

An inevitable dialogue of Ethics - A Conceptual Analysis of the South African Public Procurement Corruption

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Abstract

This article discusses the gradual death of ethics by corruption in the South African public procurement realm. The lack of adherence to ethical public procurement procedures has opened up a can of worms, which involves ethical misconduct perceived to be natural. The Government of South Africa has set up mechanisms and anti-corruption bodies to minimize corruption. Although institutions to curb corruption are in progress, they still persist. The ANC-led administration, especially in the advent of public procurement of personal protection equipment (PPEs) for Covid-19, is surrounded by scandals of unethical behaviour. The notion of public ethics is at the center of democracy because of systemic misconduct leading to a lax system of conformity with public ethics. An adverse corruption effect on procurement management in the South African public sector destroys the confidence of the public in the contract setting. The paper is purely theoretical; it is a desktop study that was primarily sponsored by the literary review. The paper takes cognizance of theory of planned behaviour and its ideals to extract and expatiate the argument. The paper claims that unethical procurement practices are hazardous, omnipresent, expensive and can lead to social and economic problems. The study employs articles, books, journals, the web and other publicly available materials to attempt to build up and understand how public procurement may be enhanced and how corruption and other unethical activity cannot be safeguarded. The papers propose and agree that elected authorities have a broader duty to be kept accountable to constituents, and that they thus have to perform their duties with professionalism, fairness, courtesy, and dignity.

Keywords: Ethics, Corruption, Public procurement, Government, Compliance, Public administration, Planned Behaviour Theory.

1. Introduction and background

Since democratic transition in South Africa in 1994, the prominence of corruption concerns in terms of public discussion have become an important component of the country's politics. Many types of corruption and fraud take place in civic sector institutions, fraud and corruption may be asserted in almost all fields of activity and transactions. However, it seems that corruption is found more in procurement than everywhere else in many nations, particularly in developing nations (Mantzaris, 2014). There are many kinds of corruption - whether they fraud, bribery, collaboration, extortion, and manipulation of documents. To comprehend the nature and methods of public procurement activities and their vulnerability to corruption, an examination

of the field of operations must thus be carried out in a concentrated way. Despite prerogatives and reservations, stealing have afflicted Élite officials and statesmen. The public procurement industry operates in a growing scrutiny environment driven by program evaluations, public and political service improvement expectations (Bolton, 2006; Eyaa & Oluka, 2011). At now, procurement is especially imperative in the public sector in South Africa and is utilized as a policy instrument because of the discrimination and unjust practices of apartheid (Bolton, 2006). The government entities have recorded long-term procurement rules and procedures. For many years, the regulations were designed to provide advice on administrative routines and those regulations would lead to economic and honest transactions in procurement. But a considerably more critical approach is now being taken to procurement policy and practices, in keeping with the broader transformation and modernization of public finance administration in many nations in the last decade and half.

2. Problem statement

Ethics denotes to tolerable behaviour or morals that guide businesses, organization, or society (Mullins, 2002). Mathebula (2014), Matshabaphala (2014) and Theletsane (2014), Ethics refers to “a system guiding conduct, upholding such conduct in the workplace, while in theory is closely linked to professionalism in the public service and places more impetus on human conduct”. Compliance with ethical standards necessitates good governance. That indicates that the efficiency and effectiveness of the organization is achieved if one follows the rules and procedures of the organization (Mashilo & Selelo, 2020). However, the question of ethical behaviour remains contentious as there is an increase of unethical cases in public procurement (Ondrová, 2017). Therefore, the existence and increasing decline of ethical conducts are the root cause of corruption, particularly in public procurement.

Kari, Mona, and Jan (2010) indicates that Public Procurement concerns procurement of goods and services by state bodies and involves public and private contracts in various parts such as healthcare, army, and construction. The public procurement procedure consists of the purchase of goods and services from the private sector by governments, departments, ministries and agencies under specific rules and policies. Upright public purchase will turn monies into health care facilities, learning institutions, infrastructure, and supply of electricity. Hunsaker (2009) claims that state procurement is a fruitful area for corruption, not just because of the scale of procurement. It is also due to several distinctive factors and contributors in government procurement that made it disposed to corruption. First, the use of financial resources from largely invisible stakeholders involves government procurement. Acquisition activities use taxpayers’ money and distract them from other government programs and activities.

The public and private sectors are also affected by corruption. But there was almost little attention to the presence of corruption in the private sector as it was in the governmental sector. The reason is that corruption in the public sector includes resources and goods which are lawfully and lawfully controlled by trustworthy

public authorities and on behalf of the public. While it is well known that public procurement is especially vulnerable to corruption and although there is much published on corruption, not much has been published on corruption specifically in the context of public procurement (Sewpersadh & Mubangizi, 2017). This paper highlights on the unavoidable discussion around continuous decline of ethics, particularly in public procurement which ultimately leads to public procurement corruption.

3. Theoretical framework on corruption and public procurement

As mentioned by Defee, Williams, Randall, & Thomas, (2010), decent study ought to be grounded in theory (Mentzer, Stank, & Esper, 2008). Be that as it may this paper will be premised and augmented from the theory of planned behaviour and its ideals. In Park & Bienkinsopp (2009), the supporters of the Theory of Planned Behaviour (TPB) have demonstrated that the theory has the possibility of offering a viable methodology for describing individual ethical and immoral action. In rational theory of action, the theory finds its etymology. After rational action theory struggled to forecast persons that commit corruption, the philosophic clarification of the planned behaviour theory was established (Manamela and Mokoеле, 2019). Human conduct is built up and enlightened through interaction between people and especially historically influenced (Nordin, Takim and Nawai, 2013). Cultural ideas and attitudes are particularly essential when people make decisions to engage in wrongdoing or dishonest transactions. That implies the decision to take part in ethical practices is determined by personal activities (Manamela and Mokoеле, 2019). The notion of anticipated action may be significant in order to comprehend corruption in the public procurement realm. It is an event that is performed in an unbelievably intricate psychological process. This suggests that a single action or human judgment resulted in the formation of corruption in the public procurement sector.

The engagement of people in unethical acts takes place under four decision-making processes, which are driven by pleasant or negative, expected sentiments to or not achieve anything in order to achieve them a private or professional goal (Brown and Loosemore, 2015). The choice of a person to carry out an immoral act thus comes from the behaviour of an individual. The desire to act on a private or professional basis by corrupting acts and the aim to achieve a personal or professional objective by corrupting activities influence decisions for further corruption. The theory of planned behaviour is based on these several elements that influence decision-making about immoral activity. However, Grow, Sheeran and Hukkelberg (2010) found that existing planned behaviour theory would not reveal the ability to predict an individual's desire to carry out a whole legal or ethical deed.

The position you have against one another by assuming the position of particular or abstract others is also self-identities, which suggests that the meaning and perception linked with the linked category are integrated into yourself. Rather of having scorched the person who is awarding tenders, a road bidder shows that the corrupt as well as the corruptee lead to a clear conduct. This shows that the theory of planed behaviour is an essential psychological way to foresee the ability of a person to take legal or

ethical measures. Trade unions and the opposition in South Africa, for instance, have called on the South African government to introduce a lifestyle audit for public officeholders, to convince them that their fortune suddenly accumulated through simple takeover of public functions (Mafunisa & Sebola 2014; Sebola 2015; Sebola 2018). Author(s) thereof concurs that before one is appointed in the public procurement sector one must undergo a personality test and declare all interests that will enable the appointers to know whether state funds are to be in safe hands or not.

4. A conceptual analysis of the South African public procurement corruption

In its governmental procurement processes, South Africa still faces immense difficulties in corruption. Procurement-related corruption refers to a deviant attitude, which is expressed as misuse of government procurement in favour of some suppliers "by themselves or the initiative of others to benefit themselves or a third party" (Rabl and Kuhlmann 2009:268; Ntayi, Ngoboka and Kakooza, 2012:417). Ambe (2016), points out that corruption and inefficiency are consistently alleged in procurement procedures and the considerable number of protests in the nation in respect of service delivery shows the prevailing unhappiness with basic services. Munzhedzi (2016), agrees that procurements and corruption remain an inseparable twin in South Africa's public sector. The Government's lack of progress with the implementation of standardized procurement processes is cause for worry at the speed at which it wishes.

In the buying department, a dishonest individual might mandate or receive individual fortification or other special returns in return for a purchase deal, or the making of the order, or for preferential treatment from the supplier, according to Badenhorst, (1994); Kangogo and Kiptoo, (2013). "These personal advantages include, for example, gifts (both material and non-material), money in the form of kick-backs, and even bribes" (Badenhorst, 1994; Kangogo and Kiptoo, 2013:91). In South Africa, nonethical activities are viewed as a main element in procurement inefficiencies which lead to frauds, favoritism and extras to disseminate public cash. While the attention of policymakers in both developed and developed countries has been drawn by unethical procurement practices, little progress has been made in addressing the conflict. South Africa's perceived degree of corruption in every government sector is now quite bad for the people (Fourie, 2018).

Ntayi et al (2012) believe that there are still significant levels of unethical behavior affecting governmental procurement services. Many kinds of governmental procurement fraud and corruption occur (Mantzaris, 2014). The public procurement sector Fourie (2015) says it is prone to corruption. The unethical behaviour of public officials (Manyaka and Sebola, 2013) has generated a large, international discussion on good governance. The scale of theft and unethical procurement practices had been a culture of non-compliance, mixed with a lack of accountability and transparency (Mazibuko and Fourie, 2017:108). Zitha & Mathebula (2015:21) says that unethical procurement officials' behaviour is characterized by corruption, fraud and nepotism that have a detrimental influence on people's quality of services. This will therefore affect non - competitive procurement practices, inadequate contract management or the award of bids to employees and their families, non-publication by suppliers, no documents to be supported on procurement awards, incorrect preferential point

systems and thresholds and acceptance of fewer than three quotations (Mazibuko and Fourie, 2017:109).

Corruption impacts society in a myriad of other ways than merely monetarily, including the loss of life, freedom, and health (Fourie, 2018). Public procurement difficulties have been spread since present legislation does not encourage technology use in procurement processes and the creation of long-term partnerships between buyers and suppliers (Amemba, Nyabokeye, Osoro, and Mburu, 2013). Lack of accountability is a source of corruption according to Amemba et al. (2013). Scholars like Neu, Everett and Rahaman (2015) suggest, not just because they have a large amount of procurement, because public procurement is a fertile field for corruption. However, Shah, (2011); Thobakgale and Mokgopo, (2018:49) argues that corruption undermines and diminishes the attainment of the value for money in government contracting as well as in the use of procurement as a tool and fair treatment of contractors.

5. Regulatory legislative frameworks governing public procurement

Public procurement is tightly controlled in South Africa. There is no one piece of legislation that covers all aspects of public procurement, and the regulations governing public procurement are scattered among multiple statutes. Previously, South Africa's public procurement was centralized until 1994. Immediately after 1994, government announced budgetary and financial reforms. In the realms of supply chain and preferential procurement, there are legal and regulatory frameworks that outline minimum standards. Departments and institutions at the national level. It is permissible for provincial and local governments to extend and create their own policies, processes, and procedures structures that fall under the jurisdiction of a national public framework the framework (Hanks, Davies & Parera, 2008). The following are some of the most important acts of law.

- ***Constitution of the Republic of South Africa (1996)***
In accordance with section 217(3) of the 1996 Constitution of the Republic of South Africa, national law provides a framework to enable a preferential procurement strategy to function. The legislation also regulates state procurement (national, provincial, municipal, constitutional, and public undertakings). A number of further legislative acts, which will be discussed in further depth below (Ambe & Badenhorst-Weiss 2012:247); The procurement of goods and services is provided for under Section 217(1). The system is fair, democratic, transparent, competitive, and economical. However, without open and accountable mechanisms, the huge resources obtained via public procurement are vulnerable to corruption, mismanagement, and misappropriation of funds.

- ***Municipal Finance Management Act, (2003) MFMA***
The Act oversees municipal governments in the field of municipal finance management. The procurement restrictions of the MFMA are equivalent to the PFMA but reach further into the system. Although the MFMA does not cover procurement in particular, Chapter 11. It provides the legal basis for the adoption in the municipality of the supply chain management technique. Municipalities shall develop a fair, fair, transparent, competitive, and cost-effective supply chain management policy, as

provided for in Section 112. After the tender award stage, the MFMA makes provision for contract management. Section 168(1)(a) of the Code of Federal Regulations that the Minister of Finance has the authority to issue regulations or recommendations pertaining to any issue that may be required in terms of enactment. It is in terms of this section that the MFMA Guidelines and Treasury prescripts pertaining to municipal supply-chain management are issued.

- ***Promotion of Administrative Justice Act 3 of (2000) PAJA***

PAJA is also applicable for public procurement in accordance with its norms and administration legislation in general. PAJA, which specifies the bounds for lawful administrative activity, has established administrative law to a substantial degree. The rules of PAJA are particularly significant when an aggrieved bidder decides to appeal a decision by a government agency on the public bidding procedure. If there is no proper recourse or review method in accordance with the Public Procurement Law, in this instance PAJA will be employed by the dissatisfied Bidder.

- ***Public Finance Management Act (1999) PFMA***

The National Treasury shall draft rules (or issue instructions for a framework for a fair, equitable, transparent, competitive, and cost-effective procurement and supply system in accordance with section 76(4)(c) of the Public Finance Management Act of 1999 (Act 1 of 1999). (Republic of South Africa 1999; Watermeyer 2011:3). This provision is founded on Section 217 of the Constitution of 1996. The Act generally provides for a public procurement legal framework including national and provincial procurement agencies as well as state-owned enterprises. Unauthorized, irregular (including corruption), fruitless and wasteful expenditures, as well as losses arising from illegal action, must be avoided by the accounting officer. Section 38(1)(a)(iii) of the PFMA requires a department, trading entity or Constitutional institution accounting officer to ensure that it maintains a "fair, fair, equitable, transparent, competitive and cost-effective procurement and provisioning system." (Mantzaris, 2014).

- ***Preferential Procurement Policy Framework Act (2000) PPPFA***

The Preferential Procurement Policy Framework Act of 2000 (Act 5 of 2000) specifies the procedures for implementing preferential procurement policies. This Act is effective by establishing a framework for the execution of the preferential policy in accordance with Section 217(3) of the Constitution of 1996. In general, this policy framework highlights the preference given to the historically underprivileged majority, including the Black, Mixed, and Indian races.

Despite the various number of legislative regulatory frameworks, public procurement corruption still thrives. This can solely be blamed on noncompliance and ignorance; government should enforce compliance if they are to achieve the regulation of this policies, so as to prevent public procurement corruption.

6. Cases of public procurement challenges in South Africa

This subject reinforces and hardens the theme with the debatable situations of corruption by government officials and politicians who mostly fuddles with administration in the procurement process. To rubberstamp the existence and

exacerbation of corruption in the procurement, the paper provides the reader with the provocative and widely spread of cases related to public. The Corruption Watch (2018) investigations have shown that the corruptions in procurement irregularities are so big and unavoidable that they are 45.3 percent more than any other related type of corruption. Below are some of the widely documented incidents of corruption emanating from public procurement to confirm this point of view.

- ***Improper conduct of Bheki Cele in R500m deal***

The General Police Commissioner Bheki Cele was accused of wrongful behaviour, when the police authorized an R500 million lease for Pretoria's Sanlam Middlestad building (Former Public Protector Thuli Madonsela, 2011). At first, Madonsela merely described SA Police Service's "accountant officer" as guilty of misconduct. When Madonsela asked who it was, Cele, then the accounting officer as chief of police, responded. She judged the accounting officer of the Department of Public Works guilty of inappropriate behaviour and mismanagement. Madonsela said Cele is asked to ensure fair, fair, transparent, competitive, and cost-effective purchase of goods and services. This behaviour was wrong, illegal, and meant mismanagement. (Friedrichsburg, 2011).

- ***Procurement of scooter Ambulances improper***

A Public Protector Investigation has identified procurement methods followed by the Provincial Health Department of Eastern Cape for the much-criticized medical scooter R10 million projects, as in breach of the relevant legal requirements (News24, 2021). Acting Public Protector Kholeka Gcaleka said his own initiative investigating allegations that the Department has violated, or has not complied with, sections of the Public Finance Manager (PFMA), the Treasury Regulations and the National Treaties, the proxies for the provision of sidecars or the hospital, the ambulance of scooters, in relation to improper conduct and maladministration.

- ***ANC investigates itself for corruption.***

ANC has initiated a party-wide inquiry into claims of corruption, requiring all provincial branches and leaders to write up the lists of all those charged with or faced with misconduct (Businessstech, 2021). In the last months, the party has been intensively scrutinized by various reports of corruption connected to the contract by Covid-19, leading to indignation among South Africans. The Special Investigative Unit, which might have been turned over to government officials or where the due diligence was not done, is presently investigating approximately R5 billions of government contracts. However, the SIU investigations into corruption are not limits to procurement fraud, with government employees also being tested for the theft of food deliveries for the neediest populations affected. The Sunday Times claimed in one such case that a politician identified in the PPE scam in the Gauteng Health Department profited by selling equipment back to the government at a rate as much as 800 per cent.

- ***Gauteng PPE tender corruption***

This week an official from the Gauteng Health Department in relation to the controversy of procurement of personal protective equipment (PPE) was suspended. Minister David Makhura stated that the Special Investigative Unit (SIU) has informed his departments. He claimed the SIU highlighted two officers, supposedly facilitating

corruption in procurement. An official from the Gauteng Health Department in relation to the controversy of procurement of personal protective equipment (PPE) was suspended (BusinessTech, 2021). The Sunday Times, meanwhile, stated that the SIU reported that Kabelo Lehloenya as Chief financial officer, Thandi Pino supply chain director and the former Chief Financial Officer of the health department behind the uneven allocation of PPE contracts. One of these contracts was given to Thandisizwe Diko, President Cyril Ramaphosa's spokesman, Khusela Diko, and claimed to be R125,000,000.

The above are only a few public sector corruption incidents which are associated with procurement. There are many unmentioned cases including distribution of food parcels to the needy during hardships of lockdown. It is the view of the authors, that corruption finds convenience mostly during the process of public procurement, and, if not properly addressed, the problem would damage the State's ability to provide services, its ability relies on availability of public funds. The authors further contend that upholding of moral ethics should be a dialogue that should never be avoided.

7. An inevitable dialogue of ethics

The South African public procurement realm is at the heart of corruption, which cannot be prevented by conversation and a meaningful debate on ethics till corruption persists. Ethics goes well beyond corruption and fraud prevention, since contemporary societies anticipate that officials will serve the public interest and serve them rationally and efficiently (Fourie, 2015). Amemba et al, (2013) contends that it was also a difficult issue to maintain high ethical standards in the procurement process. Ethical conduct includes avoiding conflicts of interest and not using an individual's position inappropriately. Ethical behaviour, as it includes public expenditure and subject to public scrutiny, is crucial to public procurement. The public authorities, even in their businesses, should always conduct themselves ethically and equitably. The discussion on ethics and responsibility in Africa is now high Sebola (2014), notes that high unethical practices and accountability, political liberations which enhanced a growing civil society to demand that violators be enforced and punished, acknowledged that unethical practices led Africa to economic decline, and exerted pressure on international donors to persuade African countries to adhere to them. It is also stated that ethical training offered to public officials about ethics rules and prescripts has minimal influence on their compliance. Sebola (2014) notes it is also highlighted. Not only is South Africa lacking the connection between politicians and government officials' ethical concerns (Sebola, 2018). In fact, (2018) Sebola says it is worldwide uproar to find it impossible for politicians and government employees to undertake public management in ways that do not include ethical difficulties.

8. Research methodology and design

Research design

Without research design no research study can be conducted. For each study, research designs are essential. Kumar (2011) regards designs of research as a systematic plan

used by academics in addressing research issues. As for Pandey and Pandey (2015), they are the study frameworks used for data collection and analysis. Qualitative approaches provide typically extensive and thorough data that inform your study with thoughts and notions. MacDonald and Headlam (2014) argue that it is able to show people's feelings and how they believe without revealing numbers of individuals who feel or think like this. For this study, qualitative approach of research has been employed. This will briefly cover a qualitative design below.

Qualitative design

Bryman (2012) says that qualitative research represents a collection of social data that focuses on the meaning of the studied population to offer useful insights into the local viewpoints. They can contribute to rich cultural and contextual data (Mack, Mack, Woodsong, Macqueen, Guest, & Namey, 2005). The researcher uses the concepts of interpretative or critical social science to stress the language of "cases and contexts" and cultural meaning in the qualitative investigation (Neuman, 2014). The logic of continuous inquiry, following a non-linear route, supports a qualitative investigation (Neuman, 2014). The current literature has been reviewed and summarized methodically. The examination of peer-reviewed journals, books, government laws and Internet sources was engaged in this procedure. The author(s) also took a qualitative research strategy to achieve the objective of this study by making use of secondary information. The work has thus gained information from publications, reports, journals, books, and other sources that are widely available.

9. Recommendations

The analysis of current literature divulges the comprehensive agreement that public procurement is prone to corruption, maladministration and mismanagement among researchers, experts and office-bearers (Munzhedzi, 2016). The government of the day should be determined in addressing corruption as one of the issues facing procurement in South Africa. The paper therefore makes the following recommendations to deal with the public procurement corruption dilemma;

- Supply Chain Management units should be able to respond to some of the skills and knowledge deficiencies. Regular training that clarify statutory provisions can help to overcome abilities and talents. Training may include extensive workshops or the provision of university subsidies to public servants to be regularly trained.
- It is also essential to promote ethical leadership in the public sector. In Africa, the existence of unethical behavior begins at the top of public and political leadership. The basic norm of conduct in society or in any industry is an ethical framework. If such a programme exists, individuals would know what is right and what is wrong, since they can assess their behavior against a formal or informal set of ethical criteria.
- A clear and proactive approach for identifying risk areas with the function of procurement should be established and the effective implementation of risk management strategies closely monitored.

10. Conclusion

It became clear that the procurement transactions are easy targets, especially in South Africa, among the numerous kinds of fraud and corruption in the public sector. It is obvious, as this article shows, that procurement in South Africa offers immoral officials, trade unions or groups the opportunity to engage in a large range of fraudulent activities, inter- and intra-collusion, extortion, and risk management systems, as well as other similar illegal, unfair practices, despite progressive legislative measures that are required to regulate it. To assure compliance in the context of public procurement, the research proposes monthly independent procurement audits and thorough surveillance to improve ethical standards. As much as corruption and public procurement are deemed inseparable twins' author(s) sees it fit that the two must undergo an ethical surgery that one of the troublesome twins could die.

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