent author on public procurement, has also contributed on the market-management element of procurement. It is further stated that, until 20th century, Britain had still experienced the problem of practitioners in purchasing transactions. It is also evidenced that, some organizations ignored the importance of purchasing for their own unjustifiable grounds. In this situation, more emphasis was put on procurement practitioners in performing the functions and other procurement activities as procurement professionals. This evidence signifies how accountability and transparency procurement principles were important as far British procurement history is concerned. In 1215, Magna Carta introduced the first standard of accountability in government. This forced King John to accept the basic principle that taxes should be raised without any consultation from wealthy subjects concerned. These efforts were made intended to enhance importance of accountability and transparency principles in public procurement in Britain. Many western nations, most of which use parliamentary systems, started adopting domestic laws by incorporating accountability and transparency procurement principles in their respective municipal laws by 1950s. In that, accountability and transparency procurement principles were later considered as basic criteria for membership in the Councils of many European nations.

4. The Evolution of Procurement Principles of Accountability and Transparency and General Procurement Reforms in Mainland Tanzania

Public procurement reform has been a core focus of the Tanzanian government from early 1960s to date. From independence today public procurement has been given high premium due to the fact that it is directly linked to economic development as well as poverty reduction. As Mlinga, has argued that many governments, Tanzania inclusive, have embarked on making serious procurement reforms purposely, and with intention of building robust procurement systems in their respective countries. The procurement reforms were basically intended to bring, inter alia, streamlining and bring harmonization, both regulatory and institutional framework in public procurement sectors.

As Kihamba earlier stated, in the early 1960s and 1970s, public procurement system in Tanzania was highly centralized, and almost of goods and services were procured and supplied by government agencies. Procurement procedures were, however, characterized by a number of deficiencies that created loopholes for corruption and financial misappropriations. Additionally, accountability on the part of office bearers was nearly non-existent. This was basically contributed by laxity in enforcing discipline at work, erosion of public service ethics, corruption, abuse and misuse of authority. In avoiding all above stated pitfalls, this research article examines contributions of various procurement reforms that have been carried out by the government with reference to accountability and transparency procurement principles evolution in Mainland Tanzania.

4.1. The Evolution and Procurement Reforms in Post Colonial Independence in Mainland Tanzania

A public procurement reform simply means changing or amending of public procurement rules, regulations, policies, and standards in order to make some improvements in public procurement sectors. In many developing countries, public procurement reforms have been mainly attributed to rapid changes of economy, globalization and pressure from international donors' old regulations that have been proved as ineffective in bringing expected changed and outcomes. The demands for international institutions were mainly intended to harmonize national and international procurement systems and eliminate weaknesses in public procurement such as corruption in public procurement sectors in Mainland Tanzania. The history of public procurement system and reforms is traced back to pre and post-colonial era in Mainland Tanzania. Prior to the enactment of the Public Procurement Act of 2001, public procurement was regulated by the "Exchequer and Audit" Ordinance of 1961 and the Financial Orders Part III in public sectors.

This was essentially adopted from British colonial masters. In 1989, Government of Tanzania had embarked on public sector management reform process which consisted and included Civil Service Reform, Financial Sector Reform, Planning and Budget System Reform in the country. Luckily, in 1996, the Country Procurement Assessment Report which was prepared by the World Bank identified a number of weaknesses in public procurement system in Mainland Tanzania. In that Report, urgent procurement reforms were eventually recommended. As result of that the Public Procurement Act 2001 was enacted as extension of Public Finance Act 2001, which intended mainly to regulate public procurement in Mainland Tanzania. The recommendations of the 2003 Country Procurement Assessment Report resulted to repeal of the Public Procurement Act 2001.

This reform resulted into enactment of the Public Procurement Act 2004 with issuance and consideration of UNCITRAL public procurement model law. This was taken as one among other drivers lead and contributed to enactment of Public Procurement Act of 2011. Recently PPA of 2011 has been amended to the Public Procurement (Amendment) Act, 2016. The amendment was put in place during the late President Magufuli regime, among other things, to cover all weaknesses revealed in Public Procurement Act, 2011 and make the additions discovered to be favorable.

The 2016 public procurement reforms, took Tanzania in another milestone, where for the first time, both accountability and transparency procurement were considered. It is on this basis that, accountability and transparency procurement principles evolution became a reality in the existing procurement regime. It was unfortunate that in many previous public procurement reforms that were made by the government, accountability and transparency procurement principles were, however, given little and less attention. The Constitution of the United Republic of Tanzania, 1977 and other previous Constitutions of 1961, 1962, 1964, and 1965, all contained a provision relating to financial matters of the government. The 1977 Constitution of the United Republic of Tanzania, in a special way, included issues relating to procurement. Despite the 1977 Constitution of the United Republic of Tanzania containing provision relating to finance, yet the same 1977 Constitution does not explicitly indicate on accountability and transparency procurement principles compared to the Constitutions of other countries such as Kenya. In law procurement reforms that were carried out in 2001, 2004 accountability and transparency procurement principles, which are important in steering a sound and robust procurement system, were however, not featured.

The accountability and transparency principles were however only featured in the Procurement Policy of 2012. The procurement principles of accountability and transparency were later, in 2016 reforms, promulgated under the 2016 Public Procurement (Amendment) Act. The 2016 procurement reforms are evidenced to bear fruits in public procurement sectors in Mainland Tanzania. This has caused a number of foreign companies such as Symbion Power (LLC) from United States of America, Strabarg International from Germany, ORYX Energies and Tiper from Switzerland, and many other companies, to have invested in Tanzania. This has, in fact, also facilitated and encouraged even private sectors to engage with the government of Tanzania in mega governments projects such as Stigler's Gauge Powers Project and construction of SGR project, to mention a few.

5. Conclusion and Recommendations

It is concluded that procurement reforms that have been carried out by the government since independence were purposely meant, among other reasons, to eliminate weaknesses and challenges that were experienced and become obvious in hampering Tanzania to have a strong and robust procurement system. It is indeed concluded that the Government of the United Republic of Tanzania has clearly made great steps in reforming the public procurement sector through the changes that have been carried for many years. The reforms that have been made so far are not the last and more reforms may be needed also in the future. The second stage of the public procurement reform which was carried out in 1996 was somehow fruitful on one hand, but it also had some weaknesses. This was carried out through the Country Procurement Assessment Report of 1996. It helped the enactment of the Public Procurement Act of 2001, which brought a lot of procurement changes in Mainland Tanzania. This achievement does not, however, deny the fact that issues of accountability and transparency procurement principles evolution was not considered. This affected, in one way another, having a strong procurement system since procuring entities could continue undertaking procurement functions without consideration of procurement principles that are in fact very paramount for effective procurement functioning. As stated by Mkinga, the speed of progress of implementation of the procurement reform and the legislative changes that were carried out had, however, left a number of gaps, which

unless filled, those gaps will automatically negate the benefits of the procurement reforms and the achievements of the recent previous years.

From findings and conclusion made, this work recommends that it is now time for accountability and transparency procurement that were put in place in 2016 are also recognized under the current Constitution of the United Republic of Tanzania like in other countries as above highlighted. This work also recommends that all procuring entities and other procurement stakeholders that are engaged in various procurement processes must realize the importance of adhering and complying with accountability and transparency procurement principles as espoused by procurement laws in Mainland Tanzania. This work also recommends that procurement institutions such as Public Procurement Regulatory Authority (PPRA) and other institutions mandated to undertake procurement oversights to ensure that all procuring entities conduct procurements with consideration of accountability and transparency procurement principles under discussion.

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