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SYSTEMIC CONSTRAINTS TO MARKET ACCESS: YOUTH AND THE PROCUREMENT PROCESS

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ABSTRACT: *The purpose of this paper is to interrogate the constraints (collateral and registration rules) affecting the youth in accessing the procurement market. It then aims to argue that under the current bureaucratic structures, it is impossible to implement the promise of allocating 30% of all public tenders to the youth. The research suggests an investment should be done towards the streamlining of registration, and all other statutory requirements in Kenya, to enable the youth become competitive when bidding for a tender.*

KEYWORDS- Youth access to government procurement opportunities (YAGPO), Public procurement, Public Procurement and Disposal Act (PPDA)

INTRODUCTION

The elevation of procurement to a strategic role has been the focus of considerable attention since the 1990s. Most of the initial literature was set against the private sector, and predominately manufacturing industry focused (for example, Lamming, 1993; Brandes, 1994; Gadde and Hakansson, 1994; Speckman et al., 1994; van Weele, 1994), with comparatively little attention given to the public sector procurement strategy and management. it is only in the last decade that public procurement strategy and management has, however, been recognized as different from that of the private sector and developed into a research discipline in itself with its own biennial international conference (Thai et al., 2005; Piga and Thai, 2007), journal, and international research study on public procurement (Knight et al., 2007a, b).

In the past decades, the public procurement system in Kenya has undergone significant developments. From being a system with no regulations in the 1960s, and a system regulated by Treasury Circulars in the 1970s, 1980s and 1990s, the introduction of the Public Procurement and Disposal Act (PPDA) of 2005 and the Procurement Regulations of 2006 has introduced new standards for public procurement in Kenya. Kenya's economic performance over the last 40 years shows two broad patterns: a long period of declining growth that ended in the early 2000s and then a period of rising growth rates. Between 1980 and 2002, yearly growth rates ranged between 0 and 8 percent, while the recent period experienced rates between 1.5 percent and 7.0 percent. The volatility of the past years is due to several factors: the global crisis, high fuel prices, 2007 and 2009 drought and the effects of Kenya's post-election violence in 2008. The growth perspective for Kenya looks promising, as economic growth recovered quickly from the last two shocks. However, any expectation that the country might reach the double-digit rates experienced by China and India or the 10 percent economic growth projected for attaining Vision 2030 would be optimistic, for it will mean a significant improvement over the historical record and will run counter to the current slowdown in emerging economies. Despite these improvements in economic performance of the past decade, the youth in Kenya remain highly unemployed. Youth, as understood by the Kenyan policy milieu, comprises a large group of people that represents two thirds of the population of working age, and many of them face the hardships of unemployment. While the national unemployment rate is about 10 percent, which is high for a country with large informal and traditional sectors, youth unemployment rates are usually much higher.

The highest unemployment rates are for people around 20 years old, at 35 percent. Young people joining the labour market early—say, between 15 and 16 years of age—start with high unemployment rates of above 20 percent, but rates are even higher for older age groups and are highest for young people aged 18 to 20 years. After that age, unemployment rates decrease rapidly. Young people aged around 25 and 30 years old show an unemployment rate of 25 percent and 15 percent, respectively, and as young people approach adulthood, rates get closer to 10 percent. According to this, not only is Kenya's employment challenge a youth issue, it is a more pronounced issue among those younger than 25 years of age.

In proportional terms, 80 percent of Kenya's 2.3 million unemployed are young people between 15 and 34 years of age. About 19 percent of the young unemployed are between 15 and 19 years of age; 30 percent are aged between 20 and 24 years; 21 percent are aged between 25 and 29; and 9 percent are aged between 30 and 34 years. Working-age adults, aged between 35 and 64 years, represent 20 percent of all unemployed people. The largest proportion of unemployed people occurs, thus, among youth aged between 20 and 24 years.

Following these dynamics and challenges, the government promised to allocate 10% of its tender awards to the youth in 2012. At the launch of the youth access to government procurement opportunities (YAGPO) program on 29th July 2012 at KICC, the minister promised to increase labour absorption of the youth, and that Government will spend KSh. 491 million for Kenya Youth Empowerment Project covering labour-intensive works and social services. This was also to support the internship and training to pass on relevant work experience to our youth. Private sector firms were called upon to reciprocate and avail opportunities for internship. The current government has, though the President, promised to allocate 30% of all tender awards to the youth.

Why it is important to assess the constraints, their magnitude and possible solutions

The youth of Kenya had high hopes in 2002 following the election of a popular president who had the support of almost the entire country. The country, then, had been promised that half a million jobs will be availed yearly. This promise was never fulfilled and instead the government of that day engaged in distractive and divisive politics culminating to the 07/08 post election violence. In the period 2002¬/2007 Kenya's economic growth was robust with a real GDP average of 5.4%. In 2007 the real GDP reached 7.1%. The service sector, led by the tourism and telecommunications industry, was one of the main drivers of growth, indicating increased employment. However, strong economic growth had done little to reduce the country's widespread poverty because distribution was skewed in favour of the already affluent. The post-election crisis further resulted in substantial damage to Kenya's social, infrastructural, institutional, and economic systems.

Following the events of 07/08, the government of the day started a program called KAZI KWA VIJANA that was under the then Prime minister of Kenya. It was aimed at the employment of youth in rural and urban areas in labour intensive public works projects, focusing on smaller projects that can be implemented rapidly.

Young people's evaluation of KKV had been both supportive and critical. Many youth appreciated the opportunity to obtain an income, albeit doing menial work for limited periods of time. However, many were also strongly negative because (i) there is no capacity building or training involved, and the work is largely menial and some youth view this as madharau (or being looked down upon); (ii) the work is very short term, and the pay is low such that some young people have coined the phrase 'kazi kwa vijana, pesa kwa wazee', literary translated to mean that the work is done by young people while the money goes to the old folk; and (iii) youth believe that there is political motivation and favoritism in the selection process.

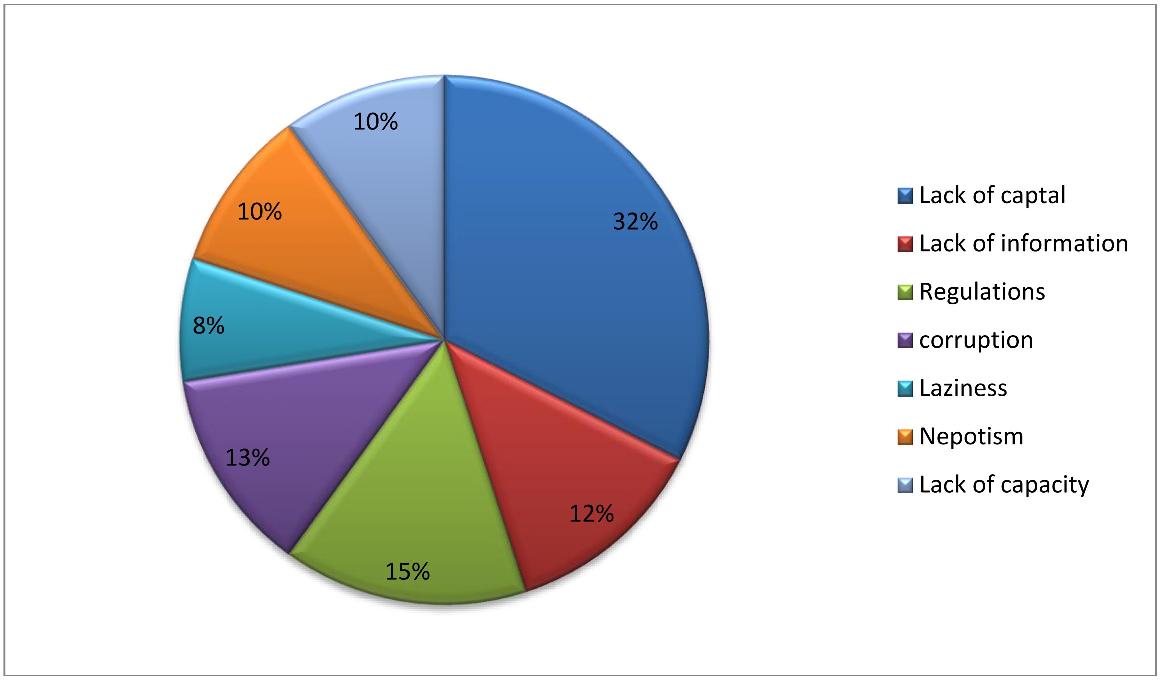
There was also the youth enterprise fund. The Youth Enterprise Development Fund was established in year 2006 with the sole purpose of reducing unemployment among the youth who account for over 80% of the unemployed in the country. The target of the fund is young people within the age bracket of 18 to 35 years who number 13 million. The Fund was gazetted on 8th December 2006 and then transformed into a State Corporation on 11th May 2007.The Fund's strategic focus is on enterprise development as a key strategy that will increase economic opportunities for, and participation by Kenyan youth in nation building. The government has so far released Ksh. 3.8 billion to the Fund.This short history into various efforts to directly uplift the welfare of the youth indicates a situation where the Kenyan economy doesn't absorb its active workforce into productive engagements. Solutions that have been employed to solve this problem have been muddled with cases of massive corruption.

Over the years, graduates have been blamed that they mostly focus on getting white collar jobs. They are blamed for not being entrepreneurial and finding a way of doing business that will take care of their needs. This is another escapist notion by the policy makers of the country who want to shift the blame to the youth. In actual sense, the youth of Kenya are known to be robust, well trained and risk takers. The impediments to their growth and well being are a systematic sabotage by policies that clearly disadvantages them. If the country really intends to help the youth by awarding them 30% of government tenders, studies must first be undertaken to learn what they need to be competitive in the market.

It is important to implement changes that will remove these impediments to eventually help the youth. The previous attempts by government have not been successful, thus, an overhaul in how the procurement process is conducted, its laws governing it and several other issues need to be addressed urgently. In an article at the Daily nation, published on 8th November 2013, Steve Biko wrote:-``A friend of mine told me on twitter that 0.005% of youth applicants will succeed at the 30% procurement issue because the system is designed to frustrate us and that despite the president promising awesome aspects for youth, he has not enforced legislative frameworks to ensure his directive works.Another friend told me that the president flags off these programs to teach youth a lesson. A lesson of patience. A lesson that riches do not come that easily. The unfortunate bit about all these, is that, the policy formulation lacks the legal backing to make it work and this has been the scenario for years.Unless the policy formulation changes, we the youth are being given a tall tale and the story teller is the Ministry of Devolution'' Sentiments like these are all over the country and the government has done little to address them.This paper seeks to prove that any attempts to help the youth, without first changing the laws, will be ineffectual. It seeks to urge stakeholders, particularly the government, to first lay a frame work of laws, which will help the youth become competitive.

METHODOLOGY

Using Likert scale, questionnaires were designed for data collection, 100 questionnaires were administered, interviews and existing literature were used too. Data generated were analyzed. Preliminary analysis of interviews done had shown that many youth had different opinions on why the youth have not been doing well in the government tender process.



The questioner was then based on the results on the preliminary data results that involved 30 youth.

Access to capital

The main reason, identified for making youth to not engage in business, is the lack of access to financial institutions which can offer capital for startups. Access to capital in Kenya's financial environment is extremely fragmented – disconnects between resources and needs impede economic growth and community stability. The youth are required to provide a log book or a title deed before they can be given a loan. The loans are then charged very high interest rates- current rate is 20%- that discourage the youth from even giving it a try. This problem was supposedly to be solved by providing the youth development fund. This fund on its cosmetic front sounds a good idea. An in-depth analysis, however, reveals something else. As a requirement, a youth group must have at least 8 members. A further quick study reveled that the average disbursed amount to a youth group ranged from Kshs 25,000 to Kshs 50,000.

With the cost of doing business in Kenya, this amount cannot even start a retail shop in any urban area in Kenya. This makes it difficult for the youth to start a competitive business and eventually bid a tender successfully. Without capital, the youth of Kenya can never start companies that will eventually be pace setters.To counter this problem, a Youth Enterprise Bank should be established in place of the enterprise fund. Studies should be made to copy the formula used by china in setting up its own china construction bank. The same model used by china should be adapted in Kenya. To ensure that money borrowed by youth is refunded, this bank can specialize in asset purchasing that will only be fully transferred upon full pay back. In this formula, the bank can have a strict rule of project proposal that aim to purchase assets, so that the youth can engage in investment activities. Assets like tuktuk, mini buses, welding machines, irrigation machines, rental houses among others will be purchased on behalf of the youth and given to them, but transfer will only be completed when full refund is made. This concept exists in the conventional banking system, under the name of asset finance, albeit they charge very high interest rates. The difference, therefore, will be a reduction of this interest rate that most of the youth cannot afford.

The youth bank can further offer traditional services offered by other banks. Services like personal banking, SME banking among others to provide a flow of cash can be offered. Youth can then be encouraged to save with the bank. With these savings and income from the services offered, the bank can eventually run on its own.Monthly refunds can be made mandatory for the youth, calculated based on the expected rate of return. This, in turn, will make the youth have a sense of responsibility in their business. This model offers a more realistic approach towards giving capital to the youth so that they can engage in economic activity. It also offers a solution towards the problem of lacking an effective repayment structure.

Access to information:
Information is power. An issue at all levels of the public entity procurement process is the limited use of information technology to record and manage the procurement process. This limited use of technology has left the youth in the dark, with many of them not knowing how to register companies, how the tender process is conducted and how to access the government loans and grants.Without access to information, how we expect to allocate 30% of the tender allocation to the youth. As at June 2013 there are no statistics as to how many companies are fully owned by youthful individuals or what percentage of tenders was allocated to them. There is also no study highlighting how successful the earlier attempt to award 10% of government tenders was. There is also no website highlighting which tenders are currently offered by government departments. This delinks of government procuring departments and the public leads to nepotism and corruption. The PPOA website offers a link that is supposedly showing all tenders currently offered by the government http://www.tenders.go.ke/. This link isn’t updated at a regular basis and one cannot depend on it to know all the tenders offered by the government.

As a matter of priority, the government should establish a website with full information regarding all government departments’ procurement activities to ensure information regarding government tenders is on a real time basis. This website should also ensure that it captures the various tenders offered by the 47 counties.Youth information centers should also be instituted in all counties to counter this information gap. Even though most Kenyans own a phone, the government has failed to streamline the procurement process, to make it adapt to changes in the digital world. The procurement process, specifically tender awarding, is shrouded in mystery and one cannot access information regarding tender awards in particular public institutions. It feels as though these institutions aren't spending the taxes of Kenyans.The youth centers should be helpful to the youth in providing information regarding company registration, available tenders and loans offered by the government. The government should revolve the individuals at sheria house, to go around the counties enlightening the youth on registration process.

Regulations

Besides the amendment of the PPDA Act and the aligned of the regulations in accordance with the new Constitution, the successful implementation of a sound, transparent, fair, equal, competitive, effective and value for money orientated public procurement system that will favour the youth, is the most challenging task for the next couple of years to come.The youth hold the key to unlocking the potential of Kenya and thus relevant amendment must be made to ensure that the promise made that 30% of tender awards will be awarded to the them must be entrenched in the procurement act. Without a simplified act, that clearly states what percentage must be awarded to the youth, and then all effort and talks made are mere rhetoric. As it stands today, there is no law governing The Youth Access to Government Procurement Opportunities (YAGPO) and no statistics showing how successful it has been. The minister has promised to amend the law governing the procurement process in Kenya in his budget speech of 2013/2014. Unfortunately, he didn't give a timeline as to when he expects the amendments to be tabled in parliament.

Information on starting a business is not easily accessible for most people in Kenya, while at the same time entrepreneurial ventures are susceptible to a fair amount of regulation. While a few NGOs offer training on establishing your own business, individuals with the capacity to hire an attorney tend to do so for the guidance needed to navigate the process of registering a business. This is a challenge to most of the youth as hiring attorney needs money. Unlike business registration processes in the United States which are more automated and often online, the procedure in Kenya is completed through a combination of multiple forms and payments, and visits to numerous offices. According to "Doing Business" the process takes 27-35 days, however multiple entrepreneurs have noted the process usually takes months. The procedure differs slightly depending on the type of business organization one is attempting to create: a partnership, a sole proprietorship, branch offices of companies registered outside Kenya, societies, or private and public registered companies.

The World Bank, in its report `Doing Business-Measuring business regulations' cited the following as the process to register a company:

I. State registration of legal entity, statistical, and tax registration with the Center for Public Registration
II. Stamp the memorandum and articles and a statement of the nominal capital
III. Pay stamp duty at bank
IV. Declaration of compliance (Form 208) is signed before a Commissioner for Oaths
V. File deed and details with the Registrar of Companies at the Attorney General's Chamber in Nairobi (Sheria House)
VI. Register with the Tax Department for the single taxpayer identification number online
VII. Apply for a business permit
VIII. Register with the National Social Security Fund (NSSF)
IX. Register with the National Hospital Insurance Fund (NHIF)

X. Make a company seal after a certificate of incorporation has been issued.

According to their report, Kenya ranks no. 121 world wide in ease of doing business. With these regulations in mind, many youth opt to do business in a fairly informal setting, which eventually disadvantages them, when government tenders are issued. While there are a number of ways that an organization can operate a business, the process of registering an ordinary business is needlessly cumbersome.

To counter this problem, the government should establish registration departments, in each county, to help the youth register business, at a lower cost, without going through lawyers who demand fees, further discouraging the youth in venturing into formal mode of business setups. This department should be a one stop place for registration, with all relevant authorities including KRA and county authorities, together with members from Sheria house, NHIF and NSSF. The registration departments in these government departments should come together and see how best they can streamline their activities together to ease the process of registration. If possible, the process should be automated in a span of one year, so that Kenya can remain a regional hub of business, having faced various threats from other economies like Rwanda and Tanzania.

Streamlining or automating the business registration process (e.g. automated online registration forms) would further ease the process of creating new businesses. By reducing this barrier, the youth would likely need less time, Knowledge, and money to navigate the process, thus allowing them to focus on creating a profitable enterprise. It would also eliminate the ability of officials to take bribes as well as the need for the youth to give bribes in order to expedite the process.

Capacity building

Without enhancing the capacity of the youth, nothing can be achived.The 8-4-4 system of education was geared towards imparting appropriate skills to enhance self-employment. However, the country’s training institutions are not only inadequate but also lack the essential facilities and technology to prepare students for the challenging business market. Equally, there is craving for establishment of commercial colleges and other training institutions to fill the void but with manifestations of uncoordinated curricula and programmes.

To enhance entrepreneurial skills for the youth, the following strategies should be prioritized:

- Developing an entrepreneurial driven curriculum for use in technical and vocational training institutes;
- Formulating and reviewing of the education and training policy as well as creating linkages between training institutions and the private sector through research, internship opportunities and finance and encouraging the private sector to get involved in technical education and training.
- Enhance entrepreneurship studies at college and university level to encourage the youth to venture into business
- As a short term plan, the government should ensure that all its departments and all the large parastatals procure basic services like provision of stationeries and cleaning services from youth based companies.
- Reward youth based companies by waiving tax deduction for a period of time e.g. 5years. This should also be entrenched in law.
- Reward innovation amongst the youth by setting aside at least one billion shillings each year to distribute amongst the universities in Kenya, and hold a national competition for innovation in

which winners of various categories are granted enough capital to pursue and roll out their products. This can be coordinated by the National Council for Science and Technology (NCST)

- Vigorous national campaign should be made to promote the Buy Kenya, build Kenya theme. This will help create a demand for local products, which would have otherwise been imported.

CONCLUSION

It was a good initiative made by the government to ensure that 30% of all tender awards in the public sector are awarded to the youth. This will automatically create employment and ensure stable income for the thousands of unemployed youth. However, this promise must be followed by substantial action meant to boost the youth in terms of capacity to enable them become competitive in the business world.

Among the necessary steps to be taken is regular assessment of the YAGPO initiative.The law makers of this country should mandate the PPOA to establish a youth department, ensure that the head of this department is a person under the age of 35 and reports directly to the CEO. They should also introduce relevant amendments to the PPDA to ensure that the 30% award is properly entrenched in our laws.

The law makers should also introduce a bill that seeks to direct on how a company is to be formed. In this bill, they should mandate each county government to establish a department that will be mandated to register companies and other forms of business. The process of registering a company must be devolved. This department should be a one stop place in which all requirements and processes can be completed at a go. The bill should seek to streamline the process and make it easier for the youth and Kenyans in general to register a company by eventually automating the process of company registration. This will ensure that Kenya remains competitive as a regional power house.

The senate should also urge county government to outsource as much as possible the various functions that they are required by law to perform. In this outsourcing, they should urge the county government to give priority to youth owned companies. Services should be further devolved to ensure maximum delivery.

A good example, In Mombasa, the stalemate between garbage collectors and the county has affected service delivery for many years. This can simply be solved by outsourcing this service and devolving it. Mombasa has six constituencies and thus the service can be awarded to six youth based companies capable of delivering. The county government will be left with the function of supervising. This will have a positive effect on the youth in counties and how service delivery is done.

The senate should also urge county government to abolish fees for single business permit when it comes to youth owned companies. This will help the youth by reducing the cost of registering a company.

Research should be conducted in all 47 counties to identify any other unique challenge that the youth face because every region has some distinct features which might create impediments to the development of youth. The findings should be forwarded to relevant county government so that they can work towards eliminating the identified problems.

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