



## **ACCOUNTABILITY AND TRANSPARENCY PROCUREMENT PRINCIPLES IN GOOD GOVERNANCE AND HUMAN RIGHTS PERSPECTIVES IN MAINLAND TANZANIA**

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### **Abstract:**

*Accountability and transparency procurement principles have played a significant role in establishing good governance in any procurement regime. These principles also safeguard the protection of human rights under human rights principles. These principles if well utilized and implemented, also encourage compliance with human rights norms. In the Tanzanian procurement regime, accountability and transparency procurement principles are also covered under procurement statutory rules. The covered principles are also articulated under regional and international procurement rules to which Tanzania is a party. Accountability as a principle is a form of liability that introduces to whom for what and what is accountable in procurement undertakings. The transparency principle, on the other hand, its essence is to show openness during in entire procurement process. The liability created by the accountability principle and openness in the entire procurement process by authorities, in general, promote good governance and enhance compliance with human rights norms in procurement regimes. Compliance with accountability and transparency procurement principles also improves public confidence in government performance. Absolute compliance with these procurement principles in the procurement regimes ensures taxpayers' resource utilization trust. In particular, accountability and transparency procurement principles have a close link with good governance and human rights. The two procurement principles are inseparable. The author of this article believes that there is a close link between accountability and transparency procurement principles with good governance and human rights. As earlier noted, it is strongly believed that good governance and human rights play a significant role in enhancing implementation and compliance with procurement principles in public procurement. Further in this paper that despite Tanzania to belief in various human rights principles as articulated by human rights norms, and also belief in human good governance as enshrined under the national Constitution, the current procurement system lacks a constitutional base, and procurement principles under discussion are only recognized under enabling Acts of the Parliament. This article emphasizes that there is a need for the current procurement system to be constitutionalized so that public entities conduct procurement based on the procurement principles named above in order to ensure that human rights and good governance goals are fully achieved by public entities, without which value for money will never be accomplished in Mainland Tanzania.*

### **Keywords:**

Accountability, transparency, procurement, good governance, and human rights.

### **1. Introduction**

This article examines public procurement principles in good governance and human rights perspectives in Mainland Tanzania. The procurement principles that are covered in this article are only two. The principles covered are accountability and transparency procurement principles. Accountability refers to the commitment to the ideals of democracy, the rule of law, and cultural accountability (Adagbabiri, M. M., 2015). This term can be broken into four separate segments. These include individual accountability, managerial accountability, fiscal accountability, and program accountability. The term transparency, on the other hand, refers to openness. The term can also be put into various segments, which are integrity, rectitude; decorum, and leadership by example. The term is also linked to the idea of stewardship. These procurement principles, among others, are articulated under current procurement legislation applicable in Mainland Tanzania.

Implementing and complying with procurement principles is a good consideration for good governance and human rights norms. At the international level, for instance, the UN Framework and Guiding Principles on Business and

Human Rights (UNGPs) provide for a globally applicable set of guidelines for governments. It also covers businesses and other procurement actors towards ensuring respect for human rights in the context of business making (Turtle, K., *et al*, 2013; R. K. Shakya, R. K., 2015; Phillips, W., Caldwell, N., and Callender, G., 2007; Srivastava, M., 2010). Under Pillar I of the UNGPs, states have a duty obligation to take all necessary measures and steps to prevent business-related human rights abuses. This includes ensuring an adequate regulatory framework for business activities. Also ensures human rights are given full effect in all areas of law and policy making, domestically and internationally. These essentially provide guidance and information to businesses on how to respect human rights (*Ibid*, Turtle, K., *et al*, 2013). In general, the procurement principles in question are coupled with good governance and human rights. This article is divided into four stages. Stage one is an introduction picturing generally the matter under examination. Stage two briefly the article considers an overview of accountability and transparency procurement principles with respect to good governance and human rights in public procurement. Stage three specifically traces public procurement and good governance, including some theories supporting accountability and transparency procurement principles in public procurement. Stage four is devoted to the ostensibly on the legal framework and close connection of procurement principles in view of good governance and human rights in Mainland Tanzania. Stage six is about a conclusion.

## **2. Conceptualizing Good Governance and Human Rights in Public Procurement**

Good governance and human rights are important concepts. Before examining public procurement principles in good governance and human rights perspectives, it is important to briefly state what good governance and human rights are all about. The article later indicates how the two principles are linked with goods governance and human rights. As a matter of fact, there is no single and exhaustive definition of what “good governance” is. There is also no delimitation of its scope that commands universal acceptance (Linarelli, J., 2012). Usually, depending on the context and the overriding objective sought, good governance has been said at various times to encompass a number of issues. This includes full respect for human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes, institutions (Sharma, A. K., 2018; Stemele, B. M., 2009; Shah, A., 2013), etc. The concept of “governance” has become a frequent concept used in different fields. It is, however, not a new concept. In fact, the term “governance” is linked with “corporate” as used in business making. This has gained prominence only during the last two decades (Abu-Tapanjeh, A. M., 2009; Zingales, L., 2005). This terminology clearly had its origin in the Greek word “kyberman” which means to steer, guide, or govern. This passed on from Greek to Latin word as “gubernare” and the old French is “governer”. This word has been defined in different ways by different organizations or committees, according to their own ideological concerns (Soyaltin, D., 2017; Fukuyama, F., 2013; Swai, S. P., 2013; Jufri, J., and Indah, S., 2014). The concept of good governance has been clarified by the work of the former Commission on Human Rights. The Commission identified the key attributes of good governance (Resolution 2000/64). These attributes include transparency, responsibility, accountability, participation, and responsiveness.

It is also contended that there is a significant degree of consensus that good governance relates to political and institutional processes. It is also related to outcomes that are deemed necessary to achieve the goals for development (Aigheyisi, O. S., 2015). From such a notion, it has been said that good governance is the process whereby public institutions conduct public affairs, manage public resources, and guarantee the realization of human rights in a manner essentially free from abuse and corruption, and with due regard to the rule of law (*Ibid*). The concept of good governance is also linked with a number of key attributes. Such attributes include transparency, responsibility, accountability, participation, and immediate responsiveness to the needs of the masses (Commission on Human Rights in its Resolution 2000/64). Regarding the way good governance relates to human rights, it is urged that the two are mutually reinforcing. It is also said that, while human rights principles provide a set of values to guide the work of governments and other political and social actors, on one hand, without good governance, human rights cannot be respected and protected in a sustainable manner. In relation to public procurement, it is argued that the procurement system of any country becomes strong effective, and efficient when good governance and human rights are taken into account by procuring entities of a nation.

## **3. Theories Enhancing Good Governance in Public Procurement**

There are a number of theories supporting the procurement principles in question. The economic downturn that has taken place and the responsibilities and performance of many public officials with respect to the management of the public administration have renewed demands for democratization and accountability in public procurement today. In this context, transparency principles become a necessary tool for the public to monitor and evaluate the performance of their representatives and public servants participating in public procurement engagements. Furthermore, transparency principles become an important component of good governance and institutional quality as well. These, in turn, are proven drivers of economic growth and public welfare (Knack, S., and Keefer, P., 1995; D. Acemoglu, D., Johnson, S., and J. A. Robinson, J. A., 2002; Albalade, D., 2012). It is believed further that, in achieving public procurement integrity in any country like Tanzania, accountability and transparency procurement principles should always be linked to good governance. Human rights norms must also be linked with procurement principles covered in this article. The mentioned procurement principles are said as two sides of the same coin in the procurement system. The management of public bodies is a complex activity that entails the balancing of different and sometimes, somewhat contradictory, objectives (El-Gayed, Y., 2013). The relationship between public procurement and good governance is subject to increasing attention (Knight, A. W., N. Billinton, N., Cahill, P. A., Scott, A., Harvey, J. S., Roberts, K. J., Tweats, D. J., Keenan, P. O., R. M. Walmsley, R. M., 2007). Effective procurements always provide governments with a means of bringing about social, environmental, and economic reform, and malpractice within public procurement demonstrates a failure of governance (Ibid). Various eminent authors such as Malta, Schapper, Calvo-Gonzalez, and Berroa (Shakya, R. K., 2017) are of the view that the public procurement environment is quite different from that of even just a few decades ago in the current world. Modern governments are now complex service organizations and major economic players. Procurement has shifted to being more focused on complex infrastructure and services. This also often involves complete service solutions, high risk, and high value, with just-in-time supply lines. This indeed requires high-level skills required for the preparation of specifications. It also requires market research, financing, and contract management (Shakya, R. K., 2009). There are a number of procurement theories, that are normally used also to measure performance and compliance with the existing procurement principles in any procurement system in the world. These theories, in one way or another, help very much with the stability of particular procurement systems in the country. It is arguably stated that there are a number of theories available in procurement. However, considering the relevancy of this article, only a few will be examined that are seen to be more relevant to the topic in question. Some of the theories that are examined in this article include principal-agent theory and legitimacy theory. These two theories seem to be more relevant to the topic under examination. Each and every theory above stated is separately examined as below indicated.

### **3.1. Principal-Agent Theory**

Principal-agent is the first theory covered in this article. The principal-agent problem has done much in recent years to illuminate diverse legal subjects in public procurements. The theory covers the management-shareholder relationship in public corporations. It also involves real estate markets, insurance, employment, and other real-life situations (Harris M., and A. Raviv, A., 1978; Meckling, W. H., and Jensen, M. C., 1976; Ross, S. A., 1973). Basically, in a principal-agent relationship, one party who is called the agent on one hand is required to perform some procurement activities or services. This being, for instance, supplying goods on behalf of the other party called the principal, on the other. This involves the delegation of some discretion and decision-making authority. This theory indicates the extent to which international or regional agreements on public procurement have the potential to strengthen the accountability of national procurement officials. The procurement officials have to ensure that public procurement integrity is daily maintained. Some eminent procurement authors argue that maintaining integrity in public procurement is one of the most important pillars of modern national procurement systems in the world (Arrowsmith, S., Linarelli, J., and Wallace, D., 2000; Kelman, S., 1990; L. Steven, L., Schooner, S. L., 2002; Soudry, O., 2020; Chrisidu-Budnik, A., and Przednska, A., 2017). In general, this theory emphasizes procurement practitioners engaged in various procurements to observe accountability and be accountable for whatever they are engaged in within public procurement sectors. This theory, therefore, enhances and guarantees the accountability procurement principle covered in this research article.

### **3.2. Legitimacy Theory**

The legitimacy theory is one of the important theories in public procurement sectors as well. The theory also emphasizes the need to have a procurement system adhering to the principles of accountability and transparency. The

legitimacy theory posits that the organization is responsible for disclosing its practices to the stakeholders, especially to the public, and justifying its existence within the boundaries of society (Wilmshurst, T. D., R. Geoffrey, R., and Frost, G. R., 2000). It is, therefore, important to bear in mind that, the relationship and interaction between an organization and society is the main focus of the legitimacy theory. It is, however, important that apart from venturing into the details of the theory under examination, an understanding of the concept of what “legitimacy” is so significant in this situation, particularly in the field of procurement law. Conceptualizing the concept of legitimacy, Suchman (<http://www.scribd.com/document/262111486/Suchman-1995-Legitimacy-Theory>, 2022) defines it as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some social construction system of norms, values, beliefs, and definitions” (Ibid). The legitimacy theory argues that officers make a disclosure practice as a way to build a good impression among the stakeholders of the role and the officers (V. Magness, V., 2006; Hui, W. S., Othman, R., Omar, N. H., Rahman, R. A., and N. H. Haron, N.H., 2011). This theory emphasizes the need for procurement practitioners to disclose everything pertaining to procurement proceedings. With this, the theory guarantees and enhances transparency of procurement principles in public procurement.

#### **4. Public Procurement Principles in Good Governance and Human Rights Perspectives in Mainland Tanzania**

Tanzania, like other nations in the world, believes in good governance and the protection of human rights. It is on this basis that Tanzania is a party to a number of human rights organizations that deal with human rights issues. Tanzania is also a party to a number of human rights treaties and Conventions that deal with human rights (Tanzania has ratified the Universal Declaration of Human Rights of 1948). Tanzania has established a special organ that specifically deals with issues relating to the protection of human rights (CHRAGG). On a similar note, in its national Constitution, the URT Constitution of 1977, as amended, has a clause on governance issues (Article 129 (1) of the URT Constitution, 1977. Under this provision, CHRAGG has been established to monitor issues related to good governance as well). It is our argument that despite Tanzania believing in human rights principles as enshrined under various human rights documents, and Tanzania being part of them, there have been a few efforts to enforce issues of accountability and transparency procurement principles as these international rules stipulate. Indeed, as earlier argued, Tanzania believes in good governance issues and there is the incorporation of good governance in the URT Constitution of 1977, the main challenge that has been observed is that there is no single or clear provision that focuses on accountability and transparency procurement under the URT Constitution of 1977. It is our further argument that the current procurement system in Tanzania is only described under the enabling Acts of Parliament. It is, therefore, our argument that at this point, the current procurement system has no constitutional base in Mainland Tanzania. The absence of a constitutional provision on procurement issues makes accountability and transparency procurement principles not to be implemented and complied with in an effective way, especially by procuring entities that are obliged statutorily to do so in Mainland Tanzania.

It is indeed stated that the objective of any procurement policy is to promote transparency and accountability in the governance agenda of any country. It is done to ensure that the requisite standards are transparently maintained in the conduct of government business. It is argued that sound procurement practices constitute part of the essential element of good governance. This is taken as just as poor practices which lead to waste and delays of procurement activities in public entities. Oftentimes, this has been a major cause of corruption and by implication, bad governance in the public sectors. It is on the basis of this that most governments in Africa have come to realize that a well-organized procurement system contributes to good governance and the protection of human rights principles. This also increases confidence and assures judicious government spending (Davidson, A., 2019). This article covers procurement principles namely; accountability and transparency in good governance and human rights perspectives in Mainland Tanzania.

It is an indisputable fact that public procurement is one of the major areas where the government implements its annual budget. It is contended that approximately 70% of the annual government budget is spent on public procurement. This is where a good number of Bidders participate in various tendering processes. This basically depends on the annual procurement plans (APP) set by each and every procuring entity concerned from user departments. Bidders’ participation, both nationals and internationals, on some occasions, attracts challenges in the procurement system, particularly in spending the annual government budgets. Such challenges include corruption,

conflict of interests, and other malpractices. It is on such a note that, the way accountability and transparency principles are implemented and complied with in procuring entities is a good way of measuring good governance and human rights in public procurement sectors in Mainland Tanzania. It is our argument that observance of good governance and human rights in public procurement sectors is important since it is in public procurement sectors where there is a high percentage of building the national economy of the country and at the same time corruption becomes inevitable. From a human rights perspective, the concept of good governance can be linked to principles and rights set out in the main international human rights instruments (Article 21 of the Universal Declaration of Human Rights, 1948; Ishan K. S., 2013).

It is our argument further that, where their procurement sectors highly contribute to the national economy of the country, definitely, their nation will be in peace and tranquility. In this, every citizen will have confidence and effectively participate in building their nations. It is further argued that ultimately there is a need for “radical transparency” in the public procurement area. This is because some stakeholders are of the view that, there is a need to put meaningful progress on procurement and human rights norms. This may perhaps manifest as an obligation for companies working with the government to disclose all of the subcontractors and suppliers in their supply chain. This should not underestimate the efforts that initiatives and radical transparency might be vital steps in shedding light on dark, hidden, and uncomfortable realities in various public procurement sectors (Turley, L., 2015).

The 2011 Public Procurement Act, amended by the 2016 Public Procurement (Amendment) Act also emphasizes procuring entities to make consideration of good governance norms, while conducting and completing tendering processes and other required procedures availed in-laws. The current procurement laws indicate that good governance principles should be highly taken into account, without which value for money (VfM) can never be fulfilled. This includes respect for the rule of law, observing human rights, and trustworthiness. It also includes accountability, transparency, fair competition, and proper use of public resources. The procurement laws in place further insist that procuring entities and Bidders participating in tendering processes must take their responsibilities effectively. They all must ensure that there is openness and transparency and make competitive and fair decisions in all procurement functions that are undertaken for the betterment of the nations. To achieve this, all procuring entities are obliged to advertise their procurement information in the Tanzania Procurement Journal (TPJ), which is published by PPRA, without fail ([www.ppra.go.tz](http://www.ppra.go.tz)). In practice, the stated TPJ and PPRA websites are always used by all Bidders and other procurement stakeholders to get first-hand procurement information and details about all bidding businesses. There are a number of issues that have been indicated under current public procurement statutes relating to good governance in public procurement sectors in Mainland Tanzania. These include, but are not limited to:

Good governance in public procurement concerns procuring entities to ensure that, public resources that are tendered by procuring entities are utilized and procuring entities consider procurement rules and principles, to mention are few, transparency, accountability, and fair competition to all Bidders competing in the procurement proceedings in achieving value for money.

Proper and effective implementation of procurement contracts is another important area. This area also relates to good governance in public procurement. In this area, it should be realized by all procuring entities that, implementation of procurement contracts is also part and parcel of the procurement proceeding, and therefore, it should be seriously noted that procuring entities should monitor effectively all procurement contracts entered with Bidders, and ensure that, Bidders perform their respective procurement contracts in line with, and as agreed upon by all parties to a contract. In relation to this, when procurement contracts are well monitored by procuring entities concerned, definitely procuring entities and the government in particular, this ensures value for money, and the government attains its procurement goals as planned.

Another area that attracts good governance in public procurement is for procurement practitioners, working and performing procurement functions, to do so with patriotism, skills, and high competence, having all the qualities needed for the benefit of the nation. In relation to this, procurement laws have categorically stated accountability clearly pointing out that, for every procurement practitioner participating in a particular procurement function, one is accountable for making timely decisions for all complaints that are raised by Bidders during procurement processes, and are also accountable for decisions they make thereof.

Considering good governance and ensuring human rights in the public procurement sector, procurement laws in place also emphasize the need for all procuring entities to ensure that, they do not offer tenders to Bidders discriminatively since current procurement legislation state clearly that, all persons are eligible and qualified to participate in the tendering processes. This includes youths, women, and persons with disabilities (section 64(2) (c) of the 2011 Public

Procurement Act, amended by the 2016 Public Procurement (Amendment) Act), in order to bring equality among Bidders in Mainland Tanzania (Article 12 and 13 of the Constitution of the United Republic of Tanzania, 1977; section 4A (3) (a) of the 2011 Public Procurement Act, amended by the 2016 Public Procurement (Amendment) Act).

Moreover, procuring entities are required while conducting their procurement functions, should ensure that, all sorts of violations of human rights are controlled and discouraged. In achieving this goal, procuring entities are even required under current procurement statutes not to purchase commodities or tendering services from Bidders who are alleged to be involved in any sort of human rights violation scandals. Such human rights violations scandals include child labour, discrimination or any kind of humiliation, and issues relating to safety. It is evident that, in some countries, Bidders who are found with human rights violation allegations are even barred from participating in tendering processes advertised by procuring entities. There are also some procuring institutions that are involved in serious human rights violations scandals.

## 5. Conclusion

From observations that have been made, it is obvious that, for a particular nation to reach the optimum level of procurement development there is a need to make frequent reforms in various sectors, especially in issues pertaining to governance and administration in particular. Such frequent reforms in various public sectors should be made to improve and encourage good governance and human rights. This should be considered not only in other sectors but also in the public procurement sector in various procuring entities. In ensuring that such an aim is reached, on various occasions, responsible authorities dealing with procurement management and monitoring, particularly PPRA have been encouraging and reminding Bidders and other procurement stakeholders to consider human rights and good governance norms while conducting procurement functions. By adhering to human rights and good governance norms, procurement challenges such as corruption will be discouraged to a large extent in the public procurement sectors, for the benefit of the national economy in Mainland Tanzania. Finally, it is concluded that it is the responsibility of every stakeholder engaged in procurement businesses to ensure that accountability and transparency procurement principles are complied with, and properly implemented in order to ensure that human rights and good governance goals are fully achieved, especially in public entities in Mainland Tanzania.

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