

**Corruption in Emergency Procurement: An Assessment of Kenya's Public
Procurement Law Effectiveness**

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Abstract

The core objective of this study is to assess the effectiveness of public procurement laws in preventing corruption in emergency procurement processes in Kenya. Public procurement is one of the major public sector economic activities in Kenya and, therefore, has great potential to impact the Kenyan economy. The Kenyan public procurement processes have been plagued with corruption over the years. The emergency public procurement processes are no exception; arguably, they present the most conducive conditions for corruption to thrive. This is because emergency procurement processes are characterized by non-competitiveness, and wider discretionary powers for the procuring entity and public officials, among other factors. The risk of corruption in emergency procurement processes is further exacerbated by the existence of loopholes in the current Kenyan legal and regulatory framework. The wide discretion of the procuring entities limits accountability and transparency thus increasing the risk of corruption in the emergency procurement processes. This study has been conducted through the doctrinal legal research methodology. The findings of this study contribute to the body of knowledge on public procurement processes in Kenya. The study further provides recommendations to policymakers and practitioners on how to strengthen the Kenyan legal and regulatory framework governing emergency public procurement processes to prevent corruption. This study is relevant, since it addresses corruption, which is one of the key challenges facing Kenya's public procurement system. Furthermore, the study contributes to the wider global discourse on anti-corruption efforts in public procurement.

Keywords: direct procurement, emergency procurement, corruption, integrity, accountability

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List of Abbreviations

COK	Constitution of Kenya, 2010
EACC	Ethics and Anti-Corruption Commission
GDP	Gross Domestic Product
IEBC	Independent Electoral and Boundaries Commission
IMF	International Monetary Fund
KEMSA	Kenya Medical Supplies Agency
KISM	Kenya Institute of Supplies Management
MBIE	Ministry of Business Innovation and Employment.
MSMEs	Micro, small and medium enterprises
NZ	New Zealand
NZGPP	New Zealand Government Procurement and Property
OCCRP	Organized Crime and Corruption Reporting Project
PP&AD	Public Procurement and Asset Disposal Act, 2015
PP&ADR	Public Procurement and Asset Disposal Regulations, 2020
PPARB	Public Procurement Administrative Review Board
PPOA	Public Procurement Oversight Authority
PPRA	Public Procurement Regulatory Authority
RECORD	Reducing Corruption Risks with Data
SMEs	Small and Medium Enterprises
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNCITRAL	United Nations Commission on International Trade Law
UNHCR	United Nations High Commissioner for Refugees
UNPF	United Nations Population Fund

List of Cases

1. *ADK Technologies Ltd in Consortium with Transnational Computer Technologies Ltd v Public Procurement Administrative Review Board & 4 others* [2023] KECA 1182.
2. *Jambo World Limited v City Council* [2006] KEHC 3041.
3. *Kabuto Contractors Limited v Attorney General* [2018] KEHC 6357.
4. *Okiya Omtatah Okoiti & 2 Others v Attorney General & 4 Others* [2020] KECA 589.
5. *Republic v Public Procurement Administrative Review Board; Accounting Officer, Kenya Rural Roads Authority & 2 others (Interested Parties) Ex Parte Roben Aberdare (K) Ltd* [2019] KEHC 5570.
6. *Republic v Public Procurement Complaints, Review and Appeals Board and Another, ex parte Apex Security Services Ltd* (2007) KEHC 3282.



List of Statutes

1. *Constitution of Kenya*, (2010)
2. *Kenya Medical Supplies Authority Act* (2013).
3. *Public Procurement and Asset Disposal Act*, (2015).
4. *Public Procurement and Asset Disposal Regulations* (2020).



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Chapter One

Introduction

1.1 Background

Public procurement is generally defined as a government act of buying goods and services which it requires to fulfill its functions.¹ In Kenya, procurement is defined as the acquisition of any kind of works, services, assets or goods including farm animals or any combination, including planning, advisory, and processing in the supply chain system through purchase, lease, rental, hire purchase or by any kind of contractual means.² Evidently, the Public Procurement and Asset Disposal Act (PPADA 2015) has an expansive view of what qualifies as ‘procurement’. The PPADA 2015 expands procurement beyond just a basic sale contract.

Procurement greatly impacts the use of taxpayers’ money and, therefore, it must be managed in a manner that leads to sustainable development of the economy.³ Consequently, procuring entities are ultimately accountable to the public. As such, there are certain principles that all public procurement processes have to conform with. Pursuant to the Constitution, the key principles for procurement systems are transparency, fairness, cost-effectiveness, equitability and competitiveness.⁴ Based on the wording of the Constitution, these principles are applicable to a procurement system which is fundamentally distinct from a single procurement transaction. The procurement system refers to the broad and ongoing framework that governs public procurement within an organization. On the other hand, a public procurement transaction is a specific instance of procurement activity that takes place within the broader procurement system. The constitutional principles aforementioned must always be present in a public procurement system, however, when it comes to the single transactions, there is a trade-off between the principles depending on the facts of the transaction. Accordingly, in some transactions, one or two of the principles may not be a decisive factor.

¹ Arrowsmith S, ‘Public Procurement: Basic Concepts and the Coverage of Procurement Rules’ in Arrow smith, S, Treumer S, Fejo J, Jiang L, (eds) *Public Procurement Regulation: An Introduction*, Asia Link, 2011, at 1.

² Section 2, *Public Procurement and Asset Disposal Act*, (2015).

³ Gichio Debra, ‘Public Procurement in Kenya: Cash Cow for the Corrupt or Enabler for Public Service Delivery?’, *Adili*, 145, 2014, 2.

⁴ Article 227(1), *Constitution of Kenya*, (2010).

Generally, procurement systems and transactions ought to promote transparency, efficiency, integrity and cost effectiveness. In Kenya, many emergency public procurement transactions have been poorly managed, leading to immense losses of public funds. The major transactions include the Independent Electoral and Boundaries Commission (IEBC) biometric voter register⁵ and more recently the Kenya Medical Supplies Agency (KEMSA) COVID-19 scandal,⁶ among many other scandals that are on the rise. In 2021, the Organized Crime and Corruption Reporting Project (OCCRP) released evidence indicating corruption in public procurement in Kenya, spanning over four years, through shell companies directly linked to public officials.⁷ According to the World Bank, approximately 25 percent of Africa's GDP is lost annually as a result of corruption. The Kenyan government loses about 33.33 percent of national budget is lost due to corruption annually.⁸ Studies have suggested that approximately 80 percent of all corruption cases before the Ethics and Anti-Corruption Commission (EACC) are procurement related. In all these cases, the common factors are opaqueness of the tendering process, inefficiencies, and lack of integrity of public officials and the procuring entities.

Public procurement plays a crucial role in the economic development of any nation as it accounts for a significant portion of government spending. In order to promote transparency and accountability, the default procedure of procurement is through open tender.⁹ Procurement through open tender is codified in Kenyan law and procuring entities are required to prefer open tendering in procuring the required goods, works and services.¹⁰ Open tender is considered the most transparent and competitive method of procurement and it ensures that the best value can be achieved. Where an entity wishes to use an alternative procurement procedure to open tender, it may do so only if the relevant conditions set in law are satisfied.¹¹ There are many alternative procurement methods available for Kenyan procuring entities. These include: design

⁵ Ayaga Wilfred, 'Report: Sh4b lost in biometric voter registration tender', *The Standard*, 2015 <https://www.standardmedia.co.ke/counties/article/2000125913/report-sh4b-lost-in-bvr-tender> on 12 January 2023.

⁶ Igunza Emmanuel, 'Coronavirus corruption in Kenya: Officials and businesspeople targeted', *BBC*, 24 September 2020 <https://www.bbc.com/news/world-africa-54278417> on 12 January 2023.

⁷ Namu John-Allan, Zalan Kira, Mukami Purity, Atallah Juliet, 'The Cost of Kenya's 'Budgeted Corruption'', *OCCRP*, 11 August 2021 <https://www.occrp.org/en/37-ccb/ccb/14986-the-cost-of-kenya-s-budgeted-corruption> on 12 January 2023.

⁸ Miriri Duncan, 'Third of Kenyan Budget Lost to Corruption: Anti-graft Chief', *Reuters*, 10 March 2016 <https://www.reuters.com/article/us-kenya-corruption-idUSKCN0WC1H8> on 13 January 2023.

⁹ Bergsgard N, Nødlandb S, 'Open Tenders in Public Procurement of Welfare Services: Professionalization, Standardization, and Innovation among Civil Sector Providers', *Journal of Civil Society*, 16(4), 2020.

¹⁰ Section 91(1), *Public Procurement and Asset Disposal Act*, 2015.

¹¹ Section 91(2), *Public Procurement and Asset Disposal Act*, 2015.

competition, two-stage tendering, restricted tendering, and direct procurement among others.¹² Each of these alternatives is expansively provided for in the Act. There have been varying levels of usage for these procurement methods; open tendering has been used at levels of 37.8 percent, restricted tendering at 35.7 percent, request for quotations at 23.6 percent, direct tendering at 2.4 percent and request for proposal at 0.5 percent.¹³ The focus of this study lies with the direct procurement method which is the method used to procure goods and services during an emergency. According to PPADA 2015,¹⁴ direct procurement may only be used or justified on grounds of a cataclysmic event that has caused an urgency and the normal procedure (open tendering) is rendered impractical.

In Kenya, the public procurement sector is particularly vulnerable to corruption, especially during emergency situations when the need for speed and efficiency can lead to lax oversight and increased opportunities for graft.¹⁵ The Kenyan government has implemented various laws and regulations to address this issue, but the effectiveness of these measures in preventing corruption in emergency procurement processes remains a critical area of concern.¹⁶

During emergency situations, such as natural disasters or disease outbreaks, the need for rapid procurement of goods and services can create an environment ripe for corruption. In these instances, the usual procurement procedures may be bypassed in the name of expediency, leading to a lack of transparency and increased opportunities for misuse of public funds.

1.2 Statement of the Problem

The Public Procurement and Asset Disposal Act (PPADA) 2015 allows procuring entities to deviate from standard procurement methods in times of crisis, where there is a significant need for goods or services.¹⁷ The Act defines "urgent need" as situations that threaten public welfare, health, safety, or property, where traditional procurement processes are impractical.¹⁸ However,

¹² Section 92(1), *Public Procurement and Asset Disposal Act*, 2015.

¹³ Udeh K, 'The Regulatory Framework for Public Procurement in Kenya', in Quinot G, Arrowsmith S (eds.), *Public Procurement Regulation in Africa*, Cambridge University Press, 2013, 116.

¹⁴ Section 103(2) (c), *Public Procurement and Asset Disposal Act*, 2015.

¹⁵ Caroline Cherotich, Stellan Omari, 'Effectiveness of Procurement Practices on the Performance of County Governments in Kenya: A Case of Kericho County Government'; IJARKE Business & Management Journal, 2018

¹⁶ E.K KInuthia, Paul A. Odundo, Grace Nyagah, 'Aspects of Procurement Reforms that Influence Expenditure Management in Public Secondary Schools in Kenya: A Focus on Emergency Procurement'. International Journal of Business and Management, 2018, 129.

¹⁷ Section 104, *Public Procurement and Asset Disposal Act* (2015).

¹⁸ Section 2, *Public Procurement and Asset Disposal Act* (2015).

the provisions contain significant loopholes. For instance, the law permits broad discretion for accounting officers in determining whether evidence of an emergency is sufficient, without clear guidelines for verification.¹⁹ This opens opportunities for manipulation, where public officials can label preventable situations as urgent needs, thereby bypassing open tendering procedures. The lack of clear mandates for evidence assessment allows for corruption and inefficiency. The COVID-19 pandemic exemplified these flaws, with inflated procurement costs and questionable contracts, such as those awarded by the Kenya Medical Supplies Authority (KEMSA), resulting in significant financial loss.²⁰ This study aims to critically assess the legal framework's effectiveness in curbing corruption in emergency procurement.²¹

1.3 Research Objectives

The main objective of this study is to assess the effectiveness of the public procurement laws in preventing corruption in emergency procurement processes in Kenya. The following are underlying objectives of this main objective:

- i. To analyze the Kenyan Constitutional, Statutory, regulatory, and institutional framework on public procurement in relation to emergency procurement.
- ii. To evaluate the relationship between emergency procurement and corruption.
- iii. To examine the effectiveness and implementation of the public procurement laws in Kenya in combating corruption during emergency procurement.
- iv. To critique the international best practices and strategies for preventing corruption in emergency procurement processes and their potential adaptation into the existing Kenyan legal framework.

1.4 Research Questions

The principal research question that this study shall answer is how effective are public procurement laws in preventing corruption in emergency procurement processes in Kenya. This question has been broken down into further secondary questions as follows:

- i. What is the relationship between emergency procurement and corruption?

¹⁹ Section 69(3), Public Procurement and Asset Disposal Act (2015).

²⁰ Rankin C, 'Reforming Emergency Procurement to Protect Against Corrupt Decision-Making While Ensuring Swift and Unencumbered Procurement', *African Public Procurement Law Journal*, 8, 2021, 88.

²¹ Regulation 90, The Public Procurement and Asset Disposal Regulations (2020).

- ii. How effective are the public procurement laws in Kenya in preventing corruption in emergency procurement processes?
- iii. What are the best practices and strategies for preventing corruption in emergency procurement processes that can be adopted in the Kenyan legal framework?

1.5 Hypothesis

The public procurement laws in Kenya have limited effectiveness in preventing corruption in emergency procurement processes due to inadequate frameworks, weak enforcement mechanisms, lack of transparency, and insufficient stakeholder participation.

1.6 Significance and Justification

This study is significant and further justified as it contributes to existing research on emergency procurement processes in the Kenyan context. This research may be instrumental in informing policy and lawmakers in Kenya as they draft policies, laws and regulations on emergency public procurement. The findings and recommendations emanating from this study may be helpful in clearing up the effectiveness of the Kenyan public procurement laws in curbing corruption in emergency procurement processes. Similarly, this research shall be useful to researchers and scholars conducting research in emergency procurement processes and how the law can be used to curb corruption in such processes. Finally, this study contributes to the wider global discourse on anti-corruption measures in emergency public procurement.

1.7 Theoretical Framework

1.7.1 Agency theory

Agency theory is generally a management theory on the relationship between agents and their principals. It is noteworthy, that this theory is typically a corporate governance theory, however, it shall be extrapolated and contextualized to inform this study. This theory provides that when a principal hires an agent to act on their behalf, the agent may not always act in the best interests of the principal. It proposes that an agent may prioritize their personal interests, hence creating a conflict of interest. With regards to emergency public procurement processes, this conflict of interest may manifest as corruption and other unethical behavior by procurement officials in a procuring entity.

Michael Jensen and William Meckling are major proponents of this theory. Michael Jensen²² has written extensively on this topic, particularly on agency costs, which are the costs associated with resolving conflicts between principals and agents, and the role of corporate governance in reducing these costs. Michael argues that the principal goal of corporations should be to maximize shareholder value. He proposes that aligning the interests of managers with the interests of shareholders may help reduce agency costs, hence promoting ethical behavior. In the context of emergency public procurement processes, aligning the interests of procurement officers with the interests of the public can help promote ethical behavior and reduce the likelihood of corruption.²³ This may be achieved by designing the emergency procurement processes to prioritize transparency, accountability, and efficiency. By doing so, the incentives of procurement agents are aligned with the goals of the public, which can help reduce agency costs and most importantly, promote ethical behavior hence curbing corruption.

William Meckling²⁴ argues that the separation of ownership and control in modern corporations creates a situation in which managers who are the agents do not always act in the best interests of shareholders who are the principals. They suggest that agency costs, can be reduced by aligning the incentives of agents with the goals of principals. In the context of emergency public procurement processes, reducing agency costs can help curb corruption and other unethical behavior. One way to do this is by aligning the incentives of procurement agents with the goals of the public. For example, by rewarding agents for finding the most cost-effective solutions rather than awarding contracts to companies with the highest bid. This can lead to more efficient procurement processes and can reduce the likelihood of corruption.

However, the application of agency theory alone is insufficient to fully capture the complexities of corruption in emergency procurement, particularly in the public sector. Institutional cultures and power dynamics within public organizations must also be considered. Procurement decisions are often influenced by institutional cultures that may tolerate or even encourage corrupt behavior, especially when public accountability mechanisms are weak. Power dynamics, both within the procurement unit and in relation to external political influences, can significantly skew

²² Jensen M, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function', *Business Ethics Quarterly*, 12(2), 2002, 245.

²³ Chrisidu-budnik A, Przedańska J, 'The Agency Theory Approach to the Public Procurement System', *Wroclaw Review of Law, Administration & Economics*, 2017, 155.

²⁴ Meckling W, Jensen M, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure',

decision-making processes. Political interference, driven by the desire for patronage or political favors, can create an environment ripe for corruption.

Moreover, legal and political structures play a crucial role in enabling or preventing corruption. Weak enforcement of procurement regulations, inconsistent legal frameworks, and lack of political will to address corruption can perpetuate systemic failures. Public accountability mechanisms, such as external audits, oversight bodies, and transparent reporting practices, are essential in holding procurement officers accountable for their actions. Without robust accountability structures, even well-designed procurement processes can be undermined by corrupt practices. Michael Jensen and William Meckling's²⁴ work on agency costs highlights the separation of ownership and control in organizations, where agents may act in their own interest rather than the principal's. This aligns with the situation in emergency public procurement, where procurement officers may act for personal gain, particularly in the absence of strong checks and balances. Aligning the interests of agents with the public's goals—such as rewarding agents for cost-effective procurement solutions—could reduce agency costs and corruption, fostering ethical behavior in procurement.

In conclusion, this theory provides a useful framework for understanding the relationship between principals and agents in the context of emergency public procurement processes. By aligning the incentives of procurement agents with the goals of the public, it is possible to reduce agency costs and promote ethical behavior. Proponents of Agency Theory, such as Michael Jensen and William Meckling, have argued that aligning the interests of agents with the interests of principals is essential for reducing agency costs and promoting ethical behavior.

1.7.2 Principal-Agent-Client Theory in Emergency Procurement

The Principal-Agent-Client Theory provides a more nuanced understanding of procurement corruption by considering the role of institutional culture, political structures, and legal accountability. For instance, in Kenya's emergency procurement processes, the political environment often influences procurement decisions. Political elites may pressure procurement agents to award contracts to politically connected firms, circumventing the established legal

frameworks.²⁵ The public, as the ultimate client, suffers from this lack of accountability, as their interests are sidelined in favor of political patronage.

Moreover, the theory addresses issues of hidden characteristics, hidden actions, and hidden intentions, which are crucial in understanding how corruption flourishes in emergency procurement. In Kenya, procurement agents may select contractors based on personal or political relationships rather than merit, a form of adverse selection. Additionally, the hidden action problem occurs when agents make procurement decisions that are not directly observable by the principal or the public. This lack of transparency is a significant driver of corruption, as agents exploit their discretion for personal gain.

Furthermore, hidden intentions emerge when agents act in ways that are only revealed after contracts are signed, making it difficult for the principal (the government) to monitor and correct corrupt practices. The moral hazard created by this information asymmetry exacerbates the risk of corruption, as agents may exploit their position without fear of immediate repercussions.²⁵ This dynamic is evident in the Kenyan context, where procurement laws are often poorly enforced, allowing agents to operate with little fear of accountability.

Kenya's public procurement system, particularly in emergency situations, is often marred by legal and political challenges. The legal framework, while designed to prevent corruption, has significant gaps that facilitate systemic failures. For instance, there are weaknesses in enforcement mechanisms and a lack of clear guidelines on the involvement of third-party entities, such as the public, in monitoring the procurement process. This lack of institutional accountability exacerbates the problem, leading to a situation where agents (contractors) are not held accountable for their actions.

Moreover, Kenya's political and legal structures can perpetuate power imbalances, where political interference influences the selection of contractors. This further weakens the enforcement of procurement laws and limits the effectiveness of legal remedies against corrupt practices. Institutional cultures within both government and contracting agencies may also be resistant to change, especially in cases where corruption is institutionalized.²⁵

²⁵Bernhold, Torben, and Niklas Wiesweg. "Principal-agent theory: Perspectives and practices for effective workplace solutions." *A handbook of management theories and models for office environments and services* (2021): 117-128.

The power dynamics between the government, procurement agents, and contractors further complicate the effectiveness of procurement laws in combating corruption. Political influence often shapes procurement decisions, with powerful political figures using their influence to direct contracts to favored firms. This institutional culture, where power and patronage outweigh merit and transparency, undermines the legal structures designed to prevent corruption.

Kenya's Public Procurement and Disposal Act (PPDA) provides a legal framework for procurement, but the law is not always effectively enforced. Weak institutional capacity, combined with a lack of political will to hold corrupt actors accountable, perpetuates the problem. The Principal-Agent-Client Theory highlights the need for robust public accountability mechanisms that go beyond contracts to ensure transparency and fairness in procurement processes.

1.8 Literature Review

Government emergency procurement in Kenya is equally receiving increasing interest. This growing interest is driven by several factors, including the significant amount of government expenditure on procurement processes, the increasing misuse of public funds and declining professionalism in these processes, the frequency of procurement scandals at the national and County levels, the desire by donors to minimize the risk of foreign aid being contaminated by corruption, and the serious deficiencies in the efficient and effective management of public procurement systems.²⁶

Additionally, the demand for good corporate governance, transparency, and accountability from the public, as well as the increasing role of media and civil society organizations in exposing unethical acts by the government, have all contributed to the heightened focus on emergency public procurement corruption in developing countries.²⁷

The issue of corruption in emergency procurement processes has been a growing concern in Kenya, particularly given the vast sums of public funds allocated to procurement activities. The

²⁶ Caroline Cherotich, Stellan Omari, 'Effectiveness of Procurement Practices on the Performance of County Governments in Kenya: A Case of Kericho County Government';IJARKE Business & Management Journal, 2018.

²⁷ Basheka Benon .C. 'Economic and political determinants of public procurement corruption in developing countries: An empirical study from uganda', *Emerald Publishing Limited*, 3rd January 2011,Vol 11,33-60.

effectiveness of Kenya's public procurement laws in preventing corruption in emergency procurement has garnered attention, particularly in the wake of several instances of abuse and mismanagement of resources. This essay reviews the current legal frameworks, procurement regulations, and institutional oversight in Kenya and critically analyzes their role in minimizing corruption, with a specific focus on emergency procurement.

Kenya's public procurement laws are primarily governed by the Constitution of Kenya, 2010, and the Public Procurement and Disposal Act (PPDA), 2015, which aim to ensure transparency, fairness, and accountability in public procurement. Articles 227 and 58 of the Constitution of Kenya specifically lay the groundwork for regulating procurement within the public sector, mandating that procurement be conducted in a manner that is fair, competitive, transparent, and cost-effective.

The PPDA provides the legal framework for procurement processes, including emergency procurement, and addresses issues such as efficiency, transparency, and accountability in public procurement. Sections 69(3), 103, 104, and 92 of the PPDA highlight the conditions under which emergency procurement can occur, establishing guidelines for urgent procurement when following normal procedures is impractical (Public Procurement and Disposal Act, 2015). Despite these provisions, concerns remain regarding the implementation and enforcement of these laws, particularly in the context of emergencies when expediency often undermines due process.²⁸

The Public Procurement Regulatory Authority (PPRA) is tasked with overseeing the implementation of the PPDA and ensuring compliance with procurement regulations. As part of its mandate, the PPRA monitors procurement practices, including those related to emergency procurement, ensuring that all procurement activities are carried out according to the statutory requirements set out in the PPDA and the Public Procurement and Disposal Regulations (PPDR). The PPRA is responsible for auditing procurement records, reviewing transactions, and investigating any discrepancies or allegations of corruption.

The importance of the PPRA's role in maintaining transparency is evident in its efforts to ensure that even in emergency procurement scenarios, procuring entities adhere to the regulatory

²⁸Matunga, Denish Ateto. "Procurement practices and level of implementation of public procurement regulations in the devolved systems of government in Kenya." PhD diss., JKUAT-COHRED, 2023.

framework. However, while the PPRA is effective in enforcing compliance in many cases, its oversight is sometimes hindered by capacity challenges, resource limitations, and political interference.²⁸ This has led to concerns about the efficacy of its oversight, particularly in cases where emergency procurement bypasses regular competitive bidding processes.

Kenya's procurement law outlines several methods for procuring goods and services, including open tendering, restricted tendering, and direct procurement (PPDA, 2015). Direct procurement, in particular, is often used in emergency situations where time constraints make it impractical to follow standard procurement procedures. While this method allows for quicker acquisition of goods and services, it is also highly susceptible to corruption, favoritism, and abuse, especially when conducted without sufficient oversight.²⁹

The use of direct procurement has led to concerns about the lack of competition, which increases the risk of inflated prices and subpar service delivery. According to Matunga,²⁸ poor budgeting and inadequate procurement planning contribute significantly to inefficiencies in emergency procurement, as public entities may prioritize expediency over compliance with procurement laws. Moreover, Matunga²⁸ argues that the lack of effective oversight mechanisms in direct procurement processes contributes to the persistence of corrupt practices, such as kickbacks and conflict of interest among procurement officers.

In contrast, open tendering, the most transparent procurement method, is designed to enhance competition, reduce costs, and improve the quality of goods and services. However, Jillo et al.²⁹ note that the extensive procedures involved in open tendering can lead to delays, making it less suitable for urgent procurement needs. Therefore, while open tendering may reduce corruption risks in non-emergency contexts, it may not be feasible for time-sensitive procurement in emergencies.

Despite the strong legal framework, several challenges impede the effective implementation of Kenya's procurement laws, particularly in emergency procurement scenarios. The fragmented structure of procurement units in many public entities and the lack of coordination between procurement departments and senior management have been identified as major barriers to

²⁹Jillo, M., M. K. Kibuine, and D. W. Kimemia. "PROCUREMENT PRACTICES AND PROCUREMENT PERFORMANCE OF PUBLIC HOSPITALS IN KENYA: A CASE OF KENYATTA NATIONAL HOSPITAL." *African Journal of Emerging Issues* 6, no. 19 (2024): 73-86.

effective procurement practices. These organizational weaknesses create bottlenecks, which delay decision-making processes and make it difficult to enforce compliance with procurement regulations.

Further, Mukura et al.³⁰ highlight that procurement staff in Kenya often lack the necessary training and capacity to effectively implement procurement laws. Many procurement officers are not well-versed in the intricacies of the PPDA and its regulations, resulting in procedural errors, inefficiencies, and increased vulnerability to corruption. Matunga²⁸ suggests that the lack of institutional capacity to enforce procurement laws effectively leads to poor procurement performance, contributing to systemic corruption.

Moreover, the limited role of procurement officers in decision-making processes further exacerbates the problem. In many public entities, procurement officers report to the accounting officers but are excluded from senior management meetings where critical decisions are made. This lack of inclusion in strategic decision-making processes weakens the ability of procurement units to push for transparent and accountable practices.

To address the persistent issues of corruption in emergency procurement, it is essential to strengthen both the legal framework and institutional oversight mechanisms. First, increasing the capacity of the PPRA to monitor procurement activities and enforce compliance with procurement regulations is crucial. This can be achieved through enhanced staffing, better training, and improved funding for the PPRA to carry out its functions more effectively.

Additionally, training and capacity building for procurement officers in public entities should be prioritized. This would ensure that procurement officials are fully aware of the legal frameworks, procurement methods, and anti-corruption strategies necessary to prevent corruption in both emergency and non-emergency procurement scenarios.

Finally, greater transparency in procurement processes, including the publication of all procurement decisions and the establishment of accessible channels for reporting corruption and

³⁰ Mukura, P., Noor Shalle, M. Kanda, and P. Ngatia. "Role of Public Procurement Oversight Authority on Procurement Regulations in Kenyan State Corporations. A Case of Kenya Electricity Generating Company (KenGen)." *International Journal Of Academic Research In Accounting, Finance And Management Sciences* 6, no. 3 (2016).

procurement irregularities, would enhance accountability and reduce the opportunity for corruption.

Kenya's public procurement laws have made significant strides in addressing corruption in procurement processes, but challenges remain, particularly in the context of emergency procurement. While the legal frameworks set out in the Constitution of Kenya and the PPDA provide a strong foundation for procurement regulation, the effectiveness of these laws in preventing corruption is hindered by capacity challenges, organizational bottlenecks, and weak enforcement mechanisms. Strengthening institutional oversight, improving the transparency of procurement processes, and investing in the training of procurement officers are essential steps toward improving the effectiveness of public procurement laws in Kenya and reducing corruption in emergency procurement scenarios.

1.8.1 The Relationship Between Emergency Procurement and Corruption

Kissi, Osei-Tutu and Safowaa³¹ state that emergency procurement processes are distinct from all other procurement methods because emergency procurement processes require immediate response and as such, the procurement process is typically expedited in order to deliver the urgently needed goods, services and works. These goods, services and works are often procured from private companies. Often times, the purchases flow from long-term agreements with the concerned companies, which agreements may have included clauses providing for future cooperation in the event of an emergency.

Huo and Xu³² explain that emergency procurement processes are only justifiable where there is a real urgency. However, it is noteworthy that the mere existence of an urgency is not sufficient to justify evoking an emergency procurement process. Only urgent needs that were unforeseeable and unpreventable are covered under this method of procurement. Moreover, poor planning cannot suffice as a justification for emergency public procurement. If there is enough time to go through the normal open tendering processes, then emergency procurement processes should not

³¹ Kissi E, Osei-Tutu E, Osei-Tutu S, 'Sole Sourcing Procurement: The Ghanaian Procurement Experience', *researchgate*, August 2018
https://www.researchgate.net/publication/341580734_SOLE_SOURCING_PROCUREMENT_THE_GHANAIAN_PROCUREMENT_EXPERIENCE on 16 January 2023.

³² Huo Hong, Xu Huanning, 'Construction of Emergency Procurement System and System Improvement Based on Convolutional Neural Network', *PubMed Central*, 23 July 2022
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9338874/> on 16 January 2023.

be preferred. Emergency procurement processes are only justified when they are absolutely necessary and the other procedures would be impracticable. This is because as Schultz and Søreide³³ state, the primary concern in emergency procurement processes is the urgency with which the goods, services and works are required which increases the unlikelihood to conduct efficient procurement in light of the severe time pressure.

Emergency procurement processes are prone to corruption due to the limited time and resources available for oversight and accountability measures. This review of literature examines why and how corruption in emergency public procurement processes occur.

Schultz and Søreide³⁴ state that corruption in emergency procurement occurs due to the fact that derogation from normal procurement processes is justified. Furthermore, they state that regardless of who conducts corruption, the form of corruption is twofold. The first form of corruption is manifested through the misuse of lawful derogations from the standard rules. Secondly, corruption manifests in the form of concealed breaches of procurement rules where at face value it seems that due procedure was adhered to. Public officials or the concerned suppliers engage in corrupt conduct that is within the grey areas of the law; in other words, most corrupt acts are not obviously corrupt.

Sope, Petherick, Ojomo and Mabece³⁵ explore the reasons which contribute to corruption during emergency procurement processes. The first reason is due to the fact that during emergencies, governments contract directly with preferred suppliers hence omitting any competition. Similarly, various aspects of the procurement process are modified. These processes include the supplier verification process which is eliminated since suppliers are chosen non-competitively and opaquely. This may lead to exorbitant pricing. The conduct of contractual formalities is modified as some governments chose to conclude contracts informally and modify terms of payment to provide payments to suppliers in advance. Similarly, the contract implementation is impacted as in emergencies there is limited monitoring and oversight which leads to acquisition of substandard goods and services or poor delivery of the concerned goods and services.

³³ Schultz J, Søreide T, 'Corruption in Emergency Procurement', *U4*, 7, 2007, 6.

³⁴ Schultz J, Søreide T, 'Corruption in Emergency Procurement', *U4*, 7, 2007, 6.

³⁵ Sope W, Petherick A, Ojomo E, Mabece S, 'Crisis Responses and Corruption in Emergencies', *Global Integrity Anti-Corruption Evidence Programme*, 2022, 4.

Sope *et al.* proceed to state that legal requirements related to transparency are unlikely to be observed in states that experience high levels of corruption. With limited transparency, verification that procurement decisions are consistent with the laws is harder. Moreover, during emergency procurement processes, a majority of governments centralize their procurement transactions, while this safeguards efficiency and integrity, it magnifies the ramifications of unethical procurement. In addition, the discretion of public officials increases during emergencies due to the focus on speedy delivery of the urgent need. This impacts on accountability of the concerned procuring entities. There are a few countries that have made provisions in law to immunize public officials from accountability for decisions they make in procuring needed goods and services required to mitigate an emergency.³⁶ Such countries include Canada³⁷ and India³⁸, whose laws guarantee immunity for public officers acting in good faith to respond to emergencies; the immunity extends to the acts they commit as they procure goods and services. Corruption is also said to result from operational barriers such as lack of electronic procurement systems which would otherwise be more efficient in holding the procuring entities accountable for their conduct during the procurement processes.³⁹

1.8.2 Effectiveness and implementation of the public procurement laws in Kenya in fighting corruption during emergency procurement

The COVID-19 pandemic is one such catastrophe that created urgent need for goods such as vaccines and personal protective gear including masks and gloves. It was impracticable to expect the relevant procuring entities to go through lengthy open tendering processes while Kenyans suffered from the COVID-19 virus. The Kenyan government had to act fast by, among other things, evoking emergency public procurement processes. The health sector in Kenya was directly involved through its agencies in procuring the required goods.⁴⁰ Particularly, KEMSA,

³⁶ Hoffman S, 'Responders' Responsibility: Liability and Immunity in Public Health Emergencies', *The Georgetown Law Journal*, 96(6), 2007.

³⁷ Khoury L, Klein A, Couture-Ménard M, Hammond K, 'Governments' Accountability for Canada's Pandemic Response', *Journal of Public Health Policy*, 43, 2022, 222-233.

³⁸ Marpakwar Chaitanya, 'Officers have 100% Immunity under the Disaster Management Act, Says Civic Chief', *India Times*, 21 December 2022 <https://timesofindia.indiatimes.com/city/mumbai/officers-have-100-immunity-under-disaster-mgmt-act-says-civic-chief/articleshow/96385396.cms> on 17 January 2023.

³⁹ Mutangili S, 'Role of E-Procurement Practices in Fighting Fraud and Corruption in Public Procurement', *Stratford Journal of Procurement & Supply Chain*, 3(2), 2019, 41.

⁴⁰ National Taxpayers Association: 'Emergency Public Procurement in Kenya: The Case of the Health Sector Procuring for COVID-19', 6.

having the duty to procure and distribute medical goods to public health institutions,⁴¹ was in charge of procuring the required goods during COVID-19. Reports have shown that over seventeen billion Kenya shillings worth of stock at KEMSA are unaccounted for. The International Monetary Fund (IMF) demanded an audit of the COVID-19 spending since it financially supported Kenya during the pandemic.⁴²

It was later uncovered that corruption was the root cause for these losses. At face value, the public officials seem to have followed due process for emergency procurement processes. There was indeed an urgent need for medical supplies during the pandemic and competitive processes would be highly inefficient and impractical. However, the anti-corruption measures in emergency procurement processes were ineffective. Therefore, public officials within KEMSA overstated the value of the supplies that were required to be purchased and they stole the supplies from the warehouses to sell for profit to the Kenyan public.⁴³ The fact that the officials would adhere to the law and still manage to engage in corrupt and fraudulent activities demonstrates a problem within the law.

The 2017 general election in Kenya was marred by significant irregularities, including the mismanagement of the biometric voter register equipment procurement.⁴⁴ This study examines how inadequate laws in Kenya contributed to the controversies surrounding the procurement of the biometric voter register equipment by the Independent Electoral and Boundaries Commission during the 2017 election cycle.⁴⁵ The 2010 constitution was widely hailed as a transformative document that would break with Kenya's authoritarian past and establish a more accountable and democratic system of governance. However, the paper argues that the inadequacy of the legal framework governing procurement processes, particularly in the electoral domain, undermined the implementation of these reforms and contributed to the IEBC biometric voter register equipment scandal in 2017.

⁴¹ Section 4, *The Kenya Medical Supplies Authority Act* (2013).

⁴² Ngugi Brian, Oketch Angela, 'COVID Millionaires Scam: Sh17 Billion Remains Unaccounted for at KEMSA', *Nation*, 8 May 2022 <https://nation.africa/kenya/news/covid-millionaires-scam-sh17-billion-remains-unaccounted-for-at-kemsa-3808276> on 13 January 2023.

⁴³ Malalo Humphrey, 'Kenya Anti-graft Agency Slams Procurement of COVID-19 Equipment', *Reuters*, 24 September 2020 <https://www.reuters.com/article/uk-kenya-corruption-idAFKCN26F3C8> on 13 January 2023.

⁴⁴ Harrington J., Manji A., 'Restoring Leviathan? The Kenyan Supreme Court, constitutional transformation, and the presidential election of 2013', *Taylor & Francis* 2015, 175-192.

⁴⁵ Opalo Ken Ochieng, 'Another Disputed Election Batters Kenya's Institutions', *University of California Press* 2018, 187-193.

In conclusion, corruption in emergency public procurement processes poses a significant threat to the effectiveness of emergency response efforts.⁴⁶ The forms of corruption in emergency procurement processes are the misuse of lawful derogations from the standard rules and in the form of concealed breaches of procurement rules. The causes of corruption in emergency procurement processes include the lack of transparency and accountability, limited monitoring and oversight, limited availability of goods and services during an emergency and the wide discretion conferred on public officers. The impact of corruption on the emergency procurement processes includes resulting in the inefficient use of resources, the procurement of substandard goods and services at inflated prices, and ultimately, the erosion of public trust in government institutions. To mitigate corruption in emergency procurement processes, there may be a need to establish transparency, accountability, and effective monitoring mechanisms.⁴⁷

1.9 Research Gap

Despite the existence of public procurement laws in Kenya, there is a dearth of research that specifically examines the effectiveness of these laws in preventing corruption in emergency procurement processes. While some studies have analyzed the effectiveness of public procurement laws in general, there is a need for research that focuses on emergency procurement processes, which are particularly susceptible to corruption as already discussed above. Therefore, there is a research gap in understanding how well the public procurement laws in Kenya prevent corruption in emergency procurement processes, and the factors that contribute to corruption in this context.

1.10 Methodology

This study utilizes the doctrinal legal research methodology to achieve the aforementioned research objectives. Accordingly, the study shall collect and analyze relevant information first, from primary sources which include the COK, Acts of Parliament and attendant regulations, International Treaties and Protocols, Model Laws and case law. Second, the study shall gather and analytically discuss information sourced from secondary sources which include academic

⁴⁶ Duri Jorum, 'Corruption in Times of Crisis', *Transparency International*, 16 March 2021 <https://knowledgehub.transparency.org/assets/uploads/kproducts/2021-Lit-review-on-corruption-and-crises.pdf> on 17 January 2023.

⁴⁷ Magakwe Jack, 'The Root Causes of Corruption in Public Procurement: A Global Perspective', *Intechopen*, 30 August 2022 <https://www.intechopen.com/online-first/83359> on 18 January 2023.

textbooks by reputed authors, peer-reviewed journal articles, and reliable online sources among other secondary sources. The study shall analyze the collected data in a bid to assessing effectiveness of the Kenyan public procurement laws in preventing corruption in emergency procurement processes.

1.11 Chapter Outline

Chapter 2- Kenyan Legal and Institutional framework on public procurement in relation to emergency procurement

This Chapter shall begin by briefly outlining the development of the Kenyan public procurement framework that led to the current framework. This is followed by an analysis of the existent Constitutional, statutory regulatory and institutional framework governing public procurement and narrow it down to emergency procurement in Kenya.

Chapter 3-Analyzing the Impact of Public Procurement Laws on Corruption During Emergency Procurement in Kenya: Effectiveness, Challenges, and Gaps

This Chapter provides insight on the correlation between emergency procurement and corruption. It shall further examine the factors that promote corruption during emergency procurement.

This chapter also assesses the effectiveness of the existing public procurement legal framework in fighting and preventing corruption. Furthermore, it shall identify the lacunaes, gaps and loopholes existing in the public procurement legal framework regarding emergency procurement that create fertile grounds for corruption to flourish. It further illustrates the various instances whereby corruption has prevailed owing to the inadequacies in the legal frameworks.

Chapter 4- Comparative practices and strategies in prevention of corruption in emergency procurement and applicable lessons to the Kenyan context

This chapter analyzes the emergency procurement laws and regulations of various jurisdictions with the aim to borrowing the best norms and practices that can be applied to the Kenyan context in preventing corruption in emergency public procurement processes.

Chapter 5- Conclusion and Recommendations

This Chapter shall make conclusions of the entire study and finally make recommendations based on the finding.



Chapter Two

The Legal and Institutional Framework for Emergency Public Procurement in Kenya

2.0 Introduction

Public procurement is a critical component of Kenya's economy, constituting approximately 26 percent of the country's GDP.⁴⁸ Public procurement is, thus, a process of great public significance, and this explains the raft of laws and frameworks which seek to guide the process in terms of fairness, equity, transparency, competitiveness, and efficiency as required in the Constitution of Kenya 2010.⁴⁹ However, despite these measures, corruption challenges persist in all forms, especially during emergency procurement.⁵⁰

This chapter covers the legal, policy, and institutional framework on emergency public procurement. Specifically, the chapter discusses principles under Constitution of Kenya 2010 and their relevance to procurement practice, especially the extent to which the constitutional principles promote the fight against corruption. The chapter also examines the current statutory and regulatory framework applicable to emergency public procurement and the accompanying institutional arrangements to facilitate the realization of the objectives of the relevant laws, regulations and policies. In this regard, the laws regulating emergency procurement processes are better or worse designed to prevent corruption. The discussion is based on empirical evidence and case studies to establish the impact of the legal and institutional frameworks on preventing corrupt practices, especially during emergencies.

2.1. Historical Evolution of Public Procurement Laws in Kenya: Early Procurement Laws and Their Development

Public procurement in Kenya has evolved over several decades and has been significantly influenced by colonial and post-independence governance structures. The early procurement

⁴⁸ Kamoni, Peter, Onesmus Mbaabu, Susan Wamitu, Kevin Wachira, and Robert Ombati. "Public Procurement price variance in Kenya: extent, Drivers, and Proposed Mitigation." *European Journal of Logistics, Purchasing and Supply Chain Management* 12, no. 2 (2024): 1-13.

⁴⁹ Nyoike, Samson. "Public Procurement Reforms in Kenya: a Quest for Equity and Fairness." PhD diss., University of Nairobi, 2019.

⁵⁰ NATIONAL TAXPAYERS ASSOCIATION. "Emergency public procurement in Kenya: The case of the health sector procuring for covid-19." NTA – Kenya – Pesa Zetu, Haki Yetu. Last modified April 2024. <https://www.nta.or.ke/wp-content/uploads/2024/04/Emergency-Public-Procurement-in-Kenya.pdf>.

practices were rudimentary, with the British colonial government establishing the Central Tender Board in 1955 to handle procurement for the colonial administration.⁴⁹ The process remained underdeveloped post-independence, with minimal changes until 1974, when the Central Tender Board's functions were transferred to the Ministry of Finance. However, this did little to alleviate corruption and inefficiency, which remained a persistent issue. During this period, administrative discretion heavily influenced procurement and lacked sufficient regulations, which allowed for arbitrary decisions and corruption.⁴⁹

The introduction of the Exchequer and Audit Act of 2001 marked a significant shift in procurement governance in Kenya. This legislation established the Public Procurement Directorate (PPD) to strengthen procurement oversight and curb corruption.⁵¹ Despite these efforts, corruption flourished, largely due to inadequate enforcement mechanisms and political interference. The turning point came with the enactment of the Public Procurement and Disposal Act (PPDA) in 2005, which established independent bodies like the Public Procurement Oversight Authority (PPOA) to regulate procurement processes.⁵² This shift towards a more formalized system laid the foundation for the current procurement regulations, although challenges, particularly in emergency procurement, remained. However, corruption remained pervasive despite these reforms, particularly in emergency procurement situations, where expediency often undermines transparency and accountability. This is evident in the case of *Okiya Omtatah Okioti & 2 others v Attorney General & 4 others (2020)*, where concerns were raised about the lack of competitive bidding in large-scale government projects, such as the construction of the Standard Gauge Railway (SGR), leading to allegations of favoritism and procurement malpractice.⁵³

2.2 Constitutional Framework on Public Procurement

2.2.1 Constitutional Provisions Governing Public Procurement in Emergencies

The Constitution of Kenya, 2010, serves as the primary legal framework for public procurement, providing the foundation for transparency, fairness, and equity in the procurement process.

⁵¹ Osamba, B. A., and M. Moronge. "Role of public procurement and asset disposal act (2015) on service delivery in county governments of Kenya." *The Strategic Journal of Business & Change Management* 6, no. 4 (2019): 616-632.

⁵² Ndi, Mutero Wa, Jeremiah M. Kalai, and Susan Chepkonga. "Influence of Community Pressure on Principals' Compliance with Procurement Regulations in Public Secondary Schools in Embu County, Kenya." *Msingi Journal* 8, no. 1 (2024): 60-70.

⁵³ Musiga, Teddy JO. "Okiya Omtatah Okioti & 2 others v Attorney General & 4 others [2020] eKLR Civil Appeal No 13 & 10 of 2015." *SAIPAR Case Review* 3, no. 2 (2020): 14.

Specifically, Article 227 of the Constitution mandates that public procurement be conducted fairly, equitably, transparent, competitive, and cost-effective⁴⁹. This article lays down the principle of accountability in public procurement, applying universally across the public sector. It ensures that public procurement practices aim to serve the public interest, and as such, it becomes crucial when evaluating the framework for emergency procurement. The Constitution does not explicitly address emergency procurement, but its general provisions aim to safeguard public interests by mandating a procurement system that is cost-effective, transparent, and accountable.⁵⁴ This broad constitutional directive guides procurement practices during emergencies, where time constraints may require an expedited procurement process.

Emergency procurement, by its nature, involves expedited processes due to urgent circumstances, such as natural disasters, pandemics, or national security crises. The Constitution recognizes the need for procurement to remain efficient in emergencies, though it does not explicitly outline special provisions for such circumstances. This lack of direct constitutional guidance is addressed by national laws, which provide more explicit instructions on how to proceed with procurement during emergencies while still aiming to uphold the fundamental constitutional principles of transparency, fairness, and accountability.

2.2.2 Legal Framework for Emergency Procurement: National Laws and Exceptions

Corruption during emergency procurement processes in Kenya has been rampant, particularly during crises like the COVID-19 pandemic. The Public Procurement and Assets Disposal Act (PPADA) of 2015 introduced measures aimed at curbing these malpractices, but significant lapses persist. The Kenyan public procurement system, particularly in the context of emergency procurement, is governed by the Public Procurement and Asset Disposal Act (PPADA) of 2015. This law stipulates how procurement processes should be conducted, emphasizing transparency, accountability, and value for money (Public Procurement and Disposal Act, 2015). However, the effectiveness of these regulations in preventing corruption during emergencies has been questioned, particularly during the COVID-19 pandemic. The Kenya Medical Supplies Authority (KEMSA) was involved in inflated procurement practices, purchasing personal protective equipment (PPE) at prices far above market rates, which resulted in a loss of over Ksh 7.8

⁵⁴Mwanarafa, Amina Mustafa, and Anthony Osoro. "Public Procurement Legal Framework and Performance of National Transport and Safety Authority, Kenya." *Journal of Procurement & Supply Chain* 3, no. 1 (2023): 10-22.

billion. Despite provisions under the PPADA, such as Section 103(2)(e), requiring that procurement entities ensure fair pricing and value for money, KEMSA failed to adhere to these guidelines, thus compromising public trust. The lack of adequate oversight, failure to implement incident action plans, and failure to publish detailed expenditure reports led to the mismanagement of resources. These systemic failures underscore the need for stricter enforcement and greater transparency in emergency procurement practices.⁵⁵ The Auditor General's reports indicate that public procurement entities in Kenya were spending nearly 60% more than prevailing market prices, with KEMSA alone reportedly overpaying for PPEs and other supplies. The Public Procurement Oversight Authority (PPRA) investigated and found systemic failures in monitoring procurement processes, citing a failure to adhere to competitive bidding procedures as stipulated under PPADA. Investigations also revealed that direct procurement, although allowed under Section 103 of the Act, was used improperly during the pandemic, as the required justification for circumventing open competition was not provided. These findings underscore the legal and procedural gaps that facilitated the corruption, indicating that while the framework exists, its enforcement remains inadequate. Legal action, though initiated, has not yet resulted in any substantial convictions or recovery of funds, highlighting the ongoing challenge of fighting corruption within emergency procurement.

Internal audit systems within institutions like the National Transport and Safety Authority (NTSA) and KEMSA, meant to ensure compliance with procurement laws, have failed to intercept fraud and corruption in emergency procurement processes. Despite the PPADA's provisions on transparency and accountability, these institutions lacked the necessary internal controls to prevent the mismanagement of public funds during emergencies. At KEMSA, the procurement oversight systems failed to detect overpricing and the lack of competition in the purchase of COVID-19 supplies, leading to the loss of over Ksh 7.8 billion. Similarly, the NTSA, despite having established internal procurement policies, struggled with the implementation of these policies. Internal audits are designed to identify and correct procurement violations, but in both cases, these measures either failed to detect the

⁵⁵ Jackline Kagume & Leo Kipkogei Kemboi. Collective failure in management of public resources: Analysis of Kenya's COVID-19 public procurement breaches. IEA Kenya, 2020, September 23. <https://ieakenya.or.ke/blog/collective-failure-in-management-of-public-resources-analysis-of-kenyas-covid-19-public-procurement-breaches/>

mismanagement or were disregarded altogether. This failure can be attributed to the absence of stringent monitoring mechanisms and inadequate enforcement of procurement procedures. **Error! Bookmark not defined.** For instance, NTSA's reliance on manual reporting and delayed auditing processes allowed procurement irregularities to go unchecked, leading to inefficient and expensive procurement activities. The legal framework mandates that institutions ensure fairness and value for money in procurement, but these legal provisions were not fully implemented, creating an environment where corruption could thrive. Moving forward, strengthening internal audit functions and ensuring compliance with procurement laws could mitigate such issues in the future.

In Kenya, public procurement thresholds are set to ensure transparency and prevent corruption. Under the Public Procurement and Asset Disposal Act (2015), emergency procurement procedures allow deviations from the standard thresholds, enabling public entities to respond to unforeseen situations quickly. The thresholds are determined based on the urgency of the need, with the procurement regulations outlining a clear distinction between regular and emergency procurement. Emergency procurement procedures are intended to fast-track processes like the acquisition of medical supplies during pandemics or disaster responses, but this flexibility can inadvertently lead to corruption if not tightly monitored.⁵⁰ In theory, emergency procurement should serve public interest by allowing faster action, but the lack of detailed and specific emergency guidelines opens room for malpractices, such as inflated prices and lack of competitive bidding.

The urgency in emergency situations creates an environment where deviations from regular procurement rules become more prone to exploitation. The health sector's procurement during the COVID-19 pandemic serves as a prime example of how the absence of clear legal frameworks and threshold determinations led to the misuse of public funds. Investigations conducted by the Auditor General revealed that KEMSA (Kenya Medical Supplies Authority) had lost over KSh. 2.3 billion due to fraudulent activities.⁵⁰ The lack of coordination between government bodies, like KEMSA and County Governments, contributed to a failure in meeting procurement objectives, such as acquiring critical medical supplies.⁵⁰ While the urgency of the pandemic justified rapid procurement, the lack of clear guidelines for ensuring the value for money and maintaining oversight resulted in inflated prices and substandard products being

procured. The findings indicate that some goods, such as personal protective equipment (PPE), did not meet the required quality standards, which was uncovered by the Kenya Bureau of Standards (KEBS). These findings highlight the weaknesses in the emergency procurement process and the failure of existing thresholds to adequately ensure transparency and control.

One key gap in the legal framework is the lack of specific provisions for the management of emergency procurement resources. The absence of a dedicated emergency procurement guideline meant that the government agencies had to rely on ad-hoc decisions, which often bypassed critical steps, like prequalification of suppliers and competitive bidding, which are vital to curbing corruption. The Public Procurement and Asset Disposal Act (2015), specifically sections 103 and 104, which deal with direct procurement, allowed discretion in emergency situations, but there were no clear criteria or oversight mechanisms to ensure accountability.⁵⁰ The gaps in technical capacity, such as the lack of adequate procurement officers trained in emergency response and the absence of integrated systems to track procurement decisions, further exacerbated the potential for corruption. Budget reports indicated that, despite the large budget allocations to the health sector, resource shortfalls were evident, particularly in counties that did not fully utilize the funds allocated to them, further delaying the emergency response.⁵⁰ A more comprehensive framework, with clearer definitions of thresholds and accountability measures, is needed to prevent the recurrence of such issues in future emergencies.

2.2.3 Regulatory Mechanisms for Emergency Public Procurement

In response to concerns regarding the potential misuse of emergency procurement procedures, Kenya has established regulatory mechanisms to ensure accountability. One of the most significant of these mechanisms is the Public Procurement Oversight Authority (PPOA), which monitors and ensures compliance with procurement laws, including those related to emergency procurement. The PPOA has the authority to investigate procurement activities, including those undertaken during emergencies, and can issue sanctions when violations occur. Despite these regulations, enforcement remains a significant challenge. The PPOA, which oversees procurement processes, has faced resource constraints that hinder its ability to monitor the procurement activities of various public entities effectively. This issue became evident when the PPOA could not carry out its mandate fully due to insufficient staffing and financial support, which were particularly problematic during heightened emergency procurement activities.**Error!**

Bookmark not defined. For instance, during the 2017 elections, the urgency surrounding the procurement of election materials led to the bypassing of standard procedures, which led to accusations of mismanagement and corruption within the process.

The PPOA's role in overseeing emergency procurement is crucial because it provides a mechanism for safeguarding against abuse. Furthermore, under the Public Procurement and Asset Disposal Act (2015), procuring entities must report on their procurement activities, including emergency procurements, to ensure transparency in how public resources are spent.⁵⁶ While these regulations are intended to increase accountability, some observers note that their enforcement has often been weak due to insufficient resources and political interference, which can undermine their effectiveness. One of the most contentious aspects of emergency procurement regulations is applying the Access to Government Procurement Opportunities (AGPO) program, which mandates that specific categories of enterprises, such as those owned by women, youth, and persons with disabilities, receive preferential treatment in government procurement. While the AGPO is designed to promote inclusivity and equity, it is not always clear how it applies during emergency procurements. This lack of clarity has raised concerns about potential discrimination and undermining competitive fairness in procurement.**Error! Bookmark not defined.**

In addition to the AGPO, the Public Procurement and Asset Disposal Act (2015) mandates that all procurement decisions, including those in emergencies, be subject to review by the Public Procurement Administrative Review Board (PPARB). This provides an additional layer of oversight and an avenue for dispute redress. However, the effectiveness of these regulatory bodies is often compromised by limited resources, delays in the review process, and the political dynamics that sometimes influence procurement decisions at the highest levels.**Error! Bookmark not defined.** Moreover, the PPDA's preference and reservation schemes—intended to reserve a certain percentage of procurement for marginalized groups—are also subject to scrutiny during emergency procurements. While important for promoting equity, some stakeholders argue that these schemes may be challenging to implement effectively during emergencies when speed is essential, and compliance with these rules could lead to delays.**Error! Bookmark not defined.** This

⁵⁶The Danish Institute for Human Rights. "A REVIEW OF THE LEGAL FRAMEWORK GOVERNING HUMAN RIGHTS AND PUBLIC PROCUREMENT IN KENYA." Last modified February 2023.

raises the question of balancing the need for urgent procurement to ensure inclusivity and fairness.

2.2.4 Emergency Procurement in the Kenyan Legal Framework

Emergency procurement, by its very nature, is designed to facilitate the swift acquisition of goods and services during crises. In Kenya, emergency procurement is regulated under the Public Procurement and Asset Disposal Act (PPADA) of 2015, which provides a framework for handling emergencies that require rapid procurement outside the regular competitive tendering processes.⁵⁷ According to the Act, emergency procurement can occur under conditions of urgent need, such as during national disasters disease outbreaks, or when it is impractical to follow the standard procurement procedures. The Act permits deviations from standard procedures, allowing expedited contracts for goods and services, and works critical for responding to unforeseen events such as natural disasters or pandemics. However, these deviations increase the risk of corruption by reducing transparency, oversight, and competition.⁴⁸

Under Section 63 of the PPADA, emergency procurement is allowed when an urgent situation arises that would cause significant damage or loss to public property, or public health or safety is at risk. The Act allows for direct procurement or minimal competition to expedite the process. The legal framework outlines specific conditions under which emergency procurement is permissible, primarily to prevent delays that could worsen the emergency. However, it also introduces accountability mechanisms to mitigate misuse or corruption risks. These include the emergency justification requirement, proper documentation, and post-procurement audits. Despite these provisions, the application of emergency procurement laws has raised concerns, particularly regarding the discretion given to government officials and the lack of stringent oversight during emergencies.

In the case of *Republic v Public Procurement Administrative Review Board; Accounting Officer, Kenya Rural Roads Authority & 2 others (Interested Parties) Ex Parte Roben Aberdare (K) Ltd*[2019] eKLR, the court addressed the issues of fairness and transparency in public procurement, emphasizing that the procurement process must adhere to the principles of

⁵⁷Susan Wairimu Munene - LLB (UoN), LLM (Notts). "An Overview of Public Procurement in Kenya » Gerivia Advocates LLP." Gerivia Advocates LLP. Last modified June 26, 2020. <https://gerivia.co.ke/176/overview-public-procurement-in-kenya/>.

transparency, competitiveness, and cost-effectiveness, even in emergencies.⁵⁸ This ruling highlights the ongoing struggle to maintain integrity in emergency procurement processes, where the situation's urgency can sometimes override the need for adherence to legal frameworks.

2.2.5 Key Legislation on Emergency Procurement in Kenya

The Public Procurement and Asset Disposal Act 2015 remains the cornerstone of public procurement law in Kenya, including emergency procurement. Under Section 2 of the Act, emergency procurement is undertaken under urgent circumstances that make following of the usual procurement procedures impractical. The Act allows for procurement without competitive bidding in such cases. However, it stipulates that the justification for emergency procurement must be submitted to the Public Procurement Regulatory Authority (PPRA) for approval.⁵⁸ Under Section 77, the Act permits deviations from the standard procurement procedures in cases of national emergency. However, it also requires that these emergency procurements comply with the national principles of fairness, transparency, and accountability. Despite these provisions, the reality often falls short. For example, the rapid procurement process during the COVID-19 pandemic led to the misuse of discretion and inadequate financial controls, which facilitated corruption and inflated pricing.⁴⁸ The rapid procurement process implemented during the COVID-19 pandemic in Kenya exposed severe weaknesses in governance and oversight, which allowed widespread corruption to flourish. The emergency procurement procedures, aimed at quickly acquiring essential medical supplies, bypassed critical financial controls, enabling rampant embezzlement and inflated prices. The Kenya Medical Supplies Authority (KEMSA), in August 2020, was at the center of the scandal, where it was revealed that the agency awarded tenders worth over \$72 million without proper vetting or adherence to procurement laws which undermined the integrity of the procurement process.⁵⁹ Investigations, prompted by public outcry and the hashtag #covidmillionaires, revealed that donor funds, including a substantial donation of PPE from Chinese billionaire Jack Ma, went missing, with reports showing over \$400 million disappearing in the first few months of the pandemic⁵⁹. These revelations were compounded by irregularities in cash transfer programs, where funds intended

⁵⁸Susan Wairimu Munene - LLB (UoN), LLM (Notts). "An Overview of Public Procurement in Kenya » Gerivia Advocates LLP." Gerivia Advocates LLP. Last modified June 26, 2020.

<https://gerivia.co.ke/176/overview-public-procurement-in-kenya/>.

⁵⁹Rasna Warah. Corruption is undermining Kenya's COVID-19 response. ONE.org Africa, 2021, September 29. <https://www.one.org/africa/stories/corruption-undermining-kenya-covid19-response/>

for vulnerable groups were misdirected due to corruption and mismanagement. This not only violated the Public Procurement and Disposal Act but also flouted the principle of transparency mandated under the Constitution of Kenya. Public outrage over these irregularities led to an investigation by the Auditor-General, which uncovered significant gaps in KEMSA's procurement processes. The investigations revealed that critical medical supplies, including personal protective equipment (PPE), were either overpriced or went missing entirely, with reports suggesting the misappropriation of over \$400 million in the initial months of the pandemic.⁵⁹ Despite the evidence, the legal framework proved inadequate to hold responsible parties accountable. There was no decisive action or legal consequences for those implicated, partly due to weak enforcement mechanisms and the absence of a comprehensive anti-corruption strategy for crisis management. Moreover, funds allocated to the pandemic response, including those from donors and the government's supplementary budget, faced a lack of disaggregated reporting, which impeded effective oversight. This created an environment where corruption thrived unchecked, further compounded by gaps in the technical capacity of auditing bodies and the lack of stringent accountability mechanisms within the system. Without clearer legal provisions and stronger enforcement, such corruption will continue to undermine efforts to combat national crises effectively.

The Kenya Public Procurement framework, despite its intention to mitigate corruption, fails to provide adequate safeguards against abuse during emergency procurement processes. Emergency procurements are intended to meet urgent public needs, but the relaxation of established procedures, such as competitive bidding, has opened the door for misuse. A notable example of such misuse is the Standard Gauge Railway (SGR) project, where procurement was fast-tracked, bypassing competitive bidding. The contract, worth approximately Ksh 327 billion (around 3 billion USD), was awarded to China Roads and Bridges Corporation, the same company that had conducted the feasibility study, raising serious concerns of conflict of interest and undue influence.⁵³ Investigations by bodies such as the Auditor-General and the Public Procurement Oversight Authority (PPOA) highlighted multiple shortcomings in the process. In 2014, the Auditor-General's report flagged irregularities in the tendering process, pointing out the lack of transparency in awarding such a large contract without sufficient competitive scrutiny. Despite these findings, no legal action was taken, and the project proceeded. The 2020 Court of Appeal ruling in *Okiya Omtatah Okoiti & 2 Others v Attorney General* confirmed that the project did not

adhere to procurement regulations, but it stopped short of addressing the corruption that had occurred due to the rushed processes. This example underscores a broader systemic issue where legal and procedural gaps, combined with inadequate oversight, enable corruption in emergency procurements. The capacity of oversight agencies, like PPOA, is also constrained by limited funding, making it difficult for them to provide effective real-time monitoring. According to the National Treasury's annual reports, the budget allocated to procurement oversight remains insufficient to carry out comprehensive audits and enforce compliance.⁵² The persistent inadequacies in the procurement law framework, lack of transparency, and constrained resources contribute significantly to the continued corruption within emergency procurement processes.

2.2.6 Challenges in Implementing Emergency Procurement Laws

The enforcement of procurement laws during emergencies in Kenya faces significant challenges, particularly due to inadequate capacity and limited resources within relevant external agencies. While the Public Procurement Regulatory Authority (PPRA) oversees compliance and investigates procurement violations, it faces constraints in enforcement due to understaffing and insufficient technical resources.⁶⁰ The Ethics and Anti-Corruption Commission (EACC), responsible for prosecuting corrupt practices, often lacks the necessary funding and personnel to handle high volumes of emergency procurement cases.⁶⁰ Additionally, while internal auditing functions by the Internal Auditor General (IAG) aim to ensure transparency, they are hindered by gaps in coordination and insufficient funding, which weakens the enforcement of procurement laws during urgent procurement processes (PPRA, 2015). These gaps facilitate the prevalence of corruption, especially when emergency procurement procedures are relaxed.

Emergency procurement procedures in Kenya, intended to expedite critical procurement during crises, are often exploited due to relaxed compliance standards. This leniency can lead to corruption, as procedures that typically ensure transparency and accountability are bypassed. For instance, in 2016, Kenya Power awarded a Kshs. 1.2 billion contract to a Chinese firm that did not meet the required eligibility criteria, violating PPDA (2015) regulations.⁶⁰ This contract, awarded despite the company's incomplete auditing reports, exemplifies how procurement fraud flourishes in emergency situations. The Ethics and Anti-Corruption Commission reported that procurement fraud is widespread, especially at the county level, where bribes and irregular

⁶⁰ Mutangili, Solomon Kyalo. "Challenges influencing compliance to Public Procurement Regulations in Kenya." *Journal of Procurement & Supply Chain* 5, no. 1 (2021): 24-34.

payments are common.⁶⁰ These instances reflect significant gaps in resources and capacity, such as insufficient technical staff, poor enforcement of regulations, and budgetary shortfalls, contributing to widespread corruption in public procurement processes.

Corruption in emergency procurement processes is often exacerbated by relaxed procedures designed to expedite procurement during crises. Despite the Public Procurement and Asset Disposal Act (2015) aiming to promote transparency, competition, and fairness, compliance remains inconsistent due to capacity gaps. These include insufficient staff training, lack of awareness, and weak enforcement by external agencies.⁶⁰ Procurement personnel's limited familiarity with regulations further compounds the issue, as greater knowledge of the laws correlates with higher compliance rates. Consequently, the absence of effective oversight and the rapid nature of emergency procurement increase the risk of fraudulent practices, undermining the law's integrity. These gaps, particularly in technical capacity and enforcement resources, hinder the full implementation of procurement regulations, leaving the system vulnerable to misuse.⁶⁰

The use of ICT in Kenya's procurement process has been an essential tool in improving transparency and accountability, particularly in emergency procurement. The government's push for e-governance has led to the development of the Public Procurement Oversight Authority (PPOA) portal, which helps advertise tenders and awards contracts above Kshs. 5 million.⁶⁰ However, the integration of ICT has faced significant challenges, including inadequate technical capacity and limited internet access, particularly in rural areas. These gaps hinder the full realization of ICT's potential to reduce corruption, as procurement processes remain susceptible to manipulation during emergencies when procedures are relaxed. Furthermore, the lack of proper training for procurement officers exacerbates these issues, as they are not equipped to effectively use digital tools to ensure compliance and prevent fraud.

In Kenya, staff training is a significant challenge in implementing emergency procurement laws, which often leads to corruption due to the relaxation of procedures during emergency situations. Many public procurement staff lack the necessary technical knowledge of procurement regulations, as noted by the PPOA (2013) and KISM (2018), who highlighted the deficiency in understanding legal frameworks and procedures.⁶⁰ This knowledge gap opens the door for unethical practices, such as opaque tendering and discriminatory supplier selection. The ambiguity in procurement rules further exacerbates the issue, allowing trained officers to exploit

these gaps for personal gain. Without consistent, dynamic training, procurement officers struggle to navigate regulations effectively, leading to poor compliance and fostering environments where corruption thrives. Thus, the lack of comprehensive training and technical capacity among procurement staff is a critical vulnerability that contributes to corruption in emergency procurement processes.

2.3 Institutional Framework Governing Emergency Procurement and Anti-Corruption Measures

2.3.1 Directorate of Criminal Investigations (DCI)

The Directorate of Criminal Investigations (DCI) ensures integrity and transparency within Kenya's public procurement system, especially during emergency procurement processes. In cases where procurement procedures are expedited due to urgent national needs, such as health crises or disaster relief, the DCI is tasked with investigating any irregularities or acts of corruption that may arise. Emergency procurement processes are particularly susceptible to corruption due to the limited time for vetting suppliers, lack of competition, and heightened pressures to deliver quickly. The DCI's mandate involves conducting thorough investigations into alleged misconduct by public officials or contractors involved in emergency procurement, including fraud, bribery, or abuse of power⁶¹. For instance, the DCI has been pivotal in uncovering corruption cases where emergency procurement has been misused for personal gain, such as inflated prices for medical supplies during the COVID-19 pandemic. The DCI strengthens the accountability framework by investigating these cases and collaborating with other agencies, such as the Ethics and Anti-Corruption Commission (EACC). Furthermore, the DCI's involvement ensures that perpetrators of corruption are prosecuted and stolen assets are recovered, contributing to the fight against public procurement corruption.⁶² The effectiveness of the DCI in these instances underscores its importance in maintaining public trust and promoting lawful conduct in emergency procurement operations.

⁶¹Mwembi, Isabella Nyabonyi, and Duncan O. Ochieng. "Security and multi-agency approaches in combating corruption in the public service in Nairobi City County, Kenya." *Reviewed Journal of Social Science & Humanities* 4, no. 1 (2023): 569-584.

⁶²Business Daily. "Procurement agency can play crucial role in anti-corruption fight." Last modified July 24, 2019. https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/procurement-agency-can-play-crucial-role-in-anti-corruption-fight-2258618#google_vignette.

2.3.2 Ethics and Anti-Corruption Commission (EACC)

In emergency procurement, the Ethics and Anti-Corruption Commission (EACC) plays a critical role in ensuring transparency and mitigating corruption risks. Emergency procurement often bypasses standard procurement procedures, exposing the process to unethical practices and abuse. The EACC's mandate is crucial in preventing these irregularities by monitoring procurement processes, conducting investigations, and ensuring that emergency procurement adheres to legal and ethical standards. Ochieng⁶³ highlighted that integrity is the cornerstone of public procurement, ensuring fairness, transparency, and compliance. This is particularly essential in emergency procurement, where speed and flexibility could otherwise lead to oversight. The EACC's efforts are crucial in upholding these principles, especially in an environment where public funds are at risk of misallocation or misuse. For example, in Kenya, there have been instances where emergency procurement has resulted in inflated prices or mismanagement, necessitating the EACC's intervention to investigate and take corrective action⁶⁴. The commission's role in enforcing ethical practices and scrutinizing procurement processes helps maintain emergency accountability. According to the Public Procurement and Disposal Act, all emergency procurement must be transparent, justified, and accountable, with the EACC ensuring that any deviation from these standards is promptly addressed. This demonstrates the essential role of the EACC in safeguarding public procurement integrity, particularly in emergency procurement processes where risks are heightened.

2.3.3 Office of the Auditor General (OAG)

The Office of the Auditor General (OAG) plays a vital role in overseeing public procurement, including emergency procurement, to safeguard against corruption and ensure the efficient use of public funds. Emergency procurement is inherently susceptible to misuse due to its expedited nature, which can bypass regular procurement processes. The OAG's mandate, as stipulated in the Constitution of Kenya under Article 229 and the Public Audit Act (2015), is crucial in ensuring that procurement during emergencies adheres to legal frameworks and is free from corruption. The OAG is responsible for auditing the financial transactions related to public

⁶³Collins Ochieng, Obura. "Role of Integrity in Enhancing Effective Procurement Practice in Kenya Bureau of Standards." (2019).

⁶⁴Onyango, Gedion. "Social processes of public sector collaborations in Kenya: unpacking challenges of realising joint actions in public administration." *Journal of the Knowledge Economy* (2024): 1-31.

procurement, assessing compliance with established procurement laws and ensuring the effectiveness of internal controls. For instance, the OAG conducts performance and forensic audits to uncover financial mismanagement and fraudulent activities within emergency procurement procedures.⁶⁵ Moreover, the OAG's role extends to providing independent oversight of procurement practices, helping to ensure that funds allocated during emergencies are used appropriately and effectively. In cases of irregularities, the OAG reports to Parliament, which can trigger investigations by other oversight bodies such as the Ethics and Anti-Corruption Commission (EACC).⁶⁶ This robust system of checks and balances, including comprehensive audits, is essential for maintaining public trust and ensuring that emergency procurement is not misused.

2.3.4 Public Procurement Regulatory Authority (PPRA)

The Public Procurement Regulatory Authority (PPRA) is critical in regulating Kenya's public procurement system, particularly in emergency procurement processes. As part of the institutional framework governing procurement, the PPRA ensures compliance with procurement laws and monitors the functionality of procurement systems, especially when speed and efficiency are paramount during emergencies. The PPRA's role extends to providing technical support, offering training, and fostering awareness of legal standards that govern procurement, which is crucial in maintaining integrity during urgent procurement situations. For example, in national crises, such as natural disasters or health emergencies, where procurement procedures must be expedited, the PPRA actively oversees emergency procurement processes to prevent corruption and ensure that public funds are utilized prudently.⁶⁷ By collaborating with agencies like the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI), the PPRA helps mitigate corruption risks often associated with emergency

⁶⁵Kanini, Joyce M. "Determinants Of Effectiveness Of Public Sector Audit In Kenya." PhD diss., KCA University, 2023.

⁶⁶Office of the Auditor-General, Kenya. "SUMMARY OF THE AUDITOR-GENERAL'S REPORT ON NATIONAL GOVERNMENT 2021/2022." Last modified May 2023. <https://www.oagkenya.go.ke/wp-content/uploads/2023/05/SUMMARY-REPORT-OF-THE-AUDITOR-GENERAL-ON-NATIONAL-GOVERNMENT-2021-2022.pdf>.

⁶⁷The National Treasury. "NATIONAL PUBLIC PROCUREMENT AND ASSET DISPOSAL POLICY." The National Treasury of Kenya. Last modified December 2021. <https://www.treasury.go.ke/wp-content/uploads/2021/12/NATIONAL-PUBLIC-PROCUREMENT-AND-ASSET-DISPOSAL-POLICY-2020.pdf>.

procurements, such as inflated prices or substandard goods.⁶² This collaboration ensures that the procurement system is not exploited in times of urgency. Therefore, the PPRA's role is indispensable in safeguarding the integrity of public procurement and ensuring that emergency procurement processes are conducted transparently and ethically, thereby fostering public trust.

2.3.5 Public Procurement Administrative Review Board (PPARB)

The Public Procurement Administrative Review Board (PPARB) oversees procurement decisions to ensure fairness, transparency, and accountability in public procurement processes. In emergency procurement, PPARB's mandate is vital as it ensures that even urgent procurement activities are conducted within the bounds of the law, preventing any undue influence or corruption.⁶⁸ In emergency procurement situations, where time constraints often lead to bypassing regular tendering processes, the PPARB's oversight becomes crucial to safeguard against corrupt practices, such as favoritism or selecting unsuitable contractors. For example, the case of *Okiya Omtatah Okoiti & 2 Others v Attorney General & 4 Others [2020]* illustrates how procurement processes, even in exceptional circumstances like the construction of the Standard Gauge Railway (SGR), must still adhere to constitutional requirements, including transparency.⁵³ The Court emphasized that failing to follow competitive bidding, even under government-to-government agreements, could lead to legal challenges. Thus, in emergency procurement, PPARB's role is to ensure that any deviation from standard procurement procedures is justified, well-documented, and not a cover for corruption. Therefore, PPARB provides an avenue for addressing grievances and reinforces the integrity of emergency procurement procedures by ensuring compliance with legal standards and preventing the misuse of power in procurement decisions.

2.3.6 Office of the Director of Public Prosecutions (ODPP)

In the context of emergency procurement, the Office of the Director of Public Prosecutions (ODPP) plays a critical role in ensuring the integrity of procurement processes by investigating and prosecuting corruption-related offenses. The ODPP is authorized under the Kenyan Constitution and the ODPP Act of 2013 to oversee investigations conducted by other agencies, such as the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption

⁶⁸Matunga, Denish Ateto. "Procurement Practices and Level of Implementation of Public Procurement Regulations in the Devolved Systems of Government in Kenya." PhD diss., JKUAT-COHRED, 2023.

Commission (EACC). Given the urgency and the often-limited transparency of emergency procurement, the ODPP's involvement is essential to curbing potential abuse. The agency ensures that procurement activities are not exploited for personal gain, especially during emergencies. A challenge noted in the literature is the lack of sufficient evidence, which has often hindered the prosecution of corruption cases, as seen in the inadequate presentation of evidence by investigating bodies like the DCI and EACC.⁶¹ Moreover, emergency procurement cases can be particularly challenging due to the rapid decision-making required and the potential for bypassing established procedures. The ODPP's role, therefore, extends beyond prosecution to ensuring that investigative agencies adhere to rigorous standards of evidence collection and reporting, ultimately preventing misuse during urgent procurement processes. For instance, the ODPP's intervention in cases involving sole sourcing during emergencies can mitigate the risk of corruption by reinforcing accountability and transparency, aligning with the broader goals of public procurement laws to maintain integrity.

2.4. Risks and Challenges of Emergency Procurement in Kenya: An Examination of the Public Procurement Framework and Corruption Vulnerabilities

Emergency procurement in Kenya, especially during critical situations such as pandemics or disasters, is governed by the Public Procurement and Asset Disposal Act 2015. The key to this legislation is that procurement procedures should be fair, transparent, and responsible. However, in such a case as the COVID-19 pandemic, deviation from standard procurement procedures is inevitable, which may lead to inefficiency, mismanagement, and corruption. This section uses recent case studies and findings to explore the key issues related to emergency procurement in Kenya, the regulative framework, and the outcomes of emergency procurement during the COVID-19 response.

Kenya's public procurement laws uphold fairness, equity, transparency, and accountability principles. Clear outlines as to how procurement of goods and services should be conducted are provided by the Public Procurement and Asset Disposal Act (PPADA) of 2015, specifically including emergency procurement. The establishment of the Public Procurement Regulatory Authority (PPRA) aligned with the Constitution of Kenya. **Error! Bookmark not defined.** However, in emergency conditions, an exception is allowed for adhering to the standard procurement process by using direct or restricted tendering. While necessary for speed and responsiveness,

these deviations put corruption and mismanagement more on the table. For instance, prompt goods and services procurements are required in emergencies such as health crises or natural disasters. Therefore, the government may choose to use routine tender procedures to secure its fast response to the problem. This flexibility in the procurement process helps to match the public immediate requirements quickly but also invites corruption in the procurement process. The NTA⁴⁹ goes on to explain that these emergencies produce less scrutiny of purchase rules; this could lead to inflated prices, poor quality goods, and ghost suppliers.

While emergency procurement is necessary in certain situations, it presents unique risks regarding corruption and inefficiency. Competitive tendering processes can be bypassed for collusion, favoritism, and contract awarding for unqualified or corrupt suppliers. The PPADA and the PPAD Regulations of 2020 aim to mitigate such risks as they require that even emergency procurements are undertaken transparently and accountable. For instance, upon emergency procurement, procuring entities must record the reasons for emergency procurement, and the contracts should be awarded based on merit. Nevertheless, problems enforcing these provisions during emergency procurement have arisen, as Musiga observes. Often, the situation is urgent, such that procurement decisions are made quickly with comparatively little scrutiny and oversight. The lack of transparency can easily corrupt and abuse public funds, particularly where there is a lack of institutional oversight.

The COVID-19 pandemic in 2020 is a prime example of how emergency procurement can be fraught with challenges. As the pandemic required the Kenyan government to manage, they invoked emergency procurement mechanisms to get hold of the necessary medical supplies and equipment. Indeed, this procurement process was spearheaded by the Ministry of Health and the Kenya Medical Supplies Authority (KEMSA). However, amid such urgency, the procurement process in the health sector turned into a matter of dispute. It was also revealed that the Kenyan government had lost KShs. 2.3 billion in getting medical supplies to combat illness at inflated prices.⁵⁰ Several factors contributed to this situation. The first demand created during the COVID-19 crisis was medical supplies such as ventilators, masks, and personal protective equipment (PPE). This sudden demand was too much for the procurement authorities to keep prices in control for reasons of international competition, given the same type of goods in the international market. Secondly, the application of emergency procurement procedures after an

emergency has occurred resulted in the contravention of best practices in procurement, such as poor due diligence on suppliers and incomplete competitive bidding practices. Third, there was a lack of transparency and pressure to do it quickly, so the procurement was done without enough oversight.

These challenges were exacerbated by the absence of intergovernmental coordination and a clear framework for procurement activities. Because national and county governments were not on the same page in procuring medical supplies, KEMSA was left to do the labor with no synergy; this resulted in duplication of efforts and inefficiencies.⁵⁰ The involvement of procurement officials who lacked experience in managing emergency procurements also contributed to the problems because emergency procurement requires special treatment and skills, and those skills had not been taught to procurement officials beforehand. Corruption in emergency procurement can arise from various drivers. According to Kamoni *et al.*⁴⁸, the factors responsible for the COVID-19 procurement scandal include the use of direct procurement methods, which bypassed competitive tendering, poor market analysis leading to inflated prices, and the use of discretionary power by procurement officers—the drivers uncovered during our research point to the need for strictly controlling and overseeing emergencies.

A significant driver of corruption is the overuse of non-competitive procurement methods. There is a condition under which non-competitive procurement can be adopted, as stated in PPADA 2015. However, this method has been abused more than once and was especially used in emergency conditions that were to be continuously exasperated. Non-competitive procurement does not give rise to transparency and opens opportunities for corrupt practices such as kickbacks and rigging of bids. In such matters, however, when procurement timelines are pushed, there is rarely enough time for them to do a thorough vetting or to make more of a cost comparison.

Another key driver of corruption in emergency procurement is the lack of effective oversight. However, as the Public Procurement Regulatory Authority (PPRA) oversees procurement activities, the process has not been suited to effectively monitor the process, especially during emergencies, which are often made quickly with disregard to thorough consideration. The KEMSA scandal depicts poorly the failure to enforce existing procurement laws and calls for stronger regulatory frameworks and more proactive monitoring systems.⁴⁸

Effective auditing and monitoring are essential in preventing corruption and ensuring public procurement funds are used appropriately. According to the Public Procurement and Asset Disposal Act, procurement processes should be audited at stages such as before the award of the contracts, while executing the contracts, and after the completion of contracts.⁴⁸ In practice, however, there has been a lapse in real-time monitoring, and if procurement irregularities are discovered, it is only after the fact. One proposed solution to this problem is the establishment of live internal procurement audits, which would allow for real-time oversight of procurement activities. Such audits would give an added level of checking to detect errors like overpricing and methods of working, which have nothing to do with competitive practices and may cause financial losses.⁴⁸ Furthermore, improvements in the capacity of the Public Procurement Regulatory Authority and other oversight bodies will significantly address the deficiencies uncovered in the current arrangement.

2.5 Analysis of the Effectiveness or Limitations of the Legal and Statutory Framework for Emergency Procurement

Kenya's public procurement law is grounded in the Constitution of Kenya 2010, which sets out principles of fairness, transparency, accountability, and competitiveness in public procurement. Specifically, Article 227 of the Constitution mandates that procurement processes be fair and transparent, applying universally across public sectors.⁶⁹ These constitutional principles are intended to guide procurement practices even in emergency situations where the procurement process must be expedited. However, despite the constitutional provision, the legal framework does not explicitly provide for emergency procurement procedures, leaving gaps that are filled by national laws such as the Public Procurement and Asset Disposal Act (PPADA) of 2015. This act allows for emergency procurement in cases of urgency, such as during national disasters or pandemics, permitting deviations from regular procurement procedures. Although this flexibility aims to address urgent needs quickly, it increases the risk of corruption by reducing transparency and oversight. While the PPADA allows for emergency procurement through direct or minimal competition, it also imposes accountability mechanisms, such as post-procurement audits and justification requirements. However, the implementation of these provisions has often been

⁶⁹ Rono, Naphtaly Kipchirchir. "Sub-national Public Private Partnerships in Kenya: an appraisal of the legal and institutional framework against the constitutional principles on devolution and public procurement." PhD diss., Strathmore University, 2021.

inadequate, especially during large-scale emergencies like the COVID-19 pandemic. Investigations into the procurement of medical supplies revealed widespread corruption, such as inflated prices and lack of competition, leading to the mismanagement of public funds. The Public Procurement Regulatory Authority (PPRA) has identified systemic failures in monitoring procurement activities during these periods, yet enforcement remains weak due to resource constraints, political interference, and insufficient staffing (Public Procurement Oversight Authority [PPOA], 2020). While the PPDA permits direct procurement methods in such situations, this flexibility raises concerns over potential misuse. Section 103 of the PPDA allows for direct procurement, but critics argue that the lack of clear guidelines and oversight in these circumstances leads to inflated prices, misallocation of resources, and the erosion of competition.⁴⁸ The Kenya Medical Supplies Authority (KEMSA) scandal during the COVID-19 pandemic exemplifies this, where procurement irregularities were linked to non-competitive procurement processes, resulting in the loss of over Ksh 7.8 billion.⁶²

The legal framework's limitations become evident when evaluating its practical enforcement. While the Public Procurement Oversight Authority (PPOA) is tasked with overseeing procurement activities and ensuring compliance, it suffers from budgetary constraints and political interference, which undermine its ability to effectively monitor and enforce compliance. The PPRA, although established to ensure fair procurement, often lacks the capacity to monitor procurement processes in real time, particularly in emergency contexts, where decisions must be made swiftly and with limited scrutiny. Moreover, the absence of clear guidelines for emergency procurement has allowed for widespread misuse. As evidenced by the KEMSA scandal, the government's reliance on emergency procurement during the pandemic bypassed critical competitive processes, leading to overpricing and substandard products being procured.⁴⁸ While the PPDA mandates post-procurement audits, these audits are often delayed, and the findings rarely result in corrective actions or criminal prosecutions. This illustrates a significant enforcement gap in the procurement system, exacerbating corruption risks.

2.6 Judicial Decisions and Enforcement Trends

Judicial decisions play a crucial role in interpreting the laws governing public procurement in Kenya. However, the application of emergency procurement laws has been inconsistent, as seen in various rulings related to procurement disputes. For example, in the case of Okiya Omtatah

Okoiti & 2 Others v. Attorney General & 4 Others (2020), the court addressed issues of fairness and transparency in emergency procurement during the construction of the Standard Gauge Railway (SGR).⁵³ The court emphasized the need to uphold constitutional principles of transparency and competitiveness, even in the context of emergencies. Despite this ruling, the procurement process was allowed to continue without substantial corrective action, highlighting the lack of effective enforcement mechanisms and the difficulties in applying the law to urgent procurement situations. The role of the Public Procurement Administrative Review Board (PPARB) is critical in resolving procurement disputes, particularly in emergency procurement. PPARB ensures that procurement decisions, including those made in emergencies, are in line with the law. However, the board's effectiveness is often compromised by limited resources, delays in decision-making and political influence. In the case of Republic v Public Procurement Administrative Review Board (2019), the court emphasized the need for procurement processes to adhere to constitutional principles, even during times of crisis.⁵⁸ This case highlights the importance of maintaining transparency and competition in procurement, even when the situation demands expedited processes.

2.7 Institutional Limitations and Challenges

The effectiveness of Kenya's institutional framework for regulating emergency procurement is hampered by several key limitations. The Public Procurement Regulatory Authority (PPRA), which is tasked with monitoring procurement activities, faces significant resource constraints that hinder its ability to oversee emergency procurements effectively. For instance, during the COVID-19 pandemic, the PPRA was unable to conduct comprehensive audits due to understaffing and a lack of financial support.⁷⁰ This lack of capacity allowed for widespread procurement fraud, including overpricing and lack of competitive bidding. Additionally, political interference has often undermined the PPRA's authority, preventing it from enforcing sanctions and holding procurement entities accountable for violations. The Ethics and Anti-Corruption Commission (EACC) also plays a critical role in investigating and prosecuting corruption in public procurement. However, the EACC faces similar challenges, including inadequate funding and a lack of personnel to handle the high volume of procurement cases. Despite these institutional shortcomings, both the PPRA and the EACC are integral to ensuring compliance

⁷⁰ Runyenje, Cynthia, and Hillary Ragen. "Annual Performance Review Report 2021." (2021).

with procurement laws. However, without adequate resources and political independence, their ability to deter corruption is severely limited. Another institutional challenge is the lack of coordination between national and county governments in procurement activities. During the COVID-19 pandemic, for instance, there was a failure to coordinate procurement efforts between the national government, KEMSA, and county governments. This lack of synergy led to duplication of efforts, inefficiency, and missed opportunities for effective procurement. A more integrated approach, with clearer guidelines and coordination mechanisms, is essential to improving the effectiveness of emergency procurement processes.

2.8 Evaluation of Effectiveness and Practical Enforcement

Despite the existence of comprehensive legal frameworks, the enforcement of procurement laws during emergencies remains a significant challenge. One of the key provisions under the PPADA is the requirement for justification and post-procurement audits in emergency procurement. However, in practice, these provisions are often overlooked or poorly implemented. During the COVID-19 pandemic, for example, investigations revealed that KEMSA, responsible for procuring medical supplies, paid inflated prices for essential goods such as personal protective equipment (PPE). The failure to conduct proper market analysis and competitive bidding led to the loss of billions of shillings in public funds. Additionally, there was no real-time monitoring of procurement activities, which allowed corruption to flourish unchecked. The Auditor General's reports also revealed that procurement entities in Kenya were often spending up to 60% more than prevailing market prices, with KEMSA being one of the most notable offenders.⁷¹ Despite the existence of regulations intended to prevent such malpractice, the absence of strong oversight and accountability mechanisms allowed for the mismanagement of resources. This lack of enforcement and the failure to hold responsible parties accountable underscore the weaknesses in Kenya's procurement system, especially during emergencies.

2.9 Institutional Weaknesses in Regulatory Bodies

The PPRA, despite its mandate to oversee public procurement, has been unable to effectively monitor and enforce compliance due to insufficient resources. The PPRA's budget is inadequate to support its operations, particularly in times of crisis when procurement activity spikes. The

⁷¹ Toroitich, Anthony Martin, Louise Dunford, Rachel Armitage, and Sangeeta Tanna. "Patients access to medicines—a critical review of the healthcare system in Kenya." Risk management and healthcare policy (2022): 361-374.

lack of sufficient staffing and technical expertise has made it difficult for the PPRA to track procurement decisions in real-time, leading to delayed interventions and missed opportunities to prevent corruption. The limitations of the PPRA are further compounded by political interference, which often undermines its ability to enforce procurement laws impartially.⁷² Political influence can lead to the selection of suppliers based on favoritism rather than merit, further exacerbating the problem of corruption in emergency procurement. To address these challenges, it is essential to strengthen the capacity of the PPRA by increasing funding, staffing, and technical resources. Additionally, measures must be put in place to protect the PPRA from political influence to ensure that procurement processes are conducted in a transparent and accountable manner.

In conclusion, while the constitutional, statutory, and regulatory frameworks in Kenya provide a foundational basis for ensuring transparency and accountability in public procurement, the effectiveness of these safeguards in preventing corruption during emergency procurement remains inadequate. The Public Procurement and Asset Disposal Act (PPADA) of 2015 lays out provisions for emergency procurement, allowing for deviations from standard procedures in urgent situations. However, the legal framework lacks sufficient real-time oversight mechanisms and clear guidelines, making it vulnerable to misuse, particularly during crises. The key provisions in the PPADA, such as the requirement for justification and post-procurement audits, are crucial in curbing corruption, but enforcement remains a significant challenge due to resource constraints and political interference. The Public Procurement Regulatory Authority (PPRA), despite its mandate, struggles to effectively monitor emergency procurements, which are often characterized by speed over thorough scrutiny. Furthermore, the reliance on non-competitive procurement processes during emergencies exacerbates the risk of corruption, as seen in cases like the COVID-19 procurement scandal. Emerging jurisprudence, such as the case of *Republic v Public Procurement Administrative Review Board*, highlights the courts' emphasis on fairness and transparency, even in emergencies. The emerging jurisprudence, as seen in cases like the *Okiya Omtatah* case, underscores the importance of adhering to constitutional principles even in emergencies. Nevertheless, the lack of robust enforcement and independent oversight hinders the realization of these constitutional principles. To strengthen the framework, Kenya needs to

⁷² Kwambai, Criselda. "Towards Good Governance: an Appraisal of the Role of Article 10 of the Constitution in Implementation of Public Procurement Law in Kenya." PhD diss., University of Nairobi, 2021.

enhance real-time monitoring, clarify emergency procurement guidelines, and ensure stronger penalties for violations. By improving institutional capacity and ensuring greater transparency, the country can mitigate corruption risks and uphold the integrity of its emergency procurement processes.



Chapter Three

The Link Between Emergency Public Procurement Laws and Corruption in Kenya: An Analysis of the Effectiveness, Challenges, and Gaps

3.1 Introduction

Public procurement is a vital component of any government's operations, directly influencing the allocation and distribution of public resources. In Kenya, like many other countries, public procurement plays a central role in the delivery of services and the realization of national development goals. However, the process has been marred by a series of challenges, notably corruption, which undermines the effectiveness of public spending and hampers development. Kenya's emergency procurement laws, intended to streamline procurement during crises, have faced significant challenges in terms of effectiveness, oversight, and accountability. The link between emergency public procurement laws and corruption in Kenya is both complex and multi-dimensional, as evidenced by numerous scandals across various public institutions. The urgency surrounding emergency procurement, such as during the COVID-19 pandemic, provides a fertile ground for corruption due to the expedited nature of decision-making, the lack of transparency, and the weak oversight mechanisms. A closer examination of several high-profile procurement scandals in Kenya—such as the Kenya Medical Supplies Authority (KEMSA), the National Youth Service (NYS), Kenya Power and Lighting Company-(KPLC), National Transport and Safety Authority-NTSA, Independent Electoral and Boundaries Commission-(IEBC), National Cereals and Produce Board (NCPB), and Kenya Airports Authority (KAA)—reveals not only the weaknesses in emergency procurement laws but also the challenges of enforcing these laws effectively. This essay seeks to explore the relationship between emergency procurement laws and corruption in Kenya by analyzing the effectiveness of these laws, the challenges they face, and the gaps that need to be addressed to minimize corruption and promote transparency.

3.2 Gaps and Weaknesses in the Framework

The Public Procurement and Assets Disposal Act of 2015 (PPADA) provides a framework for the acquisition of goods, services, and works by government institutions. This framework aims to ensure transparency, fairness, and value for money in public procurement. However, provisions in the law on emergency procurement, particularly during public health crises or natural

disasters, have been criticized for being subject to easy manipulation to facilitate corrupt practices. Emergency procurement procedures, including the use of direct procurement, are allowed under Section 103(1) of the PPADA, but only under strict conditions. These include the necessity for expedient action and the requirement that such procurements do not bypass competitive processes without justification.⁷³

Despite these provisions, weaknesses in the procurement framework have led to several challenges in ensuring effective governance. The urgency involved in emergency procurement often results in inadequate checks and balances, making it easy for unscrupulous actors to exploit these systems. For instance, during the COVID-19 pandemic, emergency procurement mechanisms were used to expedite the acquisition of essential medical supplies, but this process was marred by irregularities and corruption, leading to the mismanagement of billions of shillings.⁷⁴

A key weakness in the framework is the lack of sufficient oversight during the procurement process. The Kenyan public procurement system relies heavily on the Office of the Auditor General and other oversight bodies to ensure compliance with procurement laws. However, the capacity of these institutions to scrutinize the increasing volume of emergency procurements remains inadequate. The absence of stringent monitoring mechanisms in the emergency procurement process creates an environment ripe for abuse and corruption.

3.3 Examples of How These Structures Have Failed

The failure of emergency procurement structures in Kenya can be observed through several high-profile cases where procurement processes were manipulated for personal gain, resulting in significant financial losses and public outrage. These cases highlight not only the weaknesses in the emergency procurement framework but also the broader issues of governance, accountability, and corruption within public institutions.

⁷³ Jackline Kagume & Leo Kipkogei Kemboi. Collective failure in management of public resources: Analysis of Kenya's COVID-19 public procurement breaches. IEA Kenya, 2020, September 23.

<https://ieakenya.or.ke/blog/collective-failure-in-management-of-public-resources-analysis-of-kenyas-covid-19-public-procurement-breaches/>

⁷⁴ Rasna Warah. Corruption is undermining Kenya's COVID-19 response. ONE.org Africa, 2021, September 29. <https://www.one.org/africa/stories/corruption-undermining-kenya-covid19-response/>

3.3.1 COVID-19 Procurement Failures

The COVID-19 pandemic led to substantial emergency procurement in Kenya, with the government racing to acquire personal protective equipment (PPE), testing kits, and other medical supplies. The procurement processes during this period exposed several weaknesses in Kenya's emergency procurement framework, as governed by the Public Procurement and Asset Disposal Act (PPADA) of 2015. The law allows for direct procurement during emergencies, but it also stipulates strict conditions to avoid misuse. However, these provisions were not adhered to, leading to significant corruption and procurement malpractices. One of the most notable examples of procurement failures during the pandemic was the mismanagement of funds at the Kenya Medical Supplies Authority (KEMSA). KEMSA, which is responsible for procuring essential medical supplies, was found to have flouted several procurement regulations. According to a report by Warah⁷⁴, KEMSA violated procurement laws, awarding contracts worth about \$72 million without proper justification, inflated prices, and without the necessary competitive bidding. This was despite the fact that Section 103(1) of the PPADA requires direct procurement to be based on urgency, but not at the expense of transparency or competition. The irregularities revealed in the KEMSA scandal not only resulted in the loss of millions of dollars but also delayed the delivery of essential supplies to healthcare facilities, thus undermining Kenya's response to the pandemic.

Another glaring issue was the lack of oversight and accountability in the procurement process. Despite the provisions of the PPADA, which mandates oversight by bodies such as the Auditor-General, the capacity of these institutions to monitor the increased volume of emergency procurements was insufficient. As pointed out by Kagume and Kemboi⁷³, the government failed to publish a detailed procurement plan or justify the allocation of resources for COVID-19, which compounded the issue of accountability. The lack of oversight allowed for the exploitation of the system by well-connected individuals and companies. For instance, companies like Kilig Limited, which had no prior experience in medical supplies, were awarded lucrative contracts to supply PPEs at inflated prices.⁷³ This scenario was not unique, as other firms also benefitted from questionable procurement decisions, further deepening the corruption crisis. For example, the Ministry of Health and KEMSA failed to produce detailed expenditure reports, leaving a vacuum for corruption to thrive. The delay in audits and investigations further compounded the issue, as funds were disbursed without proper scrutiny, as seen with KEMSA's overpricing of medical

supplies⁷⁵. The absence of stringent monitoring mechanisms during emergency procurement processes facilitated corrupt practices. The procurement laws failed to effectively curb the manipulation of emergency contracts by businesspeople with political connections. According to Wafula⁷⁶, firms like Shop 'N' Buy Limited secured contracts despite being newly formed and inexperienced, raising concerns about the integrity of the bidding process and the efficacy of the regulations in place. The inflated prices of PPE kits purchased during this time were also a major concern, with the government paying up to Sh9,000 for items that were later available at much lower prices. These procurement failures demonstrate the significant gaps and weaknesses in Kenya's emergency procurement framework, where urgent action during a health crisis became a cover for exploitation and corruption.

3.3.2 Kenya Power and Lighting Company Scandal

Kenya Power and Lighting Company (KPLC) has been at the center of several procurement scandals, highlighting the inherent weaknesses in the emergency procurement framework as outlined in the Public Procurement and Disposal Act (PPADA) of 2015. These procurement failures reveal how emergency procurement laws, while designed to expedite the acquisition of goods and services, can also be manipulated to facilitate corruption. One example of such manipulation occurred in 2018, when KPLC officials were charged for procuring substandard transformers worth over KES 409 million. These transformers, purchased during an emergency procurement process, were found to be faulty, raising concerns about the effectiveness and transparency of procurement practices at KPLC.⁷⁷ The flaws in KPLC's procurement processes can be attributed to weaknesses in the oversight mechanisms and lack of due diligence during procurement activities. For instance, KPLC's internal audit for the 2016-2017 financial year uncovered that several officials colluded with unregistered supplier companies to facilitate the approval of tenders, directly contravening the provisions of the PPADA of 2015.⁷⁷ This collusion was made possible by the lack of effective oversight, which is a critical gap in the current procurement framework. Despite the law's provisions for monitoring emergency procurement,

⁷⁵ David Mwere. Push for State to explain spending of Covid-19 funds gains steam. Nation Media Group, 2020, August 13. <https://nation.africa/kenya/news/explain-covid-19-funds-use-state-told-1918158>

⁷⁶ Paul Wafula. Traders who made millions from Covid supplies. Nation Media Group, 2020, August 3. <https://nation.africa/kenya/news/traders-who-made-millions-from-covid-supplies-1911288>

⁷⁷ Boamah, Festus, and Aled Williams. "Kenya powerless'-corruption in Electricity as Problem-solving in Kenya's Periphery." Bergen, Norway: CHR Michelsen Institute, U4 Brief 1 (2019).

KPLC's case illustrates how weak oversight allows corruption to thrive, particularly when the urgency of emergency procurement circumvents normal procurement processes.

Moreover, KPLC's procurement issues have been exacerbated by a culture of impunity within the company. The company's management, including its top executives, was implicated in questionable procurement decisions, which led to the resignation of the managing director, Bernard Ngugi, in 2021, amidst internal struggles and growing procurement concerns.⁷⁸ The resignation followed a forensic audit ordered by the presidential task force, which sought to address procurement irregularities and streamline operations within KPLC. However, such drastic measures were only taken after significant financial losses and mounting corruption scandals had already damaged the company's reputation. This delay in intervention underscores the lack of effective preventative mechanisms within the emergency procurement framework, which allows corrupt activities to go unchecked until they reach a crisis point. The weaknesses in KPLC's procurement system are indicative of broader systemic issues within Kenya's emergency procurement laws. Although the PPADA provides for stringent conditions to guide emergency procurement, these provisions are often bypassed, particularly in high-pressure situations like public health crises or natural disasters. The KPLC example shows how these gaps can be exploited for personal gain, ultimately undermining the intended purpose of emergency procurement laws. The failure to implement strict monitoring and accountability measures contributes to the persistence of corruption, hindering the effectiveness of emergency procurement procedures.

3.3.3 National Transport and Safety Authority

The National Transport and Safety Authority (NTSA) serves as a key example of how emergency procurement laws in Kenya have failed, often linking them to corruption risks. The legal framework for public procurement, including the Public Procurement and Asset Disposal Act (PPADA) 2015, is designed to regulate government acquisitions of goods, services, and works.⁵⁴ However, the provisions for emergency procurement, particularly during crises, have been widely criticized for loopholes that expose the system to manipulation and corruption. NTSA, as a public agency under the Ministry of Transport and Infrastructure, is mandated with

⁷⁸ GERALD ANDAE. "Kenya Power suspends 59 ahead of tendering audit." Business Daily. Last modified November 5, 2021. <https://www.businessdailyafrica.com/bd/corporate/companies/kenya-power-suspends-59-ahead-tendering-audit-3608366>.

tasks such as vehicle registration, licensing, and enforcing road safety measures. However, the emergency procurement procedures employed by NTSA have at times circumvented the regulations set to ensure transparency. This issue was particularly evident during the implementation of procurement processes related to road safety equipment, vehicles, and related services. Under emergency conditions, such as during road accidents or disasters, the NTSA is authorized to make direct procurements under Section 103(1) of the PPADA. While this provision is intended to expedite procurement, it often lacks adequate oversight and checks, leading to the possibility of corrupt practices. A significant weakness in the procurement framework of NTSA is the inadequate monitoring of the emergency procurement process. In a bid to respond swiftly to urgent needs, NTSA has sometimes overlooked the competitive bidding process, which is a key safeguard against corruption. This has been a prominent issue as the lack of sufficient scrutiny during these procurement processes creates opportunities for manipulation. Research conducted by Mwanarafa and Osoro⁵⁴ revealed that NTSA has faced significant challenges in adhering to procurement laws, which have led to inefficiencies and high procurement costs. Specifically, procurement activities at NTSA have been criticized for failing to follow transparent and competitive processes, with some suppliers charging up to 60% more than prevailing market prices for goods and services.

Additionally, the capacity of oversight bodies such as the Public Procurement Oversight Authority (PPOA) has been questioned. The Office of the Auditor General is tasked with monitoring compliance, but its ability to track the increasing volume of emergency procurements remains limited. This lack of capacity is reflected in the high levels of public procurement-related malpractices in Kenya, including those at NTSA, which are estimated to cost the country over Kshs.700 billion.⁵⁴ In some cases, NTSA has been accused of non-compliance with internal procurement policies, which further exacerbates the corruption risks. For instance, procurement staff at NTSA are often undertrained or not sufficiently briefed on the updated circulars and legal requirements, leading to procedural lapses in awarding contracts. According to Mwanarafa and Osoro⁵⁴, procurement laws and policies are often disregarded, with procurement being based on informal processes that lack the necessary scrutiny and competitive bidding. In summary, the weaknesses in emergency procurement laws, coupled with a lack of effective oversight and internal compliance at NTSA, have contributed significantly to inefficiencies and corruption within the institution. These flaws highlight the urgent need for reforms to ensure that

procurement during emergencies is transparent, competitive, and closely monitored to avoid exploitation by corrupt individuals.

3.3.4 Independent Electoral and Boundaries Commission (IEBC)

The Independent Electoral and Boundaries Commission (IEBC) in Kenya provides a clear example of how emergency procurement frameworks can be manipulated, leading to corruption and inefficiency. The failure of the IEBC's procurement during the 2017 elections illustrates how weaknesses in the procurement system can be exploited, resulting in inflated costs, favoritism, and inefficiency. A significant issue with the IEBC procurement process during the 2017 elections was the manipulation of tendering procedures. The IEBC utilized direct procurement, a method permitted under emergency conditions, to acquire crucial electoral materials. However, the process was marred by the favoritism shown to specific suppliers, such as Safran Identity & Security (SIS) for the KIEMS technology contract and Al Ghurair for the printing of ballot papers.⁷⁹ In these instances, the procurement process was manipulated to benefit certain vendors, circumventing the competitive bidding process, which violated the principles of transparency and fairness outlined in the Public Procurement and Assets Disposal Act of 2015 (PPADA).

For example, during the 2017 election, Safran was awarded the contract for the KIEMS technology, despite concerns over its pricing and technical suitability. The procurement procedure was expedited to favor Safran, even though alternative options had been suggested. Internal audits revealed that IEBC was fixated on awarding this contract to Safran, even after alternative proposals, such as leasing technology from other African countries, were ignored.⁷⁹ This bias toward specific vendors led to the mismanagement of resources, with inflated costs such as the KIEMS contract costing 3.8 billion Kenyan Shillings despite the available budget being much lower.⁷⁹ Moreover, the procurement system at IEBC lacked adequate oversight, further enabling corruption. For example, the 1.2 million excess ballot papers printed by Al Ghurair, contrary to Plenary resolutions, raised serious questions about the transparency of the procurement decisions.⁷⁹ Additionally, various contracts were signed without due diligence, as seen with the Oracle database and security solution contract, which lacked a formal agreement and was overpriced. This failure to conduct thorough background checks and to comply with procurement regulations created a fertile ground for corrupt practices.

⁷⁹ Ken Opala, Website. "The Dark Business of Election 2017." AfriCOG. Last modified March 15, 2019. <https://africog.org/the-dark-business-of-election-2017/>.

The high costs and inefficiency were further compounded by the absence of a proper monitoring and accountability mechanism, which allowed for the duplication of contracts and the misuse of public funds. IEBC paid inflated prices for services such as data bundles and security seals, and failed to utilize resources efficiently.⁷⁹ These failures are a direct result of the procurement framework's loopholes, which were exploited by the commission to facilitate corrupt practices. The IEBC's failure in managing procurement during the 2017 election demonstrates the challenges and weaknesses in Kenya's emergency procurement framework. The lack of effective oversight and the manipulation of procurement processes led to corruption and inefficiency, ultimately compromising the credibility and integrity of the election. This case underscores the need for stronger safeguards and more transparent procedures to ensure that emergency procurement is used appropriately and does not facilitate corruption.

3.3.5 National Youth Service (NYS)

The National Youth Service (NYS) has been at the center of multiple corruption scandals, one of the most significant involving the fraudulent loss of over KSh 10 billion. This scandal highlights the critical failure of procurement oversight mechanisms, particularly in emergency procurement procedures. According to the audit report, the NYS scandal involved payments to businesses months before they were even registered with the Registrar of Companies.⁸⁰ Such irregularities indicate severe weaknesses in the internal control mechanisms that are meant to prevent corruption during procurement, especially in emergency situations. The lack of stringent oversight allowed fictitious companies to secure substantial payments, undermining the intent of procurement laws designed to ensure fairness and transparency. The Public Procurement and Assets Disposal Act (PPADA) of 2015 stipulates that direct procurement can only occur under strict conditions, yet the absence of sufficient monitoring allowed fraudulent companies to thrive within the system.

One of the most significant weaknesses in the procurement framework is the improper use of emergency procurement processes, as seen in the NYS scandal. Emergency procurement, designed to expedite urgent acquisitions, was manipulated during the procurement of services and goods, which were neither essential nor timely. This was especially evident in the case of a

⁸⁰ The Star. "NYS in Another Corruption Scandal As 10 Billion Goes Missing." Radio Jambo. Last modified October 2, 2020. <https://www.radiojambo.co.ke/habari/2018-05-13-nys-in-another-corruption-scandal-as-10-billion-goes-missing>.

fraudulent payment of KSh 791 million for a 3.5-kilometer road construction project in Kibera, despite no actual construction taking place.⁸¹ The use of emergency procurement mechanisms in such scenarios made it easier for actors within the NYS to circumvent the usual competitive bidding processes, thus allowing corruption to flourish. According to Ferdinand⁸², the lack of a consistent procurement strategy at the NYS facilitated this manipulation, where payments were made to suppliers with irregular or incomplete registration details.

The absence of effective oversight in the procurement processes at NYS further aggravated the situation. The procurement was plagued by a lack of scrutiny from the Office of the Auditor General and other oversight bodies. For example, during the tenure of Richard Ndubai as the Director-General, several fraudulent payments were made to phantom companies, many of which were registered only after they had received payments.⁸⁰ This scenario exemplifies the failure of the systems in place to monitor the increasing volume of emergency procurements, as highlighted by Ferdinand.⁸² Without rigorous checks, public procurement is more vulnerable to abuse, particularly during times of crisis, when the need for rapid responses can bypass the usual procurement procedures. The failure of these oversight institutions underscores the gaps in the emergency procurement framework, which relies heavily on audits that are often too slow to catch irregularities in real-time. The NYS scandal serves as a prime example of how weaknesses in the public procurement framework, particularly in emergency procurement, can facilitate corruption. The absence of robust oversight mechanisms, combined with the misuse of emergency procurement procedures, allowed for fraudulent payments and the manipulation of procurement processes. The case highlights the need for stronger controls and a more transparent approach to emergency procurement, ensuring that such systems cannot be exploited for personal gain.

3.3.6 Kenya Airports Authority (KAA)

The Kenya Airports Authority (KAA) has been embroiled in several corruption scandals, particularly in relation to its emergency procurement processes. These procurement mechanisms, which are meant to expedite the acquisition of goods and services during crises, often lack

⁸¹ Paul Wafula. "Up to Sh1.4b was stolen in NYS scandal, new audit now reveals." The Standard - Kenya & World News | Latest and Breaking News. Last modified 2017. <https://www.standardmedia.co.ke/article/2000204386/up-to-sh1-4b-was-stolen-in-nys-scandal-new-audit-now-reveals>.

⁸² Ferdinand, Matano. "E-Procurement Implementation Practices On Effective Procurement Of Goods And Services In The National Youth Service, Nairobi County, Kenya." PhD diss., kisii university, 2022.

sufficient oversight, leading to irregularities and abuse. One significant example is the inflated contract for the construction of a modern passenger terminal at Jomo Kenyatta International Airport (JKIA). Initially, KAA had signed a contract in December 2011 with the Chinese firm Anhui Construction Engineering Group Ltd for a sum of Sh59.4 billion. However, in 2013, KAA modified the contract to include a 16% value-added tax (VAT), which added an additional Sh9.5 billion to the project cost, without proper justification. This addition raised questions about whether the new tax provision was deliberately inserted to inflate the project cost, creating room for corruption.⁸³ Moreover, the decision to modify the contract and introduce additional charges occurred during the tenure of the then Managing Director, Lucy Mbugua. This modification highlights a weakness in the emergency procurement framework, which allows for direct procurement during urgent circumstances. While direct procurement is intended to address emergencies swiftly, it can also be exploited to bypass competitive bidding, leaving room for corrupt activities, as evidenced by the inflated VAT provision.⁸⁴

A critical gap in the emergency procurement framework is the lack of robust oversight mechanisms. The Office of the Auditor General and other oversight bodies play a significant role in scrutinizing procurement processes. However, the increasing volume of emergency procurements, especially during crises, has stretched the capacity of these institutions. In the case of KAA, the absence of stringent monitoring allowed for the manipulation of contracts and mismanagement of public funds. The scandal surrounding the JKIA terminal expansion is just one of many instances where the lack of effective checks led to inflated costs and questionable contract variations. The manipulation of procurement contracts has been further compounded by the absence of a transparent procurement process, which facilitates the exploitation of the system by unscrupulous actors.

The failure of the institutions responsible for monitoring procurement processes at KAA is another contributing factor to the corruption issues faced by the authority. In 2011, KAA entered into a contract with a bus company to shuttle passengers at JKIA, with the government paying an inflated amount of Sh11 million for the service. This contract was scrutinized by President

⁸³ The Citizen. "JKIA Construction Contract Under Investigation." The Citizen. Last modified April 5, 2021. <https://www.thecitizen.co.tz/tanzania/news/africa/jkia-construction-contract-under-investigation-2522710>.

⁸⁴ NLM. "Graft and tender scandals are the norm at airports authority." Last modified March 22, 2023. <https://nairobi.lawmonthly.com/graft-and-tender-scandals-are-the-norm-at-airports-authority/>.

Uhuru Kenyatta, who ordered investigations, revealing systemic corruption within KAA. As a result, senior KAA officials, including Managing Director Lucy Mbugua, were suspended to pave the way for investigations into the mismanagement of funds. This example highlights how KAA's internal structures failed to prevent corruption and how emergency procurement procedures were manipulated for personal gain.⁸⁴ These instances demonstrate how the weaknesses in Kenya's emergency procurement framework—lack of transparency, insufficient oversight, and institutional failures—create an environment conducive to corruption. By failing to effectively monitor and regulate procurement processes, particularly in emergency situations, KAA has been a significant beneficiary of the loopholes in the systems, which have facilitated the misappropriation of public funds.

3.3.7 National Cereals and Produce Board (NCPB)

The National Cereals and Produce Board (NCPB) serves as a critical example of how emergency procurement frameworks can be manipulated, leading to corruption and mismanagement of public resources. A prime example of this is the 2008 maize scandal, where emergency procurement processes, coupled with a lack of transparency and weak oversight, facilitated widespread corruption. During this period, the government was faced with a severe maize shortage caused by various factors, including low yields and post-election violence. The Strategic Grain Reserve, managed by the NCPB, was found to be critically understocked, with a deficit of 1.6 million bags, exacerbating the food security crisis.⁸⁵ In response, the government directed the NCPB to import approximately 3 million bags of maize to ease the shortage and stabilize prices. However, the emergency procurement measures were marred by significant flaws. First, the maize was sold to millers at a subsidized price, but there were reports of misuse where individuals and companies, who were not millers and lacked milling capacity, were allocated maize. These individuals resold the maize at exorbitant prices to genuine millers, thereby making huge profits at the expense of the public⁸⁵. Additionally, allocations of subsidized maize were made to these unqualified parties, undermining the intended purpose of the subsidies to support low-income earners. The direct procurement process allowed during this emergency period, as outlined under Section 103(1) of the Public Procurement and Asset Disposal Act (PPADA), was intended to expedite the procurement of maize; however, it lacked

⁸⁵ The Nation. "Ruto says not to blame over maize scandal." Last modified July 3, 2020. <https://nation.africa/kenya/news/politics/ruto-says-not-to-blame-over-maize-scandal-623558>.

adequate checks and balances, which are critical to ensuring that the funds and resources are utilized appropriately.

One of the main weaknesses identified in the emergency procurement framework is the lack of robust oversight during such processes. Although the PPADA provides for oversight bodies such as the Office of the Auditor General, these institutions were not adequately equipped to handle the surge in emergency procurements, leading to inefficiencies and corruption.⁸⁵ In the case of the maize procurement, there were clear signs of manipulation, where the procurement process bypassed competitive bidding mechanisms. The lack of stringent monitoring and accountability mechanisms allowed for widespread abuse and the diversion of public funds. Further, the weakness in the oversight system was evident in the involvement of senior government officials. The report by PricewaterhouseCoopers identified key public officials, including Permanent Secretaries and officials from the Prime Minister's office, as being directly involved in decisions that led to the diversion of maize intended for distribution.⁸⁵ These officials, despite their significant roles in the decision-making process, were either exonerated or failed to act to ensure proper procurement procedures were followed, highlighting the systemic vulnerabilities in the emergency procurement framework. The example of the National Cereals and Produce Board (NCPB) illustrates how weaknesses in the emergency procurement framework can lead to corruption, mismanagement, and resource misallocation. The lack of sufficient oversight, inadequate capacity of institutions responsible for monitoring procurement, and the bypassing of competitive processes have all contributed to the exploitation of emergency procurement mechanisms. These challenges demonstrate the need for a more robust and transparent system that ensures the proper use of public resources during times of crisis.

3.3.8 Agency Theory and the KEMSA Scandal

A critical component of understanding corruption in emergency procurement is Agency Theory, which posits a misalignment of incentives between agents (procurement officials) and principals (the public interest). This theory is particularly useful when examining the KEMSA COVID-19 procurement scandal. In this case, the procurement officers were expected to act in the best interest of the public by ensuring transparency and value for money. However, their actions demonstrated a failure to act as fiduciaries. Concepts such as agency costs, information asymmetry, and moral hazard come into play. In the KEMSA case, procurement agents exploited

the urgency of the COVID-19 crisis to bypass competitive procurement processes, inflating prices and awarding contracts without proper justification. For example, KEMSA was found to have awarded contracts worth approximately \$72 million without adhering to legal requirements for competitive bidding.⁷³ The misconduct observed was a direct result of agency costs, where the procurement officials prioritized personal gains over the public's interest. The lack of transparency in procurement procedures allowed these agents to act in their own interest, exploiting the information asymmetry between the procurement officials and the general public. This case clearly illustrates how agency theory provides a lens to understand the underlying systemic issues that lead to corruption in emergency procurement processes, particularly when the agents are motivated by personal or political interests.

3.3.9 Legal, Institutional, and Operational Gaps

The challenges and gaps in Kenya's emergency procurement framework are multi-dimensional, spanning legal, institutional, and operational domains. Legally, the Public Procurement and Asset Disposal Act (PPADA) of 2015 outlines strict guidelines for emergency procurement; however, the law's implementation is often hindered by loopholes that facilitate corruption. These include the broad discretion granted to procurement officials under the guise of urgency, which often leads to the bypassing of competitive bidding processes. This lack of clear criteria for defining "urgency" or "emergency" allows for manipulation, as seen in cases such as KEMSA, where procurement processes were expedited without justification, leading to inflated prices and substandard supplies. Institutionally, the oversight mechanisms in place to monitor emergency procurement are inadequate. Despite the establishment of bodies like the Public Procurement Oversight Authority (PPOA) and the Office of the Auditor-General, their capacity to scrutinize the increasing volume of emergency procurements is limited. In several cases, such as the KEMSA scandal, these oversight bodies were either too slow to act or failed to detect the mismanagement of funds in real-time. Moreover, institutional independence remains a significant concern, with political interference often preventing effective monitoring and accountability.

Operationally, the emergency procurement process lacks sufficient checks and balances. The procurement process during emergencies often prioritizes speed over due diligence, which, although necessary in some cases, leads to vulnerabilities that are exploited for corrupt purposes.

For instance, during the COVID-19 crisis, KEMSA's failure to conduct proper market research and publish procurement plans allowed unscrupulous businesses to benefit from inflated contracts. Furthermore, the lack of a transparent auditing process allowed for significant financial mismanagement. In the KPLC case, procurement officials colluded with unregistered suppliers, and similar fraudulent activities were observed at the NTSA, where competitive processes were bypassed in favor of expedient procurements, leading to higher costs and inefficiencies.⁵⁴ Addressing these gaps requires a clear categorization of the issues: legal gaps involve unclear definitions and enforcement challenges, institutional gaps involve inadequate capacity and independence of oversight bodies, and operational gaps refer to inefficiencies and lack of due diligence in procurement processes. Strengthening these areas is crucial for reducing corruption in emergency procurement and improving the overall effectiveness of public procurement laws in Kenya.

3.4 Conclusion

The link between emergency public procurement laws and corruption in Kenya is evident in the numerous scandals that have plagued the country's public institutions. While the Public Procurement and Assets Disposal Act was intended to regulate procurement practices and ensure transparency, its implementation has been hindered by weak oversight, the misuse of direct procurement, and a lack of accountability. The COVID-19 pandemic, the KEMSA scandal, the National Youth Service (NYS), Kenya Power and Lighting Company-(KPLC), National Transport and Safety Authority-NTSA, Independent Electoral and Boundaries Commission-(IEBC), National Cereals and Produce Board (NCPB), and the KAA corruption issues all illustrate the dangers of ineffective emergency procurement systems. To address these challenges, there is a need for stronger oversight mechanisms, greater transparency in procurement processes, and stricter enforcement of the laws. Additionally, public institutions must adopt a more coordinated and proactive approach to procurement, ensuring that emergency procurement is only used in genuine crises and that funds are allocated and spent appropriately. Only through comprehensive reforms and sustained efforts to combat corruption can Kenya hope to improve its public procurement system and restore public trust in government institutions.

Chapter Four

Comparative Practice in Prevention of Corruption in Emergency Procurement: Lessons for the Kenyan Context

4.1 Introduction

Corruption in public procurement has long been a major issue in many countries, especially in times of emergency procurement. During such crises, like the COVID-19 pandemic, governments are under immense pressure to respond quickly, often bypassing regular procedures to expedite the procurement process. While this can lead to quick solutions, it also increases the risk of corruption and mismanagement. To address these issues, several countries have adopted best practices and strategies to prevent corruption in emergency procurement. This essay explores international best practices in preventing corruption in emergency procurement processes and how these strategies can be integrated into Kenya's legal framework.

4.2 Global Best Practices in Preventing Corruption in Emergency Procurement

4.2.1 Clear Legal Frameworks and Regulations

The implementation of clear and robust legal frameworks is crucial in curbing corruption in emergency procurement. Singapore provides an exemplary model of how a clear and transparent procurement process can mitigate corruption risks. During the COVID-19 pandemic, Singapore relied heavily on its established procurement regulations, which adhered to the World Trade Organization's Government Procurement Agreement (GPA). This framework ensured that all government procurement was done in a transparent manner, promoting "open and fair competition" and allowing "equitable opportunities" for suppliers⁸⁶.

The Government Procurement Act (1997), along with regulations like the Government Procurement Regulations (2002), ensured that procurement procedures were followed systematically and uniformly. One of the key features of Singapore's system is the "GeBIZ" portal, a centralized electronic business center for government transactions. This open platform allowed suppliers to access procurement opportunities, which reduced the potential for favoritism and ensured transparency.⁸⁶ Additionally, procurement methods varied depending on the value of the contract, from direct sourcing for small-value contracts to open tenders for larger

⁸⁶ Gao, Henry S. "Emergency procurement and responses to COVID-19: The case of Singapore." (2021): 1.

projects, which ensured appropriate checks and balances. Furthermore, Singapore's commitment to rooting out corruption in procurement is reinforced by its regular audits conducted by the Auditor-General's Office (AGO), which helps identify procedural lapses and promotes accountability⁸⁶. Despite occasional lapses, such as those in IT controls, Singapore's legal and regulatory framework has maintained a relatively high level of procurement integrity.

While legal frameworks are essential, political commitment plays a significant role in ensuring their effectiveness. Singapore's political leadership has consistently demonstrated a strong resolve to address corruption. For example, the government has implemented stringent measures to combat fraud in procurement. The introduction of procedural safeguards, such as segregating procurement duties to ensure checks and balances, reflects the government's commitment to minimizing corruption risks.⁸⁶ Additionally, the rotation of procurement officers, coupled with the disqualification of fraudulent suppliers, has significantly reduced opportunities for misconduct. The effective management of emergency procurement in Singapore during the pandemic was not merely a result of legal frameworks but also due to the government's commitment to preventing corruption. For instance, when procurement irregularities were discovered in small-value purchases, the Public Utilities Board swiftly reformed its procurement process by reducing such purchases by 96% and centralizing them. These reforms reflect the adaptability of the system in response to emerging challenges and illustrate how political will is crucial in ensuring the success of regulatory frameworks.

Kenya's efforts to curb corruption, particularly in emergency procurement, could benefit significantly from adopting similar legal frameworks and strong political commitment as seen in Singapore. While Kenya has made considerable progress with the Public Procurement and Disposal Act (2005) and subsequent amendments, its enforcement mechanisms are still underdeveloped compared to those in Singapore. One of the key challenges in Kenya is not just the political will to combat corruption but also the capacity of institutions tasked with enforcement. For instance, while the Office of the Auditor General in Kenya has the mandate to conduct audits, the actual capacity to carry out regular audits across all state institutions remains in question. According to Zimmermann⁸⁷, despite the legal framework being largely up to international standards, the ability of Kenyan institutions such as the Ethics and Anti-Corruption

⁸⁷ Zimmermann, Till, and Michael Riegner LL M. NYU. "Prosecuting Corruption in Kenya, Uganda and South Africa." (2023).

Commission (EACC) and the Director of Public Prosecutions (DPP) to investigate and prosecute corruption cases is compromised by limited resources, political interference, and a lack of specialized personnel. The challenges facing Kenya's anti-corruption efforts are not only legal but institutional, as there remains a significant gap in capacity between Kenya and countries like Singapore. In Singapore, the legal and institutional systems are robust, with the Corrupt Practices Investigation Bureau (CPIB) having considerable independence and the capacity to manage a high volume of cases efficiently. In contrast, Kenya's agencies, including the EACC and the DPP, often struggle with poor coordination and underfunding, which impedes effective enforcement⁸⁷. Therefore, for Kenya to make meaningful progress in reducing corruption in procurement, it must enhance the capacity of its institutions to carry out regular audits and investigations, while continuing to foster political will at all levels of government. For example, Kenya could adopt centralized procurement platforms like GeBIZ to enhance transparency and reduce the opportunities for corruption. **Error! Bookmark not defined.** Additionally, incorporating regular audits and reviews of procurement procedures, as seen in Singapore, could help identify and address potential areas of corruption in a timely manner. Most importantly, Kenya's political leadership must demonstrate a commitment to enforcing these legal frameworks and implementing reforms as needed.

4.2.2 Political Will and Leadership Commitment

One of the key factors in preventing corruption in emergency procurement processes is strong political will and leadership commitment. This commitment can play a crucial role in addressing corruption, particularly in situations involving urgent procurement needs. In South Korea, political will played a crucial role in strengthening the capacity of state agencies to fight corruption. The government's genuine commitment to tackling corruption, particularly after the 2014 Sewol Ferry disaster, spurred the implementation of the Improper Solicitation and Graft Act (ISGA) in 2016. This law was not just a legal tool but also a direct manifestation of political will, as it curtailed practices like bribery and gift-giving across all levels of society, including the highest echelons of government and business.⁸⁸ The political leadership ensured that institutions like the Anti-Corruption and Civil Rights Commission (ACRC) had the resources and autonomy needed to carry out investigations and enforce the law. This is evidenced by the increased focus

⁸⁸ Hancocks, K.J. K. "Is the Party Over? South Korea Introduces Strict Anti-corruption Law." CNN. Last modified September 28, 2016. <https://edition.cnn.com/2016/09/27/asia/korea-corruption-law-begins/index.html>.

on detecting, investigating, and prosecuting both petty and grand corruption, which had previously been a challenge due to limited institutional capacity and public skepticism.⁸⁹ The government not only backed these measures but also allocated resources to support the work of state agencies, empowering them to act without fear of political interference. This proactive stance ensured that agencies were equipped with the necessary tools to bring high-level officials and business leaders to justice, as demonstrated by the significant prosecutions of figures involved in grand corruption schemes.⁹⁰ By embedding anti-corruption measures into both legal and cultural frameworks, South Korea's leadership demonstrated that political will can directly influence the effectiveness of state agencies in their fight against corruption. Through this commitment, the capacity of these institutions was strengthened, with clear support and resources provided to ensure the enforcement of anti-corruption laws. Such an understanding is crucial in shaping the framework for emergency procurement in Kenya, where procurement decisions made under pressure could be vulnerable to corruption. Brazil's approach to public procurement, particularly through the Food Acquisition Program (PAA), offers a strong example of how political commitment can significantly reduce corruption and improve the effectiveness of state agencies. The PAA, established in 2003, demonstrates that when a leader is genuinely committed to fighting corruption, state institutions are empowered to execute their mandates. In Brazil's case, political will was shown through the federal government's decision to prioritize procurement from smallholder farmers, particularly from rural communities. This commitment not only tackled social issues like hunger and poverty but also ensured that the procurement process was transparent and free from the inefficiencies that previously plagued the system.⁹¹ The political leadership behind the PAA was crucial in aligning the program with national goals, as it provided the necessary resources and institutional support to streamline procurement processes. This allowed agencies to operate more effectively without the interference of corruption, as demonstrated by the creation of laws and frameworks that encouraged fair

⁸⁹ Kim, Ruth. "South Korean Anti-Corruption Efforts: A Study of the Chaebol-Government Relationship." PhD diss., Drew University, 2019.

⁹⁰ Hock, Branislav, Hyeonho Park, Jeehyun Oh, and Mark Button. "The profile and detection of bribery in South Korea." *Crime, Law and Social Change* 83, no. 1 (2025): 1-16.

⁹¹ Pereira, Cesar, and Mayara Gasparoto Tonin. "Corruption in public procurement in Brazil." *Routledge Handbook of Public Procurement Corruption* (Routledge, Forthcoming) (2023).

competition and transparency.⁹² Furthermore, this commitment was supported by the mobilization of various social and political actors, such as family farming movements and rural organizations, who advocated for policies that ensured procurement benefited local farmers and supported sustainable development. However, despite the success of the PAA, the persistence of corruption, particularly revealed in the aftermath of Operation Car Wash, highlights that political will alone is not enough. Strong enforcement mechanisms and institutional reforms are needed to maintain the capacity of state agencies to carry out their work effectively.⁹³ The Brazilian experience shows that political will, when combined with institutional support and resources, can lead to positive outcomes, but it must be accompanied by robust mechanisms to address systemic corruption and ensure lasting improvements. For Kenya, adopting similar measures could help ensure that emergency procurement is transparent, equitable, and resistant to corrupt practices.

South Korea's anti-corruption strategy is deeply embedded in its institutional framework, where multiple levels of governance and civil society participation have worked together to curb corruption. As indicated in the BTI 2020 report, South Korea has made notable improvements in its anti-corruption measures, such as strengthening public sector integrity and enhancing transparency in procurement processes. **Error! Bookmark not defined.** South Korea's experience demonstrates that no matter how well-intentioned laws are, their success heavily depends on the political environment that supports their enforcement. In Kenya, there is a need for a similar institutional reinforcement, where political leaders not only support anti-corruption policies but also ensure that mechanisms are in place to hold public servants accountable during emergency procurement. In Brazil, the Food Acquisition Programme established clear procurement standards and focused on the efficient allocation of public funds to smallholder family farmers, which drastically reduced the level of corruption by removing middlemen from the procurement process. The programme purchased R\$12 billion worth of food from smallholder farmers between 2009 and 2018, creating a model that Kenya can learn from. **Error! Bookmark not defined.** By prioritizing local farmers, Brazil was able to reduce corruption risks inherent in procurement while addressing social equity. Kenya could adopt this decentralized approach, particularly in

⁹² Grisa, Catia, Mário Avila, and Rafael Cabral. "The politicization of public food procurement in Brazilian state governments: actors and ideas in the creation of sustainable food systems." In *Public Policies and Food Systems in Latin America* [Internet]. Éditions Quae, 2022.

⁹³ Motta, Alexandre Ribeiro. "Public Procurement in Brazil Federal Government: a perspective from the agents responsible for its regulation and operation." In *International Public Procurement Conference*, Seoul, South Korea. 2010.

sectors where corruption risks are high due to middlemen or monopolies, and prioritize transparency and local economic support during emergency procurement processes.

The experiences of both South Korea and Brazil offer valuable lessons that Kenya could incorporate into its procurement strategies. Political will, as seen in South Korea, is indispensable in ensuring that anti-corruption laws are not just drafted but also effectively enforced. In South Korea, the Improper Solicitation and Graft Act created a clear legal framework that addressed bribery and undue influence. **Error! Bookmark not defined.** For Kenya, the lesson is clear: without strong, consistent leadership to back anti-corruption measures, even the best laws can falter. Additionally, Brazil's focus on the equitable distribution of resources through the Food Acquisition Programme has shown that targeted, transparent procurement processes can reduce corruption while benefiting marginalized communities. **Error! Bookmark not defined.** For Kenya, adopting a similar approach, particularly in addressing procurement in rural or vulnerable areas, could ensure that emergency procurement processes are both fair and efficient, reducing the opportunity for corruption.

4.2.3 Digitalization and E-Procurement Systems

One of the most effective global best practices for preventing corruption in emergency procurement is the implementation of digital systems, specifically e-procurement. E-procurement has been widely adopted due to its significant potential to enhance transparency, reduce human interference, and ensure better monitoring of procurement activities.⁹⁴ The Estonian model, for instance, showcases how digital tools can promote accountability. In Estonia, all users in the e-procurement system, including tenderers and contracting authorities, must authenticate themselves. This mandatory authentication via national ID cards ensures that every action within the system is traceable and can be verified, thus reducing the risk of fraudulent activities.⁹⁴ Furthermore, the Estonian model logs every step in the e-procurement process, which provides an audit trail that can be used to resolve complaints efficiently, thus fostering trust and compliance with procurement laws.

The Estonian e-procurement system stands out because of its successful integration of transparency and security features. The country's system ensures that tenders are submitted via

⁹⁴ Simovart, Mari Ann, and Marina Borodina. "A qualitative step from e-communication to e-procurement: the Estonian e-procurement model." *Ius Publicum Network review* 2 (2017): 1.

secure HTTPS channels and stored in the e-procurement platform until the submission deadline has passed, guaranteeing the integrity of the bidding process.⁹⁴ The framework also addresses the challenge of ensuring that the system remains open to foreign suppliers. By avoiding overly restrictive digital signing requirements, Estonia ensures that international firms can participate without undue barriers, which enhances competition and decreases the likelihood of local favoritism. The success of the Estonian model offers valuable lessons for Kenya, particularly in ensuring that e-procurement systems are designed to be accessible and secure, while promoting equal opportunities for both local and international suppliers.

A critical factor in the successful implementation of e-procurement systems in reducing corruption is the level of political commitment to transparency and anti-corruption measures.⁹⁵ In Estonia, strong political will has been crucial in driving the transition to e-procurement, ensuring that both technical and legal reforms align with the goal of improving procurement efficiency.⁹⁴ For Kenya, integrating digital procurement systems into the existing legal framework would require similar political will. The political commitment to root out corruption must be evident at the highest levels to ensure that the legal framework supports the effective use of e-procurement. Without clear political will, even the most advanced e-procurement systems could fail to meet their anti-corruption potential.

Kenya can adopt several lessons from the Estonian e-procurement model, particularly in the areas of transparency, authentication, and accessibility. Implementing a secure, digital procurement platform that tracks every action would significantly reduce opportunities for corrupt practices in emergency procurement processes. Furthermore, ensuring that the system is non-discriminatory and accessible to both local and foreign suppliers will foster competition, which is a key factor in reducing procurement-related corruption.⁹⁴ By fostering a transparent, accountable, and competitive environment, Kenya could effectively prevent corruption in its emergency procurement processes, especially when coupled with strong political support and a commitment to institutional reforms.

⁹⁵ Maepa, Dineo N., Musenga F. Mpwanya, and Tshishikhawe B. Phume. "Readiness factors affecting e-procurement in South African government departments." *Journal of Transport and Supply Chain Management* 17 (2023): 874.

4.2.4 Independent Oversight and Audits

One of the key global best practices in preventing corruption in emergency procurement processes is the establishment of independent oversight and audits. This practice has been notably successful in jurisdictions such as Finland, where the presence of autonomous anti-corruption agencies plays a crucial role in enhancing transparency and accountability. In Finland, independent bodies like the Finnish National Bureau of Investigation (NBI) and the Finnish Competition and Consumer Authority (FCCA) have been pivotal in ensuring that procurement activities remain free from corrupt influences.⁹⁶ These agencies are tasked with conducting impartial investigations and prosecuting cases of corruption, a process that reinforces the integrity of the public procurement system. Their independence ensures that they are not influenced by political or administrative pressures, making their work highly credible and effective.⁹⁶ Similarly, Australia's emphasis on probity in grants and procurement administration is another prime example of independent oversight. The Australian National Audit Office (ANAO) regularly assesses probity in public sector operations, including procurement, ensuring adherence to ethical standards and reducing the risk of corruption⁹⁷. The ANAO's audits focus on areas such as conflicts of interest, fraud, and procurement processes, providing critical checks to prevent corruption and ensuring that public funds are spent efficiently and transparently.

In Kenya, integrating such independent oversight mechanisms into the existing legal framework for emergency procurement could be highly beneficial. Currently, the Kenyan Public Procurement and Disposal Act provides for oversight by bodies like the Public Procurement Regulatory Authority (PPRA). Kenya's current anti-corruption agencies face significant challenges to their independence, primarily due to political interference and lack of sufficient resources. Political influence from the executive undermines the ability of the Ethics and Anti-Corruption Commission (EACC) to function autonomously, as high-level figures often use their power to block investigations into corruption. Moreover, these agencies suffer from insufficient human and financial resources, which diminishes their capacity to conduct thorough

⁹⁶ Gillies, Hjalles Häkkinen, Jussi Haavisto Chan, and Pekka Tavio Parenti. "Analyzing the Effectiveness of Anti-Corruption Measures and Their Impact on Governance in Helsinki, Finland." *Journal of Public Policy & Governance* 7, no. 2 (2023): 37-45.

⁹⁷ Matthew Schulz. "Grants Watch: Audits, Investigations and Reviews." SmartyGrants. Last modified November 10, 2023. <https://www.smartygrants.com.au/articles/grants-watch-audits-investigations-and-reviews>.

investigations and prosecute corrupt officials⁹⁸. This systemic weakness is evident in high-profile scandals such as the Kimwarer and Aror Dams case, where investigations have stagnated despite substantial evidence of corruption.⁹⁸ Finland's model, by contrast, offers a framework where anti-corruption agencies operate with clear, independent mandates, free from political interference. Finland's model enhances institutional autonomy by reinforcing legal structures, increasing transparency, and improving cooperation among anti-corruption bodies.⁹⁹ These mechanisms ensure that agencies like the Finnish National Bureau of Investigation can effectively carry out their duties without external pressure. By adopting similar strategies, Kenya could strengthen legal safeguards, allocate adequate resources to anti-corruption bodies, and ensure that the EACC and other agencies can operate independently without interference from powerful political figures. Additionally, Finland's approach to transparency in public procurement could help curb corruption in sectors prone to manipulation, such as emergency procurement. This would enable Kenya to increase transparency, enhance accountability, and improve the effectiveness of its anti-corruption institutions, ultimately ensuring that Kenya's fight against corruption is more robust and successful.

Another crucial lesson from global best practices is the need for strong political commitment to combat corruption. In Finland, the commitment to transparency and accountability is not only reflected in the legal and institutional frameworks but is also supported by the political will to enforce these measures. The Finnish government's consistent political commitment to addressing corruption has been a key factor in the success of its anti-corruption efforts.⁹⁶ This is evident in the low corruption perception index (CPI) scores, where Helsinki consistently ranks among the least corrupt cities globally.⁹⁶ In contrast, Kenya's anti-corruption efforts, while bolstered by the creation of the Ethics and Anti-Corruption Commission (EACC), face challenges in enforcement, especially during times of emergency procurement. Often, procurement processes are rushed, and political pressures can lead to compromised decision-making.⁹⁶ To enhance the effectiveness of Kenya's legal framework, it is crucial to establish a similar level of political will that supports the enforcement of anti-corruption laws, particularly during emergency situations when procurement decisions can be more susceptible to corruption. Additionally, improving the

⁹⁸ Daud, Yussuf M. "A review of effectiveness of anti-corruption strategies and institutions in Kenya." *African Journal of Commercial Studies* 4, no. 4 (2024): 303-318.

⁹⁹ Oilinki, Juuso. "Government resolution on the national anti-corruption strategy and action plan 2021–2023." (2021).

autonomy and effectiveness of oversight bodies like the PPRA could foster a more transparent procurement process, ensuring that public funds are not misused during emergencies. By drawing on the success of independent audits and political commitment observed in Finland and Australia, Kenya could significantly enhance its emergency procurement processes, reducing the potential for corruption and increasing public trust in government operations.

4.2.5 Training and Capacity Building

Training and capacity building are critical strategies in preventing corruption in public procurement, including emergency procurement. The lessons learned from jurisdictions such as Germany, Brazil, and Korea highlight the importance of building internal capacity to safeguard transparency and integrity in procurement processes. In Germany, for instance, the Federal Procurement Agency (FPA) has implemented an electronic workflow system that centralizes procurement-related information and ensures an audit trail of all procurement decisions. This centralized approach not only strengthens procurement processes but also enhances internal capacity by training officials on how to conduct thorough audits, identify risks, and implement proactive measures to avoid corruption.¹⁰⁰ This capacity-building approach aligns with the need for trained personnel who can manage emergency procurement procedures in a transparent and effective manner.

Additionally, Brazil's Public Spending Observatory has set a precedent in using technology to monitor procurement. Through this observatory, procurement expenditure data is continuously cross-checked, creating a system of real-time alerts for potential irregularities.¹⁰¹ The Brazilian model shows that training and capacity building can extend to data management, fostering a culture of continuous vigilance among procurement officials. This proactive engagement helps detect potential corruption risks, ensuring that emergency procurement processes are not compromised. Kenya's technological uptake in procurement processes has seen significant strides in recent years, especially with the adoption of e-procurement systems that aim to enhance operational efficiency, transparency, and accountability in public procurement. The implementation of digital procurement tools, such as the Integrated Financial Management

¹⁰⁰ Fourie, David, and Cornel Malan. "Technological approach to ensure ethical procurement management." *Factoring Ethics in Technology, Policy Making, Regulation and AI* (2021): 13.

¹⁰¹ Lassou, Philippe Jacques Codjo, Matthew Sorola, Daniela Senkl, Sarah George Lauwo, and Chelsea Masse. "Monetization of politics and public procurement in Ghana." *Accounting, Auditing & Accountability Journal* 37, no. 1 (2024): 85-118.

Information System (IFMIS), has been central to improving the efficiency of procurement processes within Kenya's government institutions¹⁰². The benefits of these systems are substantial, particularly in addressing challenges like mismanagement and corruption, which have historically plagued Kenya's procurement landscape. By digitizing procurement processes, Kenya has been able to minimize human errors, improve the speed of procurement cycles, and reduce opportunities for fraudulent activities¹⁰³. Furthermore, integrating technology in procurement allows for better monitoring and tracking of transactions, thus fostering greater accountability and enhancing the ability to audit procurement activities¹⁰³. The adoption of digital procurement systems also aligns with the strategic management practices that are increasingly being prioritized in Kenya. Strategic e-procurement has been linked to improved performance in governmental institutions, with findings suggesting that digital tools enhance operational productivity and cost-effectiveness. The effectiveness of digital procurement systems in Kenya is underscored by a robust correlation between strategic planning and enhanced procurement performance, particularly in devolved government entities. Moreover, training procurement officers on how to leverage these technological tools can significantly bolster their capacity to monitor transactions effectively, further mitigating risks associated with corruption and mismanagement.¹⁰² Kenya's push for digital procurement represents a vital step toward improving the integrity and performance of its procurement systems. The integration of technology, coupled with strategic management practices, enhances the efficiency, transparency, and accountability of public procurement, offering considerable benefits to Kenya's public sector operations. By continuing to build capacity and refine these systems, Kenya can further strengthen its procurement processes and foster a more transparent and effective public service.

For training and capacity building to be successful in preventing corruption, clear political commitment is necessary. In Ghana, political interest heavily influences public procurement, often leading to corruption as political financiers expect lucrative returns from public contracts.¹⁰¹ Despite a legal framework that advocates for transparency, the political commitment to enforcing anti-corruption laws is often lacking, which weakens the efficacy of these

¹⁰² Obiero, Reuben. "E-Procurement Practices and Organizational Performance of Kiambu County Government, Kenya." PhD diss., Kenyatta University, 2024.

¹⁰³ Otieno, Claire, Marguerite Dz've, Rebecca Mbithe, and Justice Mutua. "STRATEGIC MANAGEMENT PRACTICES AND DIGITAL PROCUREMENT IN KENYA." *African Journal of Emerging Issues* 6, no. 9 (2024): 1-11.

frameworks. In contrast, Korea's Public Procurement Service (PPS) successfully integrated a national e-procurement system that automates various procurement procedures, reducing opportunities for corruption. The implementation of the KONEPS system, which tracks all procurement stages and links external systems for data sharing, has resulted in a significant reduction in corruption, especially with the use of automatic checks for collusive bidding.¹⁰⁰ This successful model demonstrates how strong political will, combined with technology-driven capacity-building efforts, can substantially reduce corruption in procurement. For Kenya, adopting both the technological and political frameworks seen in Korea could help tackle corruption within emergency procurement. This would require not only robust training for procurement officers but also the political will to ensure that such systems are consistently monitored and enforced. The Kenyan government could introduce similar e-procurement systems to enhance transparency and efficiency, creating a deterrent to corrupt practices.

4.3 Proposed Solutions for Kenya: Integrating International Best Practices

The rampant corruption in Kenya's public procurement sector, particularly within emergency procurement processes, has become a significant challenge to the country's governance and economic stability. As illustrated in numerous cases, such as the alleged procurement fraud involving high-profile individuals like Governor Mike Sonko and others **Error! Bookmark not defined.**, corruption continues to plague public procurement in Kenya. To address this issue, Kenya can draw lessons from international best practices, particularly from countries with well-established anti-corruption frameworks. This section focuses on key strategies that Kenya can adopt from international models to prevent corruption in its emergency procurement processes.

4.3.1 Strengthening Political Will

One of the primary lessons from successful international anti-corruption efforts is the need for strong political will. For instance, South Korea's anti-corruption reforms, particularly through the Kim Young-ran Act **Error! Bookmark not defined.**, highlight the importance of political leadership in ensuring the success of anti-corruption policies. In Kenya, the frequent political interference in procurement processes has exacerbated corruption risks, particularly at the county government level. **Error! Bookmark not defined.** Strengthening political will involves more than just creating anti-corruption laws; it requires political leaders to demonstrate a firm commitment to upholding these laws and fostering transparency. Singapore, another country with successful

procurement reforms, emphasizes transparency and public participation as core principles of its procurement policy.⁸⁶ The implementation of these principles can only be effective if political leaders commit to enforcing them, ensuring that emergency procurement processes are not influenced by political patronage or personal interests. Furthermore, as seen in South Korea, political commitment to anti-corruption needs to be coupled with institutional reforms and public accountability mechanisms, which Kenya should strive to implement to ensure procurement processes are shielded from political manipulation.

4.3.2 Adoption of E-Procurement Systems

E-Procurement systems have proven to be highly effective in curbing corruption by promoting transparency, reducing human intervention, and streamlining the procurement process. Singapore's adoption of the Government Electronic Business (GeBIZ) portal to facilitate procurement processes serves as an excellent example of how digital systems can reduce the risk of corruption. Through GeBIZ, Singapore ensures that procurement opportunities are published openly and accessible to all suppliers, ensuring fairness and competitiveness.⁸⁶ Kenya's adoption of e-procurement is already in place, but the system's effectiveness remains hindered by weaknesses, especially in post-award contract management. The Kenyan government should invest in enhancing the e-procurement system to make it more comprehensive and effective, particularly in monitoring the entire procurement cycle. This could involve incorporating automated systems for tracking contract performance, managing tendering documents, and ensuring adherence to procurement regulations. As demonstrated in Colombia and Georgia, implementing such systems can increase public trust in government procurement and reduce opportunities for fraud.

4.3.3 Enhancing Oversight Mechanisms

A key factor in preventing corruption is the establishment of robust oversight mechanisms. In Singapore, the Auditor-General's Office conducts regular audits to ensure compliance with procurement requirements.⁸⁶ This process helps identify and rectify any irregularities or breaches in procurement practices. Similarly, the establishment of independent procurement oversight bodies can significantly improve accountability in Kenya's procurement process. The EACC's efforts to investigate procurement fraud in Kenya have been critical, yet more needs to be done to ensure that such investigations lead to meaningful consequences. Strengthening independent

oversight bodies, such as the Public Procurement Regulatory Authority (PPRA) in Kenya, and empowering them with more resources and authority to monitor procurement activities, can help deter corrupt practices. Additionally, the integration of civil society organizations and media in monitoring procurement activities, as seen in Colombia's use of integrity pacts **Error! Bookmark not defined.**, would promote greater transparency and accountability.

4.3.4 Training and Capacity Building

Training and capacity building for procurement officers are essential to ensuring the integrity of the procurement process. As highlighted in the case of Ghana, weak institutional frameworks and a lack of proper training for procurement officers contribute to the widespread corruption in procurement systems.¹⁰¹ In Kenya, procurement officers often lack the technical expertise needed to implement anti-corruption measures effectively. Kenya should invest in regular training programs for procurement staff at all levels of government. These programs should focus on procurement laws, regulations, ethics, and the proper use of technology in procurement processes. In South Korea, for example, the government has implemented regular training for public officials to prevent corruption. **Error! Bookmark not defined.** Similarly, Kenya could create specialized units within the public procurement sector responsible for overseeing the ethical conduct of procurement officers and ensuring that they adhere to the highest standards of professionalism.

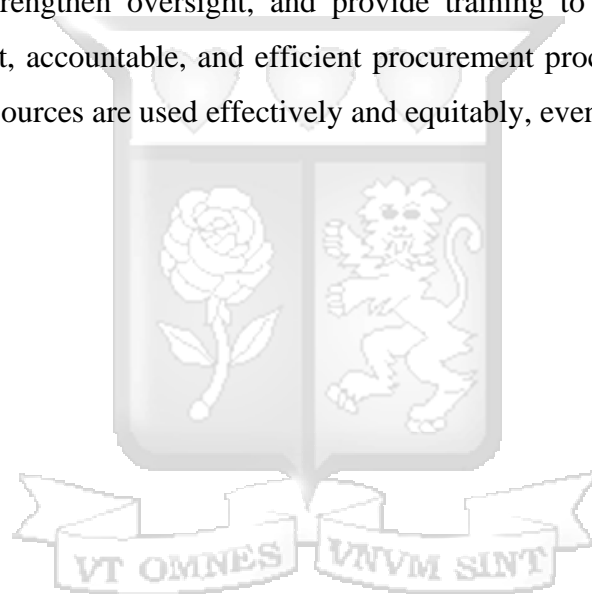
4.3.5 Legislative Reforms

Lastly, legislative reforms are essential to ensuring that anti-corruption measures are embedded within the legal framework. Kenya has made significant strides in developing a legal framework for procurement, with the Public Procurement and Disposal Act (PPDA) of 2015 and the Leadership and Integrity Act providing some level of protection against corruption. However, the effectiveness of these laws is often undermined by the lack of enforcement and the loopholes that allow corruption to persist **Error! Bookmark not defined.** To strengthen Kenya's legal framework, the country should consider adopting more stringent penalties for procurement-related corruption, as seen in South Korea's approach with the Improper Solicitation and Graft Act. **Error! Bookmark not defined.** Additionally, the Kenyan government could follow the example of Singapore, where the revised Government Procurement Act (GPA) and associated regulations emphasize transparency, fair competition, and the exclusion of suppliers involved in fraudulent

activities⁸⁶. Furthermore, Kenya could adopt open contracting principles, which have been successfully implemented in countries like Slovakia, to ensure that all stages of the procurement cycle are transparent and subject to public scrutiny.**Error! Bookmark not defined.**

4.4 Conclusion

In conclusion, preventing corruption in emergency procurement requires a combination of clear legal frameworks, political commitment, digitalization, effective oversight, and continuous training. By adopting international best practices from countries such as Singapore, Estonia, and South Korea, Kenya can improve its procurement system and reduce corruption risks, especially during emergencies. The Kenyan government must prioritize political will, invest in e-procurement systems, strengthen oversight, and provide training to procurement officials to create a more transparent, accountable, and efficient procurement process. By doing so, Kenya can ensure that public resources are used effectively and equitably, even during times of crisis.



Chapter Five

Conclusion and Recommendations

5.1 Introduction

The public procurement system in Kenya plays a crucial role in the overall economic development of the nation, as it manages substantial public funds. However, it has been plagued by corruption, especially in emergency procurement situations, where the urgency to meet national needs sometimes undermines the established procurement processes. The Public Procurement and Asset Disposal Act (PPADA) 2015 was designed to ensure transparency, fairness, and cost-effectiveness in public procurement, even during emergencies. However, the effectiveness of these laws in preventing corruption during emergency procurement processes remains contentious, as evidenced by numerous scandals like the Kenya Medical Supplies Authority (KEMSA) corruption during the COVID-19 pandemic. This chapter will present the findings of the research on the effectiveness of public procurement laws in Kenya, focusing on the role of the PPADA 2015 in curbing corruption during emergency procurement. It will provide a conclusion drawn from the data analyzed and offer actionable recommendations aimed at improving the framework for emergency procurement in Kenya.

5.2 Conclusion

This study has assessed the effectiveness of Kenya's public procurement laws in preventing corruption during emergency procurement processes. While the Public Procurement and Asset Disposal Act (PPADA) 2015 provides a robust framework for procurement in Kenya, its application during emergencies is often compromised due to legal loopholes, inadequate enforcement, and the urgency of the situations. The constitutional principles of fairness, transparency, and accountability, intended to guide public procurement, are essential, but in emergency procurement, the drive for expedience often overrides these principles. The provision for direct procurement in emergency situations, while necessary, has frequently been misused, allowing procurement officials to bypass due process. This relaxation of procurement procedures, particularly during crises like the COVID-19 pandemic, exposes the system to exploitation, with cases of inflated prices and mismanagement of public funds.

A key issue is the insufficient enforcement of the procurement laws. Oversight bodies such as the Public Procurement Regulatory Authority (PPRA) and the Ethics and Anti-Corruption Commission (EACC) have faced resource constraints, making them unable to monitor procurement processes effectively. These limitations have allowed corruption to thrive, as was evident in the mismanagement of funds during the pandemic. The lack of real-time oversight, coupled with the discretion granted to procurement officers, has created opportunities for abuse. Furthermore, the current framework does not provide clear, specific guidelines for handling emergency procurement, which leaves room for manipulation. The reliance on non-competitive procurement methods during emergencies, while meant to expedite processes, often leads to corruption, as it bypasses competition and reduces transparency. For Kenya's public procurement laws to be more effective in preventing corruption, there is a need to strengthen the legal framework. Clearer guidelines for emergency procurement, stricter enforcement, and enhanced capacity for oversight agencies are essential to reduce the opportunities for corruption. Furthermore, procurement officers must be better equipped with the necessary knowledge and tools to navigate these processes ethically.

Kenya's public procurement system, particularly in emergencies, faces significant challenges in preventing corruption. The Public Procurement and Asset Disposal Act (PPADA) of 2015 provides a legal framework to ensure transparency and fairness in public procurement. However, emergency procurement laws designed to expedite decision-making have created loopholes that allow for the manipulation of procurement processes, undermining their original purpose. This has been exacerbated by weak oversight, insufficient capacity in regulatory bodies, and a lack of political will to enforce the laws effectively. One of the primary issues identified in Kenya's procurement framework is the lack of adequate oversight during emergency procurement processes. While the law mandates oversight from institutions like the Office of the Auditor-General, the capacity of these bodies is insufficient to handle the increased volume of emergency procurements. This gap in monitoring allows corrupt practices to thrive, particularly when procurement is rushed due to crises. The absence of stringent enforcement mechanisms and timely audits has made the system vulnerable to abuse, enabling actors with political connections to exploit it for personal gain.

The emergency procurement framework, while intended to streamline acquisition processes in times of crisis, has often been misused, as seen in numerous scandals involving public institutions. These scandals highlight the vulnerability of the system to manipulation when urgency overrides standard procurement procedures. In particular, the absence of strict monitoring and the misuse of direct procurement have led to inflated prices, mismanagement, and delayed service delivery, ultimately compromising the intended benefits of emergency procurement. To address these issues, it is essential for Kenya to strengthen its procurement oversight mechanisms. Regulatory bodies must be provided with the resources and autonomy needed to monitor procurement activities effectively. Additionally, digital procurement systems could enhance transparency by tracking procurement processes and ensuring that each step is open to scrutiny. Implementing a more robust and transparent monitoring system would help reduce opportunities for corruption and foster greater accountability. Another key recommendation is the need for greater political will to tackle corruption within the procurement system. In the absence of strong political commitment, even the best legal frameworks can be undermined by political interference. The Kenyan government must demonstrate a firm commitment to ensuring transparency in procurement by holding individuals accountable for misconduct, particularly during times of emergency when the potential for exploitation is high.

In conclusion, the effectiveness of Kenya's procurement laws in curbing corruption during emergency procurement processes remains limited. While the laws offer a solid foundation, their application is weakened by gaps in enforcement, discretion in decision-making, and the absence of clear guidelines for emergencies. By addressing these shortcomings, Kenya can enhance the integrity of its procurement system, ensuring that public resources are used efficiently, even in times of crisis. Kenya's efforts to improve its public procurement system must focus on addressing the gaps in oversight, enhancing the capacity of regulatory bodies, and fostering political will. By strengthening enforcement mechanisms and adopting digital procurement systems, Kenya can improve the effectiveness of its procurement laws and reduce corruption risks. These reforms are critical not only for ensuring that public funds are spent efficiently but also for restoring public trust in government institutions.

5.3 Recommendations

To enhance the effectiveness of Kenya's public procurement laws in preventing corruption during emergency procurement processes, a multi-faceted approach is needed. First and foremost, there should be an overhaul of the regulatory framework to ensure more stringent guidelines are in place for emergency procurement. The current provisions under the Public Procurement and Asset Disposal Act (PPADA) 2015 permit deviations from standard procedures during emergencies, but these allowances are often exploited. Therefore, the legal framework must define "emergency" more clearly and introduce specific, narrowly tailored conditions under which exceptions can be made. A clear distinction between genuinely urgent situations and those resulting from poor planning is critical. Moreover, the requirement for "adequate evidence" of an emergency, as stipulated in the Act, should be more precisely defined to prevent abuse of discretion by procurement officers. Strengthening these provisions would not only mitigate corruption risks but also ensure that procurement processes are only expedited when absolutely necessary, safeguarding public funds and promoting greater transparency.

In addition to legislative reforms, it is essential to enhance the enforcement mechanisms surrounding emergency procurement. This can be achieved by bolstering the capacity and resources of oversight bodies such as the Public Procurement Regulatory Authority (PPRA), the Ethics and Anti-Corruption Commission (EACC), and the Office of the Auditor General (OAG). These institutions should be provided with more financial and human resources to enable them to monitor procurement activities in real time, especially during emergencies when decisions are often made rapidly. The current lack of real-time monitoring has allowed fraudulent practices, such as inflated prices and ghost suppliers, to thrive. Introducing mandatory, live internal audits for emergency procurements would ensure that any irregularities are identified and addressed immediately, thereby increasing accountability. Additionally, stronger penalties for those found guilty of mismanaging public procurement during emergencies would serve as a deterrent against corruption. This holistic approach to enforcement would significantly strengthen the transparency and efficiency of emergency procurement processes.

Kenya should embrace best practices from other jurisdictions and incorporate them into its legal and institutional frameworks. Countries such as Canada and India have established effective emergency procurement systems by providing immunity for public officials acting in good faith

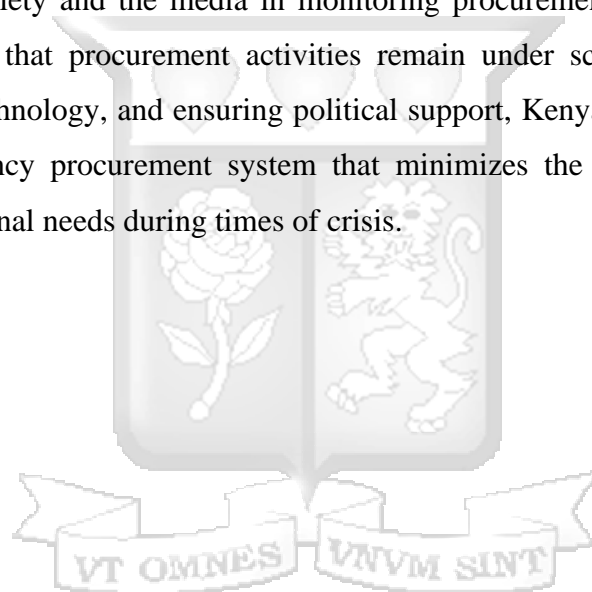
during emergencies, coupled with a well-structured oversight mechanism. Adopting similar practices in Kenya could help balance the need for swift action during emergencies with the imperative of maintaining accountability. Furthermore, investing in technology and digital platforms to monitor procurement in real-time would facilitate transparency and minimize opportunities for corrupt practices. Implementing electronic procurement systems would allow for better documentation, auditing, and tracking of contracts, thus increasing both efficiency and accountability. By combining these international best practices with localized adjustments to the legal and institutional frameworks, Kenya could significantly reduce corruption in emergency procurement processes, ensuring that public funds are spent effectively in times of crisis.

To address the persistent corruption within Kenya's emergency procurement system, I recommend the implementation of several comprehensive reforms that target the core weaknesses identified in the legal and institutional frameworks. First, Kenya should enhance oversight mechanisms by significantly strengthening the Public Procurement Regulatory Authority (PPRA) and other oversight bodies such as the Ethics and Anti-Corruption Commission (EACC). These institutions are critical in ensuring accountability and transparency in procurement activities, especially during times of crisis. However, their effectiveness is currently undermined by insufficient resources, limited capacity, and political interference. Increasing the financial and human resources allocated to these bodies, coupled with a robust legal framework that ensures their independence from political pressures, will improve real-time monitoring and allow for more thorough investigations of procurement processes. Additionally, regular audits and the use of technology for data-driven oversight can help identify irregularities earlier, reducing the opportunity for corruption to flourish.

Kenya must adopt digital procurement systems, drawing inspiration from global best practices such as Singapore's Government Electronic Business (GeBIZ) platform and Estonia's e-procurement system. These platforms ensure transparency by providing a centralized, accessible system for procurement activities, allowing both local and international suppliers to compete fairly and reducing opportunities for favoritism. Implementing a secure and transparent e-procurement system will not only streamline the procurement process but also create an audit trail that makes it difficult for corruption to go unnoticed. This shift towards digitalization,

combined with stringent enforcement of anti-corruption laws, can reduce human interference and provide a more efficient way of monitoring and managing public procurement.

Finally, political will and leadership commitment are essential to the success of these reforms. Strong political leadership, as demonstrated by countries like South Korea, is crucial in ensuring the full implementation and enforcement of procurement laws. In Kenya, political interference in procurement decisions has often been a significant driver of corruption. For reforms to succeed, Kenya's leadership must demonstrate a commitment to eliminating corruption in procurement by supporting transparency initiatives and holding public officials accountable for any misconduct. Furthermore, adopting best practices such as open contracting principles and expanding the involvement of civil society and the media in monitoring procurement processes can increase public trust and ensure that procurement activities remain under scrutiny. By strengthening oversight, embracing technology, and ensuring political support, Kenya can build a more robust and transparent emergency procurement system that minimizes the risk of corruption while effectively meeting national needs during times of crisis.



Bibliography

- Arrowsmith S, 'Public Procurement: Basic Concepts and the Coverage of Procurement Rules' in Arrow smith, S, Treumer S, Fejo J, Jiang L,(eds) Public Procurement Regulation: An Introduction, Asia Link, 2011, at 1.
- Arrowsmith S, 'Public Procurement: Basic Concepts and the Coverage of Procurement Rules' in Arrow smith, S, Treumer S, Fejo J, Jiang L,(eds) Public Procurement Regulation: An Introduction, Asia Link, 2011, at 11.
- Arrowsmith S. Linarelli J, Wallace D, 'Regulating Public Procurement: National and International Perspectives', Kluwer Law International, 2000, 72-73.
- Bernhold, Torben, and Niklas Wiesweg. "Principal-agent theory: Perspectives and practices for effective workplace solutions." A handbook of management theories and models for office environments and services (2021): 117-128.
- Caborn E, Arrowsmith S, 'Procurement methods in the public procurement systems of Africa', in Quinot G, Arrowsmith S (eds) in Public Procurement Regulation in Africa, Cambridge University Press, 2013, 284.
- Grinlinton D, 'Horizontal and Vertical Integration of Sustainability into Policymaking, Planning and Implementation of Renewable Energy Projects—The New Zealand Model', in Mauerhofer V(ed), Legal Aspects of Sustainable Development, 2016.
- Grisa, Catia, Mário Avila, and Rafael Cabral. "The politicization of public food procurement in Brazilian state governments: actors and ideas in the creation of sustainable food systems." In Public Policies and Food Systems in Latin America [Internet]. Éditions Quae, 2022.
- Harrington J., Manji A., 'Restoring Leviathan? The Kenyan Supreme Court, constitutional transformation, and the presidential election of 2013', Taylor & Francis 2015
- Meckling W, Jensen M, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure', 1976.
- Opalo Ken Ochieng, 'Another Disputed Election Batters Kenya's Institutions', University of California Press 2018,

Paul Wafula. "Up to Sh1.4b was stolen in NYS scandal, new audit now reveals." The Standard - Kenya & World News | Latest and Breaking News. Last modified 2017.

<https://www.standardmedia.co.ke/article/2000204386/up-to-sh1-4b-was-stolen-in-nys-scandal-new-audit-now-reveals>.

Pereira, Cesar, and Mayara Gasparoto Tonin. "Corruption in public procurement in Brazil." Routledge Handbook of Public Procurement Corruption (Routledge, Forthcoming) (2023).

Trepte P, 'Public Procurement in the European Union', in Arrowsmith S (ed.), The Law of Public and Utilities Procurement, Sweet and Maxwell, London, 2 edn, 2005.

Udeh K, 'The Regulatory Framework for Public Procurement in Kenya', in Quinot G, Arrowsmith S (eds.), Public Procurement Regulation in Africa, Cambridge University Press, 2013, 116.

Uehara, Thiago. Public procurement for sustainable development. 2020.

Alonso-Pauli, Eduard , and Lluís Bru. "Strategic delegation in procurement." SIOE. 2015. https://extranet.sioe.org/uploads/sioe2020/alonso-pauli_bru.pdf. 10 March 2023.

Fourie, David, and Cornel Malan. "Technological approach to ensure ethical procurement management." Factoring Ethics in Technology, Policy Making, Regulation and AI (2021): 13.

Gao, Henry S. "Emergency procurement and responses to COVID-19: The case of Singapore." (2021): 1.

Motta, Alexandre Ribeiro. "Public Procurement in Brazil Federal Government: a perspective from the agents responsible for its regulation and operation." In International Public Procurement Conference, Seoul, South Korea. 2010.

Peshkov, V V , T G Doroshenko, and I A Sukhanova. "Non-Competitive Procurement of Resources in Industrial and Civil Construction." International science and technology conference, 2019: 1-6.

- Zimmermann, Till, and Michael Riegner LL M. NYU. "Prosecuting Corruption in Kenya, Uganda and South Africa." (2023).
- Newfoundland and Labrador: Public Procurement Policy, 20 March 2021, 32.
- OECD: 'Guidelines for Accelerated Public Procurement Procedures', Public Procurement Toolbox, 2009, 1.
- Oilinki, Juuso. "Government resolution on the national anti-corruption strategy and action plan 2021–2023." (2021).
- OPO. "Emergency procurement." Office of the Procurement Ombudsman. Dec 2020. <https://opo-boa.gc.ca/urgence-emergency-eng.html>. 10 March 2023.
- The National Treasury. "NATIONAL PUBLIC PROCUREMENT AND ASSET DISPOSAL POLICY." The National Treasury of Kenya. Last modified December 2021. <https://www.treasury.go.ke/wp-content/uploads/2021/12/NATIONAL-PUBLIC-PROCUREMENT-AND-ASSET-DISPOSAL-POLICY-2020.pdf>.
- Treasury. "National Public Procurement and Asset Disposal Policy." Treasury KE. 2020. <https://www.treasury.go.ke/wp-content/uploads/2021/12/NATIONAL-PUBLIC-PROCUREMENT-AND-ASSET-DISPOSAL-POLICY-2020.pdf>. 10 March 2023.
- Aboelazm, Karem, and Attia Afandy. "Centralization and decentralization of public procurement: Analysis for the role of General Authority for Governmental Services (GAGS) in Egypt." *Journal of Advances in Management Research* 16, no. 3 (2019): 262-276.
- Bergsgard N, Nødlandb S, 'Open Tenders in Public Procurement of Welfare Services: Professionalization, Standardization, and Innovation among Civil Sector Providers', *Journal of Civil Society*, 16(4), 2020.
- Caroline Cherotich, Stellan Omari, 'Effectiveness of Procurement Practices on the Performance of County Governments in Kenya: A Case of Kericho County Government'; *IJARKE Business & Management Journal*, 2018

- Chrisidu-budnik A, Przedańska J, 'The Agency Theory Approach to the Public Procurement System', *Wroclaw Review of Law, Administration & Economics*, 2017, 155.
- Daud, Yussuf M. "A review of effectiveness of anti-corruption strategies and institutions in Kenya." *African Journal of Commercial Studies* 4, no. 4 (2024): 303-318.
- Dekel O, 'The Legal Theory of Competitive Bidding for Government Contracts', *Public Contact Law Journal*, 37, 2008, 237.
- Dekel O, 'The Legal Theory of Competitive Bidding for Government Contracts', *Public Contact Law Journal*, 37, 2008, 237.
- E.K KInuthia, Paul A. Odundo, Grace Nyagah, 'Aspects of Procurement Reforms that Influence Expenditure Management in Public Secondary Schools in Kenya: A Focus on Emergency Procurement'. *International Journal of Business and Management*, 2018
- Engelbert, Annika , Nina Reit, and Laurence Westen. "Procurement Methods in Kenya – A Step Towards Transparency?" *European Procurement & Public Private Partnership Law Review*, 2012: 162-171.
- Gillies, Hjallis Häkkänen, Jussi Haavisto Chan, and Pekka Tavio Parenti. "Analyzing the Effectiveness of Anti-Corruption Measures and Their Impact on Governance in Helsinki, Finland." *Journal of Public Policy & Governance* 7, no. 2 (2023): 37-45.
- Haur, Harpreet, and Surya Prakash Singh. "Disaster Resilient Proactive and Reactive Procurement Models for Humanitarian Supply Chain." *Production Planning and Control*, 2018: 19-53.
- Hock, Branislav, Hyeonho Park, Jeehyun Oh, and Mark Button. "The profile and detection of bribery in South Korea." *Crime, Law and Social Change* 83, no. 1 (2025): 1-16.
- Hoffman S, 'Responders' Responsibility: Liability and Immunity in Public Health Emergencies', *The Georgetown Law Journal*, 96(6), 2007.
- Huo, Hong, and Huanning Xu. "Construction of Emergency Procurement System and System Improvement Based on Convolutional Neural Network." *Computational Intelligence and Neuroscience*, 2022: 1-8.

- Jensen M, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function', *Business Ethics Quarterly*, 12(2), 2002, 245.
- Jillo, M., M. K. Kibuine, and D. W. Kimemia. "PROCUREMENT PRACTICES AND PROCUREMENT PERFORMANCE OF PUBLIC HOSPITALS IN KENYA: A CASE OF KENYATTA NATIONAL HOSPITAL." *African Journal of Emerging Issues* 6, no. 19 (2024): 73-86.
- Kamoni, Peter, Onesmus Mbaabu, Susan Wamitu, Kevin Wachira, and Robert Ombati. "Public Procurement price variance in Kenya: extent, Drivers, and Proposed Mitigation." *European Journal of Logistics, Purchasing and Supply Chain Management* 12, no. 2 (2024): 1-13.
- Khoury L, Klein A, Couture-Ménard M, Hammond K, 'Governments' Accountability for Canada's Pandemic Response', *Journal of Public Health Policy*, 43, 2022, 222-233.
- Krvinsh A, Vilks A, 'Prevention of corruption in public procurement: Importance of general legal principles', *Jurisprudence*, 20(1), 2013, 235-247.
- Lassou, Philippe Jacques Codjo, Matthew Sorola, Daniela Senkl, Sarah George Lauwo, and Chelsea Masse. "Monetization of politics and public procurement in Ghana." *Accounting, Auditing & Accountability Journal* 37, no. 1 (2024): 85-118.
- Maepa, Dineo N., Musenga F. Mpwanya, and Tshishikhawe B. Phume. "Readiness factors affecting e-procurement in South African government departments." *Journal of Transport and Supply Chain Management* 17 (2023): 874.
- McGaughey F et al, 'Public Procurement for Protecting Human Rights', *Alternative Law Journal*, 2022.
- Meng, Qingchun, Zhiping Kao, Ying Guo, and Chunbing Bao. "An emergency supplies procurement strategy based on a bidirectional option contract." *Socio-Economic Planning Sciences*, 2023.
- Mukura, P., Noor Shalle, M. Kanda, and P. Ngatia. "Role of Public Procurement Oversight Authority on Procurement Regulations in Kenyan State Corporations. A Case of Kenya

- Electricity Generating Company (KenGen)." International Journal Of Academic Research In Accounting, Finance And Management Sciences 6, no. 3 (2016).
- Musiga, Teddy JO. "Okiya Omtatah Okoiti & 2 others v Attorney General & 4 others [2020] eKLR Civil Appeal No 13 & 10 of 2015." SAIPAR Case Review 3, no. 2 (2020): 14.
- Mutangili S, 'Role of E-Procurement Practices in Fighting Fraud and Corruption in Public Procurement', Stratford Journal of Procurement & Supply Chain, 3(2), 2019, 36-47.
- Mutangili, Solomon Kyalo. "Challenges influencing compliance to Public Procurement Regulations in Kenya." Journal of Procurement & Supply Chain 5, no. 1 (2021): 24-34.
- Mutangili, Solomon Kyalo. "Corruption in public procurement in Kenya: Causes, consequences, challenges and cures." Journal of Procurement & Supply Chain 3, no. 1 (2019): 63-72.
- Mwanarafa, Amina Mustafa, and Anthony Osoro. "Public Procurement Legal Framework and Performance of National Transport and Safety Authority, Kenya." Journal of Procurement & Supply Chain 3, no. 1 (2023): 10-22.
- Mwembi, Isabella Nyabonyi, and Duncan O. Ochieng. "Security and multi-agency approaches in combating corruption in the public service in Nairobi City County, Kenya." Reviewed Journal of Social Science & Humanities 4, no. 1 (2023): 569-584.
- Ndii, Mutero Wa, Jeremiah M. Kalai, and Susan Chepkonga. "Influence of Community Pressure on Principals' Compliance with Procurement Regulations in Public Secondary Schools in Embu County, Kenya." Msingi Journal 8, no. 1 (2024): 60-70.
- Onyango, Gedion. "Social processes of public sector collaborations in Kenya: unpacking challenges of realising joint actions in public administration." Journal of the Knowledge Economy (2024): 1-31.
- Osamba, B. A., and M. Moronge. "Role of public procurement and asset disposal act (2015) on service delivery in county governments of Kenya." The Strategic Journal of Business & Change Management 6, no. 4 (2019): 616-632.

- Otieno, Claire, Marguerite Dz've, Rebecca Mbithe, and Justice Mutua. "STRATEGIC MANAGEMENT PRACTICES AND DIGITAL PROCUREMENT IN KENYA." *African Journal of Emerging Issues* 6, no. 9 (2024): 1-11.
- Rankin C, 'Reforming Emergency Procurement to Protect Against Corrupt Decision-Making While Ensuring Swift and Unencumbered Procurement', *African Public Procurement Law Journal*, 8, 2021, 88.
- Saussier S, Valbonesi P, 'Introduction to the Special Issue: Public Procurement-New Theoretical and Empirical Developments', *Economia e Politica Industriale*, 45, 2018, 1-4.
- Simovart, Mari Ann, and Marina Borodina. "A qualitative step from e-communication to e-procurement: the Estonian e-procurement model." *Ius Publicum Network review* 2 (2017): 1.
- Telles P, 'Extremely Urgent Public Procurement under Directive 2014/24/EU the COVID-19 Pandemic', *Maastricht Journal of European and Comparative Law*, 29(2), 2022.
- Toroitich, Anthony Martin, Louise Dunford, Rachel Armitage, and Sangeeta Tanna. "Patients access to medicines—a critical review of the healthcare system in Kenya." *Risk management and healthcare policy* (2022): 361-374.
- Ayaga Wilfred, 'Report: Sh4b lost in biometric voter registration tender', *The Standard*, 2015 <https://www.standardmedia.co.ke/counties/article/2000125913/report-sh4b-lost-in-bvr-tender-on-12-January-2023>
- Business Daily. "Procurement agency can play crucial role in anti-corruption fight." Last modified July 24, 2019. https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/procurement-agency-can-play-crucial-role-in-anti-corruption-fight-2258618#google_vignette.
- David Mwere. Push for State to explain spending of Covid-19 funds gains steam. *Nation Media Group*, 2020, August 13. <https://nation.africa/kenya/news/explain-covid-19-funds-use-state-told-1918158>
- GERALD ANDAE. "Kenya Power suspends 59 ahead of tendering audit." *Business Daily*. Last modified November 5, 2021.

<https://www.businessdailyafrica.com/bd/corporate/companies/kenya-power-suspends-59-ahead-tendering-audit-3608366>.

Gichio Debra, 'Public Procurement in Kenya: Cash Cow for the Corrupt or Enabler for Public Service Delivery?', Adili, 145, 201

Gichio Debra, 'Public Procurement in Kenya: Cash Cow for the Corrupt or Enabler for Public Service Delivery?', Adili, 145, 2014, 2.

Igunza Emmanuel, 'Coronavirus corruption in Kenya: Officials and businesspeople targeted', BBC, 24 September 2020 <https://www.bbc.com/news/world-africa-54278417> on 12 January 2023.

Malalo Humphrey, 'Kenya Anti-graft Agency Slams Procurement of COVID-19 Equipment', Reuters, 24 September 2020 <https://www.reuters.com/article/uk-kenya-corruption-idAFKCN26F3C8> on 13 January 2023.

Marpakwar Chaitanya, 'Officers have 100% Immunity Under the Disaster Management Act, Says Civic Chief', India Times, 21 December 2022 <https://timesofindia.indiatimes.com/city/mumbai/officers-have-100-immunity-under-disaster-mgmt-act-says-civic-chief/articleshow/96385396.cms> on 17 January 2023.

Miriri Duncan, 'Third of Kenyan Budget Lost to Corruption: Anti-graft Chief', Reuters, 10 March 2016 <https://www.reuters.com/article/us-kenya-corruption-idUSKCN0WC1H8> on 13 January 2023.

Ngugi Brian, Oketch Angela, 'COVID Millionaires Scam: Sh17 Billion Remains Unaccounted for at KEMSA', Nation, 8 May 2022 <https://nation.africa/kenya/news/covid-millionaires-scam-sh17-billion-remains-unaccounted-for-at-kemsa-3808276> on 13 January 2023

Ngugi Brian, Oketch Angela, 'COVID Millionaires Scam: Sh17 Billion Remains Unaccounted for at KEMSA', Nation, 8 May 2022 <https://nation.africa/kenya/news/covid-millionaires-scam-sh17-billion-remains-unaccounted-for-at-kemsa-3808276> on 13 January 2023.

Paul Wafula. Traders who made millions from Covid supplies. Nation Media Group, 2020, August 3. <https://nation.africa/kenya/news/traders-who-made-millions-from-covid-supplies-1911288>

Shaw Robert, 'Kenya: Court Ruling Opens a Pandora's Box of Flawed SGR Procurement', AllAfrica, 24 June 2020 <https://allafrica.com/stories/202006240192.html> on 12 January 2023.

The Citizen. "JKIA Construction Contract Under Investigation." The Citizen. Last modified April 5, 2021. <https://www.thecitizen.co.tz/tanzania/news/africa/jkia-construction-contract-under-investigation-2522710>.

The Nation. "Ruto says not to blame over maize scandal." Last modified July 3, 2020. <https://nation.africa/kenya/news/politics/ruto-says-not-to-blame-over-maize-scandal-623558>.

The Star. "NYS in Another Corruption Scandal As 10 Billion Goes Missing." Radio Jambo. Last modified October 2, 2020. <https://www.radiojambo.co.ke/habari/2018-05-13-nys-in-another-corruption-scandal-as-10-billion-goes-missing>.

Advant Beiten. "Possibilities for Accelerated Procurement in Times of the "Corona Crisis"." Advant Beiten. March 13, 2020. <https://www.advant-beiten.com/en/blogs/possibilities-accelerated-procurement-times-corona-crisis>. 10 March 2023.

Bosio Erica, Djankov Simeon, 'How Large is Public Procurement?', World Bank Blogs, 5 February 2020 <https://blogs.worldbank.org/developmenttalk/how-large-public-procurement> on 11 February 2023.

Bosio Erica, Spagnolo Giancarlo, Bandiera Oriana, 'Discretion, Efficiency and Abuse in Public Procurement', CEPR, 30 November 2021 <https://cepr.org/voxeu/columns/discretion-efficiency-and-abuse-public-procurement-new-ebook> on 16 January 2023.

Buyandsell. "Standing Offers." Government of Canada: Buy and Sell. 2023. <https://buyandsell.gc.ca/for-businesses/selling-to-the-government-of-canada/the-procurement-process/standing-offers>. 10 March 2023.

Care Emergency Toolkit. "Role of Procurement in an Emergency." Care Emergency Toolkit. 2023. <https://www.careemergencytoolkit.org/programme-support/2-procurement/1-role-of-procurement-in-an-emergency/>. 10 March 2023.

- Damin Jung & Thomas Kalinowski. "Korea's Anti-Corruption Efforts an Inspiration for Other Countries." BTI. Last modified December 19, 2019. <https://blog.bti-project.org/2019/12/19/koreas-anti-corruption-efforts-an-inspiration-for-other-countries/>.
- Duri Jorum, 'Corruption in Times of Crisis', Transparency International, 16 March 2021 <https://knowledgehub.transparency.org/assets/uploads/kproducts/2021-Lit-review-on-corruption-and-crises.pdf> on 17 January 2023.
- Hancocks, K.J. K. "Is the Party Over? South Korea Introduces Strict Anti-corruption Law." CNN. Last modified September 28, 2016. <https://edition.cnn.com/2016/09/27/asia/korea-corruption-law-begins/index.html>.
- Huo Hong, Xu Huanning, 'Construction of Emergency Procurement System and System Improvement Based on Convolutional Neural Network', PubMed Central, 23 July 2022 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9338874/> on 16 January 2023.
- Jackline Kagume & Leo Kipkogei Kemboi. Collective failure in management of public resources: Analysis of Kenya's COVID-19 public procurement breaches. IEA Kenya, 2020, September 23. <https://ieakenya.or.ke/blog/collective-failure-in-management-of-public-resources-analysis-of-kenyas-covid-19-public-procurement-breaches/>
- Jorum Duri. "Corruption and devolution in Kenya." Last modified April 23, 2021. https://knowledgehub.transparency.org/assets/uploads/kproducts/Kenya-2021_Corruption-and-devolution.pdf.
- Kalpschtrej Karina, De Urieta Melisa, Bisilian Jose, Battilana, 'How to Monitor Procurement during a State of Emergency: 4 Lessons Learned from Argentina', Partnership for Transparency fund, 2022 <https://www.ptfund.org/how-to-monitor-procurement-during-a-state-of-emergency-4-lessons-learned-from-argentina/> on 15 January 2023.
- Ken Opala, Website. "The Dark Business of Election 2017." AfriCOG. Last modified March 15, 2019. <https://africog.org/the-dark-business-of-election-2017/>. Uehara, Thiago. Public procurement for sustainable development. 2020.
- Kissi E, Osei-Tutu E, Osei-Tutu S, 'Sole Sourcing Procurement: The Ghanaian Procurement Experience', researchgate, August 2018

- https://www.researchgate.net/publication/341580734_SOLE_SOURCING_PROCUREMENT_THE_GHANAIAN_PROCUREMENT_EXPERIENCE on 16 January 2023.
- Law Insider. "Emergency procurement definition." Law Insider. 2023.
<https://www.lawinsider.com/dictionary/emergency-procurement> 10 March 2023.
- Magakwe Jack, 'The Root Causes of Corruption in Public Procurement: A Global Perspective', Intechopen, 30 August 2022 <https://www.intechopen.com/online-first/83359> on 18 January 2023.
- Matthew Schulz. "Grants Watch: Audits, Investigations and Reviews." SmartyGrants. Last modified November 10, 2023. <https://www.smartygrants.com.au/articles/grants-watch-audits-investigations-and-reviews>.
- Ministry of Business, Innovation and Employment: 'Small Businesses in 2021', <https://www.mbie.govt.nz/assets/small-business-factsheet-2021.pdf> on 24 February 2023.
- Namu John-Allan, Zalan Kira, Mukami Purity, Atellah Juliet, 'The Cost of Kenya's 'Budgeted Corruption'', OCCRP, 11 August 2021 <https://www.occrp.org/en/37-ccb/ccb/14986-the-cost-of-kenya-s-budgeted-corruption> on 12 January 2023.
- New Zealand Government Procurement: 'Growth in Government Procurement Spend', 20 May 2021 <https://www.procurement.govt.nz/about-us/news/growth-in-government-procurement-spend/> on 20 February 2023.
- NLM. "Graft and tender scandals are the norm at airports authority." Last modified March 22, 2023. <https://nairobiawmonthly.com/graft-and-tender-scandals-are-the-norm-at-airports-authority/>.
- NZ. "Quick Guide to Emergency Procurement." New Zealand Government Procurement. 2023. <https://www.procurement.govt.nz/assets/procurement-property/documents/guide-emergency-procurement.pdf>. 10 March 2023.
- OECD. "Competition and Procurement." Organization for Economic Cooperation and Development. 2011. <https://www.oecd.org/daf/competition/sectors/48315205.pdf> 10 March 2023.

Rasna Warah. Corruption is undermining Kenya's COVID-19 response. ONE.org Africa, 2021, September 29. <https://www.one.org/africa/stories/corruption-undermining-kenya-covid19-response/>

RECORD: 'Ensuring Transparency in Emergency Procurement: Recommendations', <https://www.politsei.ee/files/Korruptsioon/Trykised/record-transparency-in-emergencyprocurement.pdf?1c884fd9b1> on 15 January 2023.

Susan Wairimu Munene - LLB (UoN), LLM (Notts). "An Overview of Public Procurement in Kenya » Gerivia Advocates LLP." Gerivia Advocates LLP. Last modified June 26, 2020. <https://gerivia.co.ke/176/overview-public-procurement-in-kenya/>.

The OECD. "Public Procurement." The Organization for Economic Cooperation and Development. 2023. <https://www.oecd.org/governance/ethics/public-procurement.htm#:~:text=Public%20procurement%20refers%20to%20the,contract%20management%20and%20final%20payment.> 10 March 2023.

Transparency International: '2021 Corruption Perceptions Index' https://images.transparencycdn.org/images/CPI2021_Report_EN-web.pdf

UNAIDS. "Procurement Manual." UNAIDS. 2023. <http://procurementmanual.unaids.org/home/6-solicitation-methods/6-9-emergencies#:~:text=Emergency%20procurement%20refers%20to%20procurement,could%20result%20in%20delivery%20delays.> 10 March 2023.

UNAIDS. "Procurement Manual." UNAIDS. 2023. <http://procurementmanual.unaids.org/home/6-solicitation-methods/6-9-emergencies#:~:text=Emergency%20procurement%20refers%20to%20procurement,could%20result%20in%20delivery%20delays.> 10 March 2023.

UNPF. "Emergency Procurement Procedures." United Nations Population Fund. 2011. https://www.unfpa.org/sites/default/files/admin-resource/Emergency%20Procurement%20Procedures_EN_UNFPA_Publication-41633.doc. 10 March 2023.

World Bank. "Emergency Procurement for Recovery and Reconstruction." World Bank. Sept 2015. <https://thedocs.worldbank.org/en/doc/315691568908208946-0090022019/original/EmergencyProcurementforReconstructionandRecoveryToolkit.pdf>. 10 March 2023.

Africa Centre for Open Governance: 'Public Procurement in Kenya's Counties: Experience from Three Counties', 2015, 26.

Boamah, Festus, and Aled Williams. "Kenya powerless'-corruption in Electricity as Problem-solving in Kenya's Periphery." Bergen, Norway: CHR Michelsen Institute, U4 Brief 1 (2019).

Development Gateway. "Emergency Procurement: Lessons Learned from COVID-19." Development Gateway. Aug 17, 2020. https://developmentgateway.org/wp-content/uploads/2020/10/DevelopmentGatewayReport_EmergencyProcurementCovid19.pdf. 10 March 2023.

EACC. "An Evaluation of Corruption in Public Procurement: A Kenyan Experience." Ethics and Anti-Corruption Commission. Feb 2015. <https://eacc.go.ke/default/wp-content/uploads/2018/09/Evaluation-of-corruption-in-the-public-procurement.pdf>. 10 March 2023.

<https://eacc.go.ke/default/wp-content/uploads/2018/09/Evaluation-of-corruption-in-the-public-procurement.pdf>. 10 March 2023.

NATIONAL TAXPAYERS ASSOCIATION. "Emergency public procurement in Kenya: The case of the health sector procuring for covid-19." NTA – Kenya – Pesa Zetu, Haki Yetu. Last modified April 2024. <https://www.nta.or.ke/wp-content/uploads/2024/04/Emergency-Public-Procurement-in-Kenya.pdf>.

National Taxpayers Association: 'Emergency Public Procurement in Kenya: The Case of the Health Sector Procuring for COVID-19', 6.

NTA. "Emergency Public Procurement in Kenya: The Case of the Health Sector Procuring for COVID-19." National Taxpayers Association. 2023.

<https://www.nta.or.ke/Resources/Reports/Emergency%20Public%20Procurement%20in%20Kenya>. 10 March 2023.

OECD, 'Procuring for Broader Outcomes A Case Study of New Zealand: Measuring the Impact of Government Procurement on Productivity and Well-Being', OECD Public Governance Policy Papers - N°15, 2022, 22.

Office of the Auditor-General, Kenya. "SUMMARY OF THE AUDITOR-GENERAL'S REPORT ON NATIONAL GOVERNMENT 2021/2022." Last modified May 2023.
<https://www.oagkenya.go.ke/wp-content/uploads/2023/05/SUMMARY-REPORT-OF-THE-AUDITOR-GENERAL-ON-NATIONAL-GOVERNMENT-2021-2022.pdf>.

Runyenje, Cynthia, and Hillary Ragen. "Annual Performance Review Report 2021." (2021).

Schultz J, Søreide T, 'Corruption in Emergency Procurement', U4, 7, 2007, 6.

Sope W, Petherick A, Ojomo E, Mabece S, 'Crisis Responses and Corruption in Emergencies', Global Integrity Anti-Corruption Evidence Programme, 2022, 4.

The Danish Institute for Human Rights. "A REVIEW OF THE LEGAL FRAMEWORK GOVERNING HUMAN RIGHTS AND PUBLIC PROCUREMENT IN KENYA." Last modified February 2023.

Collins Ochieng, Obura. "Role of Integrity in Enhancing Effective Procurement Practice in Kenya Bureau of Standards." (2019).

Ferdinand, Matano. "E-Procurement Implementation Practices On Effective Procurement Of Goods And Services In The National Youth Service, Nairobi County, Kenya." PhD diss., Kisii university, 2022.

Kanini, Joyce M. "Determinants Of Effectiveness Of Public Sector Audit In Kenya." PhD diss., KCA University, 2023.

Kim, Ruth. "South Korean Anti-Corruption Efforts: A Study of the Chaebol-Government Relationship." PhD diss., Drew University, 2019.

Kwambai, Criselda. "Towards Good Governance: an Appraisal of the Role of Article 10 of the Constitution in Implementation of Public Procurement Law in Kenya." PhD diss., University of Nairobi, 2021.

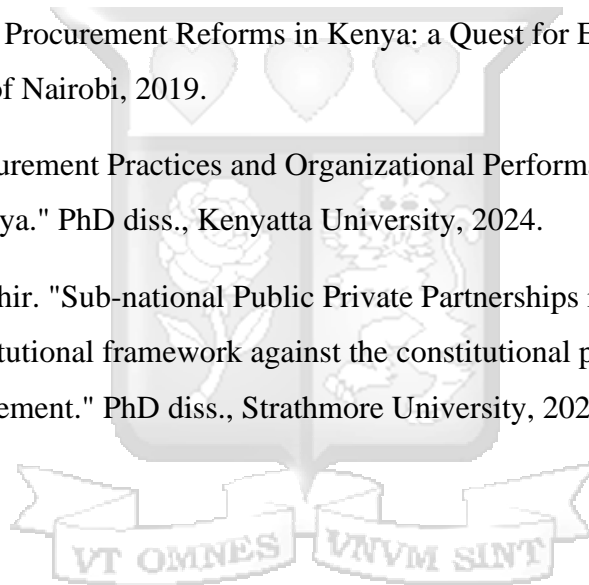
Matunga, Denish Ateto. "Procurement Practices and Level of Implementation of Public Procurement Regulations in the Devolved Systems of Government in Kenya." PhD diss., JKUAT-COHRED, 2023.

Matunga, Denish Ateto. "Procurement practices and level of implementation of public procurement regulations in the devolved systems of government in Kenya." PhD diss., JKUAT-COHRED, 2023.

Nyoike, Samson. "Public Procurement Reforms in Kenya: a Quest for Equity and Fairness." PhD diss., University of Nairobi, 2019.

Obiero, Reuben. "E-Procurement Practices and Organizational Performance of Kiambu County Government, Kenya." PhD diss., Kenyatta University, 2024.

Rono, Naphtaly Kipchirchir. "Sub-national Public Private Partnerships in Kenya: an appraisal of the legal and institutional framework against the constitutional principles on devolution and public procurement." PhD diss., Strathmore University, 2021.



Appendices

Appendix A: Similarity Report



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Appendix B: Ethical Clearance Confirmation



23rd April 2025

Mr Amollo Rodney,
rodney.amollo@strathmore.edu

Dear Mr Amollo,

RE: Assessing the Effectiveness of the Kenya Public Procurement Laws in Preventing Corruption During Emergency Procurement Processes

This is to inform you that SU-ISERC has reviewed and approved your above SU- Masters proposal. Your application reference number is SU-ISERC2857/25. The approval period is from 23rd April 2025 to 22nd April 2026.

This approval is subject to compliance with the following requirements:

- i. Only approved documents including (informed consents, study instruments, MTA) will be used.
- ii. All changes including (amendments, deviations, and violations) are submitted for review and approval by SU-ISERC.
- iii. Death and life-threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to SU-ISERC within 72 hours of notification.
- iv. Any changes anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to SU-ISERC within 72 hours.
- v. Clearance for the export of biological specimens must be obtained from relevant institutions.
- vi. Submission of a request for renewal of approval at least 60 days prior to the expiry of the approval period. Attach a comprehensive progress report to support the renewal.
- vii. Submission of an executive summary report within 90 days of completion of the study to SU-ISERC.

Before commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology, and Innovation (NACOSTI) <https://research-portal.nacosti.go.ke/> and obtain other clearances needed.

Yours sincerely,

Mr Ambrose Rachier,
Chairperson; SU-ISERC