

SAIIA OCCASIONAL PAPER

Analysing key policy and governance issues
in Africa and beyond



PREVENTING CORRUPTION IN AFRICAN PROCUREMENT

Professor Awadi Sadiki Mawenya

Number 9, August 2008

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Abstract

Corruption in public procurement is the chief cause of poverty in Africa. It is fostered by poor governance and weak legislation. According to reputable surveys, it may be costing the continent up to \$148-billion a year. Yet it can be countered if there is the will and skill to do so.

Professor Awadi Sadiki Mawenya is a well-known anti-corruption activist and a founding member of FACEIT (Front Against Corrupt Elements in Tanzania). He concludes that corruption is rampant and growing on the continent but that it can be brought under control by means of forceful legislation, government commitment and private sector support.

He says: 'Corruption in public procurement is a multi-faceted problem for which there is no single solution. Combating it requires a comprehensive package of measures that must be implemented concurrently. The first line of defence is to ensure a sound legal framework that incorporates an anti-corruption law with real authority and effective sanctions.'

He believes that the promise inherent in Africa can be realised if countries act now.

Professor Awadi Sadiki Mawenya is a founder member of the Front Against Corrupt Elements in Tanzania (FACEIT). He is a director of Design Partnership Ltd, a consulting engineering firm based in Dar es Salaam. He is an engineer, academician and consultant with professional training in civil and structural engineering. He obtained BSc(Eng) and MSc(Eng) degrees from the then University of East Africa and a PhD degree from the University of Wales, UK. He is a Fellow and Past President of the Institution of Engineers Tanzania and a Fellow of the Institution of Civil Engineers, UK. An early draft of this paper was presented at the 'APRM and Reform' Workshop held by the South African Institute of International Affairs (SAIIA), at the Birchwood Hotel, Johannesburg, 20-22 November 2007.

Introduction

Public procurement in Africa is widely acknowledged to be prone to corruption, a vice that impedes socio-economic development and growth.¹ This paper highlights the nature, extent, causes and economic costs of this corruption. It also reviews strategies that are being used to prevent and combat it, or are needed to do so.

Grand corruption in public procurement is the chief cause of poverty in Africa. There is no single solution and a holistic approach with a comprehensive package of measures is necessary. This package should address political will and commitment, public service reforms, legal and regulatory frameworks, transparency and accountability and constructive engagement with non-state actors. All should be implemented concurrently to be effective. Africa is a continent of hope and promise. Eradicating corruption in public procurement will go a long way to fulfilling this promise.

Corruption is a global problem; no country is totally free from it. It is a systemic problem in most of Africa today,² where the level of corruption is high and has been rising in most countries during the last decade despite concerted efforts to combat it.³

African countries are seriously concerned that corruption is a major developmental challenge impeding socio-economic development and national economic growth. They know that rampant corruption has high economic costs. It has increased poverty and human suffering; further marginalised the poor; undermined capacity building; and increased misuse and looting of Africa's abundant natural resources.

Corruption affects all sectors of the economy and cuts across the four thematic areas of the African Peer Review Mechanism (APRM), namely: democracy and political governance; economic governance and management; corporate governance; and socio-economic development. It is probably more pervasive and has higher costs in public procurement – i.e. government purchasing of goods, works and services – here it has attracted most attention. This is not surprising, considering that government purchasing accounts for a large share (50-80%) of public financial expenditure at all levels of government.⁴ Public procurement in Africa is a hot spot for corrupt malpractices and many contracts are tainted.

This paper presents a general overview and does not attempt to analyse the problem in detail.

Nature and causes of corruption in public procurement

Corruption takes place when client officials entrusted with procurement collude with suppliers and contractors and break the law in pursuit of personal interests. It usually involves bribery and fraud. Bribery normally involves a degree of fraud because it has to be concealed by cheating and deception. Although bribery normally attracts greater public attention, fraudulent procurement practices often lead to higher financial wastage.

There is both petty and grand corruption in public procurement. Petty corruption exists mainly in smaller contracts, notably those involving goods, services and minor projects for local government authorities.

Larger contracts are special targets for grand corruption. These are executed primarily by central governments, through own or donor funding. They are often targeted by corrupt public officials and politicians in partnership with unscrupulous business corporations or their agents. Prime targets are:

- public works in construction projects;
- contracts for the supply of goods in large quantities (e.g. office supplies, motor vehicles and pharmaceuticals);
- contracts for the supply of large equipment items (e.g. power generators and aircraft);
- contracts relating to concessions to operate public utilities; and
- contracts for the supply of military equipment.

Corruption may take place at any stage of the procurement cycle.⁵ During pre-qualification and tendering phases, for example, client officials and representatives may bend procurement rules to favour preferred bidders in exchange for bribes. During contract implementation, client officials and representatives may demand bribes in order to grant

contract variations, approve time extensions, certify defective work or expedite payments.

Corruption in public procurement can be attributed to a combination of socio-economic factors. Perhaps the most crucial is bad governance, manifested by lack of transparency, weak accountability and lack of integrity by public officials entrusted with procurement. These officials often violate regulations and procedures with impunity.

Second, pervasive poverty and low salaries that do not reflect marketplace realities create a powerful motive for public servants entrusted with procurement to engage in corruption. In fact, most petty corruption in local government authorities can be attributed to low salaries.

Third, procurement procedures normally include several steps, from preparation of documents to pre-qualification of applicants to evaluation of bids to contract administration and supervision. These steps tend to proliferate situations in which corruption thrives.

Fourth, high-ranking public officials and politicians may have undue influence on procurement processes and the allocation of government budget. Greed and the desire for wealth motivate them to take advantage of their powerful positions.

Corrupt suppliers, contractors and consultants are driven by one or more of several motives. The most common is to win business. It is frequently manifested when a potential supplier seeking an unfair competitive advantage bribes an official to:

- gain access to confidential information;
- be included in the pre-qualified list;
- eliminate a competitor from the pre-qualified list;
- influence the proposal evaluation process; or
- level the playing field just in case all other competitors are offering bribes.

Suppliers, contractors and consultants who pay bribes to win business are sometimes depicted as innocent parties forced by ruthless officials to provide kickbacks. In reality, both parties are guilty, ultimately, of defrauding the client.

During the contract execution phase, there is wide scope for corruption. Compromised suppliers, contractors and consultants usually have a deliberate intention to get unjustified compensation or to embezzle public funds. They use ingenious ploys to inflate claims or vary contract terms.

Consultants are normally complicit. They approve fraudulent payments for defective work, or for goods and services not actually supplied; and they approve artificial claims, unjustified variations and extensions of time, etc.

Bribes may be paid directly or indirectly. Direct pay-offs are not necessarily the most common or most costly forms of corruption.

Cost and economic damage of corruption in Africa

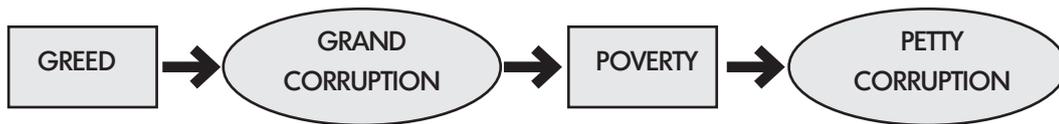
According to World Bank and African Union surveys, corruption costs Africa \$148-billion a year.⁶ Worldwide, the volume of bribes exchanging hands through public sector procurement is estimated to be \$390-400 billion per year.⁷

It is estimated that corruption occurs in up to 70% of public procurement contracts in Sub-Saharan Africa.⁸ In such cases, bribes and fraudulent transactions inflate project costs by about 20-30%.

Money spent on bribes is, however, not the most damaging cost of corruption. To this must be added the high cost of resources wasted through unnecessary purchases and inferior quality of goods, opportunities missed and inefficiencies introduced in the process of doing business.⁹ In addition, corruption in public procurement undermines capacity building in the private sector by sustaining corrupt enterprises while killing competent, clean ones.

Where government and public scrutiny of projects is weak, corruption often creates white elephants – projects chosen not so much for their intrinsic economic worth as for the opportunity they provide for bribes and kickbacks.

Since Africa is characterised by poorly performing developing economies, corruption and poverty are invariably closely linked.¹⁰ Grand corruption diverts substantial public revenues earmarked for government recurrent and development expenditure budgets into private coffers. Progressively, grand corruption distorts economic activity in the country to such an extent that poverty sets in. As a result, public servants who are underpaid because of the diminished government recurrent expenditure budgets are compelled to engage in petty corruption in order to survive. It is clear, therefore, that grand corruption, which is driven by greed to amass illegal personal wealth and power, causes poverty which in turn causes petty corruption. This causative relationship between corruption and poverty can be depicted diagrammatically as shown below:



Unlike Asia, most corruptly acquired funds in Africa find their way into banks in Europe and North America, thereby perpetuating poverty in Africa. The political and bureaucratic elite steal from the poor to enrich the rich. The sums involved are huge. It is estimated that the amount stolen, and now held in foreign bank accounts, is equivalent to more than half of the continent's external debt.¹¹

Preventing and combating corruption in public procurement

It is impossible to eradicate corruption anywhere, Africa included. However, it is possible to reduce it to marginal levels that do negligible damage to the economy. This has been done in most developed countries and can be achieved in Africa by a holistic approach that makes everyone aware that corruption is a criminal act that will be discovered and severely punished. This approach requires effective monitoring and audit systems. Enforcement agencies must be able and willing to take action against offenders regardless of their status. It also requires incorruptible judicial systems that can make and enforce convictions. No anti-corruption mechanism can fully succeed unless there is real likelihood of prosecution for offenders.

During the last decade several African countries have given considerable attention to issues of good governance. This has been prompted by greater awareness of the problem of corruption as well as by pressure from external development partners, notably the World Bank and International Monetary Fund (IMF) which rightly believe that good governance in developing countries will accelerate development and reduce poverty.

There is a general recognition that corruption is a multi-faceted problem for which there is no single solution.¹² To fight it, a combination of measures must be implemented in an integrated manner at national and global levels.

Hence, anti-corruption strategies adopted by most African countries are based on a holistic approach that addresses political will and commitment, legal and regulatory framework, transparency and accountability, public service reforms and constructive engagement with non-state actors.¹³

Political will

The fight must start with an explicit commitment to eradicate corruption, in all its manifestations, at the highest level of government. Political commitment is a necessary condition for procurement reforms. New rules alone are not enough. Without political will and commitment by the prime leadership of the country, grand corruption is perpetuated and petty corruption in the bureaucracy becomes endemic and more difficult to stop.

On the political front, the African Union (AU) Convention Against Corruption is the most notable expression of political will by African governments to combat corruption. Adoption of this Convention by all member states is the most important political and legislative milestone in the fight against corruption in Africa. It demonstrates a clear political will and reinforces similar regional political commitments within the continent such as the Southern African Development Community (SADC) Protocol Against Corruption.¹⁴

Both the AU Convention and SADC Protocol have encouraged open discussion and debate on corruption at

national level. There is more talk about corruption in society and much more pressure on national governments to address the issue openly and vigorously. There is also a greater recognition in public statements made by political and civic leaders (including religious leaders) that corruption is a problem that requires immediate attention. All these are indicative of tangible political will at national level to effect change. In general, however, ordinary citizens in Africa feel that their governments are not sufficiently committed to fighting and eradicating corruption.¹⁵

Legal and regulatory framework

To keep client officials accountable, a comprehensive legal and regulatory framework governing public procurement must be implemented. This framework must incorporate:

- an anti-corruption law that has real authority and sanctions;
- effective institutional arrangements for public procurement at all levels of government, including the role of professional procurement units in procuring entities.
- effective institutional arrangements for regulating and monitoring public procurement, including independent audits; and
- an effective appeals mechanism to enable aggrieved parties to seek prompt remedy (including compensation) for unfair treatment.

The legislative domain is the most dynamic component of the anti-corruption effort in Africa, and there are a number of countries that have adopted, or are adopting, new anti-corruption legislation.¹⁶ The new legislation recognises that fighting corruption requires both criminal justice and civil legislation procedures to be used comprehensively. It also recognises the importance of balance between anti-corruption measures that are preventive in nature and those that are punitive. The purpose of the former is to regulate the context within which corruption takes place, while the latter category focuses on punishment and sanctions. The former category includes statutes for regulating the public sector and public corporations. Legislation to regulate public procurement, for instance, belongs in this category.

Transparency and accountability

Equal opportunity and fairness for all in the bidding process are central features of a sound and transparent procurement system. To achieve this, it is necessary to ensure:

- adequate and opportune advertisement of all business opportunities;
- transparent and objective tender evaluation criteria;
- wide publicity for tender results and contract awards;
- prompt and effective review procedures for handling complaints by aggrieved bidders;
- media, civil society and general public involvement in monitoring public procurement; and
- adequate protection for whistle-blowers.

These features are normally incorporated in procurement guidelines set by several multilateral and bilateral donor agencies as well as in domestic legislation regulating public procurement in various African countries.¹⁷ Domestic legislation also provides clearly defined institutional arrangements within which public procurement takes place, including mechanisms for monitoring how procurement is implemented and procedures for handling complaints.¹⁸

A transparent procurement system promotes competition and empowerment of domestic suppliers, contractors and consultants. It also fosters procurement standards and practices that ensure that clients get value for money.

Public service reforms

To tackle corruption in public procurement effectively, a wide range of political and socio-economic reforms are needed to enhance good governance and reduce poverty. For example, donor-supported reform programmes in

several African countries are designed to improve the efficiency and accountability of government and to reinforce the rule of law.¹⁹

However, these programmes address only superficially the other key drivers of corruption, notably poverty and political patronage. Historical evidence shows that high per capita incomes and levels of development in richer developed Western countries allow the emergence of better governance and less corruption.²⁰ It would therefore be prudent for African countries to actively pursue reforms that accelerate socio-economic development and growth and thereby dispose them to better governance and lower corruption levels.

Role of non-state actors

Political will to combat corruption is not simply the will of politicians alone. There are leaders throughout society – from professional groups, the private sector, trade unions, religious institutions and other civil society groups. All can be energised and mobilised in the course of fighting corruption and furthering integrity in public procurement.

Anti-corruption forums of these non-state actors have important roles to play. These forums should be encouraged to:

- speak out publicly against corruption;
- increase awareness of corruption and its consequences among their members, through publicity and training;
- support moves to make procurement procedures more fair, reasonable, objective and transparent (the greater the transparency, the more difficult it will be to conceal corruption);
- collaborate with government bodies to ensure that efforts to curb corruption are well founded, coordinated, consistent and effective;
- enforce effective codes of ethical conduct among their members; and
- require their members to report allegations of corruption.

Remember, corruption can only be prosecuted if reported. No anti-corruption mechanism can succeed unless there is real likelihood that offenders will be prosecuted.

Global initiatives

Recently, there has been increased international concern about corruption and its negative effects on poverty and the world economy. As a result, there have been significant changes to international business practices and laws regulating them.²¹ Below are some of the changes.

- Several international organisations have introduced conventions against corruption (notably the United Nations, OECD, African Union, European Union, Council of Europe and Organisation of American States). These conventions have provisions that require signatory countries to criminalise bribery and related offences, take preventive and enforcement measures, and provide effective extradition and co-operation between countries.
- It is now a crime for a corporation or national of an OECD country to pay or receive a bribe, even if the offence takes place entirely outside that OECD country.
- The adoption of international anti-money laundering measures have increased the likelihood that payers and receivers of bribes will be identified.
- There is a trend towards increased ethical investment and corporate governance demanding high standards of integrity.
- The reporting and prosecution of corruption offences is increasing.

The effectiveness of these international initiatives can be enhanced if developed countries institute more pro-active measures to help repatriate corruptly acquired funds in foreign banks to the country from which they were looted.

Endnotes

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- 3 Of 180 countries worldwide ranked by Transparency International according to the 2007 Corruption Perception Index (CPI), 45 of the 53 AU member states have CPI scores of less than 3.5, the cut-off point below which corruption is considered rampant. Further, for a majority of AU member states, the 2007 CPI scores are significantly lower than the historical peak scores attained in the ten-year period 1998-2007, indicating that perceptions of corruption have increased during this period.
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- 18 For example, *the Public Procurement Act* (2004) of the United Republic of Tanzania provides for an independent Public Procurement Appeals Authority within the Ministry of Finance.
- 19 Typical examples are the *Local Government Reform Programme (LGRP)*, *Public Financial Management Reform Programme (PFMRP)* and *Legal Sector Reform Programme (LSRP)* of the United Republic of Tanzania.
- 20 Khan MH, *op. cit.*
- 21 Transparency International, *Preventing Corruption in Construction Projects, Risk Assessment and Proposed Actions for Construction and Engineering Companies and Consulting Engineering Firms*, March 2005.



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