

Anne Schmidt

Public Procurement Law and Reform in Developing Countries: International Best Practices and Lessons Learned

Namibia as a Case Study



Nomos

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Preface

This publication was accepted as dissertation for the doctorate of law by the University of Bremen in January 2016.

My interest in Namibia and its legal system has been persistent since my studies at the University of Namibia in Windhoek in 2008. After completing my LL.M. studies in London, I decided to write a dissertation on “Chinese investment in Namibia from a legal perspective”. Very soon it became clear that this topic was way too complex. But the information on Chinese companies getting blamed for corruptive practices in public procurement led me to the topic of public procurement law and reform.

Prof. Dr. Manfred Hinz who has worked at the University in Namibia more than two decades has supported me with my project while giving me the freedom to shape the topic according to my interests. His experience and helpful comments have contributed to the successful finalisation of my dissertation. I also want to thank *Prof. Dr. Andreas Fischer-Lescano* who assisted the dissertation project in particular by helping out with bureaucratic formalities and hindrances.

A very important part of the dissertation is the field study in Namibia. Thanks to a scholarship by the German Academic Exchange Service, I was able to conduct field work in Namibia for 6 weeks in 2014. In this regard I thank *Sevelus*, *Saave* and *Mathias Nakashole* who hosted and assisted me. Additionally, I thank all the people who were available for an interview and provided information on public procurement in Namibia.

There are many others who have provided academic, financial, linguistic or practical assistance. *Dr. Cornelia Glinz* and my brother, *Jan Schmidt* have read parts of the dissertation while work was in progress and provided helpful critical remarks. My parents supported me financially so that I could invest most of my time into researching and writing.

This study takes into account literature and state practice available until December 2015. The Namibian Public Procurement Bill 2015 has been gazetted shortly after my dissertation was printed, on 31 December 2015. As the Public Procurement Act, 2015 (Act No. 15 of 2015) does not differ from the bill, all references made to the bill can be read as being part of the act.

Sulingen, January 2017

Anne Schmidt

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List of Abbreviations

ACC	Anti-Corruption Commission
BBBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BMZ	Federal Ministry of Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)
COMESA	Common Market for Eastern and Southern Africa
CoP	Code of Procedure
CPPN	Commonwealth Public Procurement Network
DoW	Department of Works
DSU	Dispute Settlement Understanding
EEC	Employment Equity Commission
EMEs	Exempted Micro Enterprises
EPRCP	Enhancing Procurement Reforms and Capacity Project
EU	European Union
EXIM	Export-Import Bank of China
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GPA	Government Procurement Agreement
HDI	Historically Disadvantaged Individual
ILO	International Labour Organisation
IMF	International Monetary Fund
IPPR	Institute for Public Policy Research
ITC	International Trade Commission
LGSETA	Local Government Sector Education and Training Authority
LRDC	Law Reform and Development Commission
LTBR	Local Tender Board Regulations
MANWU	Metal Allied Namibian Workers' Union
MAPS	Methodology for Assessing Procurement Systems
MDGs	Millennium Development Goals
MFN	Most-Favoured Nation
MNE	Multinational Enterprise
NGOs	Non-Governmental Organisations
NUNW	National Union of Namibian Workers
NQF	National Qualifications Framework

List of Abbreviations

OECD/DAC	Organisation for Economic Cooperation and Development / Development Assistance Committee
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PFMA	Public Finance Management Act
PP	Public Procurement
PPFA	Preferential Procurement Policy Framework Act
PPRP	Public Procurement Reform Project
RDP	Reconstruction and Development Programme
RTBR	Regional Tender Board Regulations
SADC	Southern African Development Community
SCM	Supply Chain Management
SMEs	Small and Medium Enterprises
SMMEs	Small, Medium and Micro-sized Enterprises
SOEs	State-Owned Enterprises
SPP	Sustainable Public Procurement
TIC	TIPEEG Implementation Committee
TIPEEG	Targeted Intervention Programme for Employment and Economic Growth
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Commission on Trade and Development
UNDP	United Nations Development Programme
US	United States
WTO	World Trade Organisation

Introduction

1. Background

Public procurement spending is estimated to account for 15% of the world's GDP. Whereas most industrialized countries spend around 10% of their GDP on public procurement, developing countries' public procurement spending amounts to a much higher percentage, in some cases up to 70% of GDP.¹ Procurement rules and practices can, therefore, materially impact the domestic economy. Apart from its economic relevance, efficient and effective public sector procurement is essential to ensure socio-economic development as it depends, inter alia, on qualitative service-delivery and infrastructure development, which in turn is also necessary for economic growth. The poor and the vulnerable are especially dependent on the provision of goods and services in the proper quality and quantity through their governments.²

Public procurement is a very sensitive issue because it affects both the private and public sectors and involves consolidating and balancing political interests. The contractor has an economic interest in getting a large and prestigious tender award. Especially in certain branches such as the construction sector a company's outlook can depend on winning government contracts for major infrastructure projects. The government, on the other hand, has to make a difficult decision by choosing the best but also lowest bid in order to fulfil its democratic mandate to spend tax money wisely while pursuing governmental policies. In short, it is a business process within a political system concerning national interests. The way this business process works, both in terms of law and actual practice, has significant implications for the integrity, accountability and effectiveness of pub-

1 Development Assistance Committee, 'Strengthening Procurement Capacities in Developing Countries - *Harmonising Donor Practices for Effective Aid Delivery*', (Paris: OECD, 2005), p. 18.

2 Cf. S.J. Evenett, 'Is there a Case for New Multilateral Rules on Transparency in Government Procurement?', in S.J. Evenett, *The Singapore Issues and the World Trading System: The Road to Cancun and Beyond* (Switzerland: SECO, 2003), p. 212.

lic procurement.³ Public procurement should, hence, be understood not only as discipline in its own right but also in the wider context of good governance.⁴ It might also be suggested that the state should invest as much as possible of its already limited funds in policies furthering developing goals such as reducing poverty or increasing and improving health and education. In view of the scarcity of resources, well-conceived procurement decisions can indirectly promote development goals.⁵

Considering the amount of public money being spent in the field of public procurement and the vast sums of money wasted through corruption and inefficiencies one can conclude that the improvement of public procurement systems should be an essential element of initiatives to promote good governance. Good governance is important for the success of public procurement, but also vice versa, since public procurement is a key factor in regard to the efficiency and effectiveness requirement of good governance (that “processes and institutions produce results that meet the needs of society while making the best use of resources of their disposal”).⁶

The fact that an efficient and effective procurement system can further socio-economic development has also been emphasised by the OECD/DAC Task Force on Procurement, which noted that effective pro-

3 W.A. Wittig, 'Building Value through Public Procurement: A Focus on Africa', conference paper, 9th International Anti-Corruption Conference, Durban, South Africa, 10-15 October 1999, p. 3.

4 The Cusco Declaration of the OECD/DAC Task Force on Procurement recognises that “efficient and effective public procurement is a fundamental component of good governance.” OECD/DAC Task Force on Procurement, 'The Cusco Declaration "Strong Procurement Systems for Effective States"', 2011, available at <http://www.oecd.org/dac/effectiveness/48425963.pdf>; last accessed: 1 December 2015.

5 Cf. B.C. Basheka, 'Public Procurement Reforms in Africa: A Tool for Effective Governance of the Public Sector and Poverty Reduction', in K.V. Thai, *International Handbook of Public Procurement* (Boca Raton, Florida: Taylor & Francis Group, 2009), p. 133ff; S.J. Evenett; B.M. Hoekman, 'International Cooperation and the Reform of Public Procurement Policies', (World Bank: 2005), p. 4 (available at <http://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-3720>; last accessed: 26 November 2015).

6 Website of United Nations Economic and Social Commission for Asia and the Pacific, 'What is Good Governance?', <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp> (last accessed: 12 October 2012).

curement systems are a key part of development.⁷ Most donor countries, including Germany, actively promote and thereby expedite good governance and the achievement of the above-mentioned development goals – all of which are part of the Millennium Development Goals (MDGs).⁸ Public procurement law can therefore be an impetus to achieving these objectives, but can also be an impediment if it is deficient by nature or insufficiently implemented. The creation of an efficient and effective system within the framework of reform is thus in the interest of the donor countries as well as the whole international community that is dedicated to the achievement of the MDGs.

In developing countries, the reform of public procurement law is of particular importance. First because the percentage of the GDP spent on public procurement is often much higher than in developed countries, an efficient and effective public procurement system can be expected to have a significant impact on socio-economic development. Second, the sophistication of the general legal framework and the effectiveness of the implementation of laws in most developing countries differ considerably from that in most western states, and this particularly applies to sub-Saharan African countries, including Namibia. Not only is public procurement law itself very complex, it is also influenced by several other fields of law, which are often not yet well-regulated or at least not effectively implemented in developing countries. The result is that reforming public procurement law poses an exceptional challenge for developing countries.

2. Problem Statement

Increasing discontent in regard to public procurement procedures in Namibia has led to a reform of public procurement law being initiated.⁹ Ma-

7 The Second Meeting of the OECD/DAC Task Force on Procurement - Summary of meeting by the UN Procurement Capacity Development Centre, Cusco, Peru, 4th-6th May 2011.

8 United Nations General Assembly, 'United Nations Millennium Declaration', A/55/L.2 (New York: United Nations, 2000).

9 Corruption Watch Namibia, 'Tender Board swamped by exemptions, reform urgently needed' (Corruption Watch Namibia: 2011), available at <http://www.corruption-watch-namibia.com/tender-board.html>; last accessed: 3 October 2012; 'Runter von Verliererspur' (Newspaper article), Allgemeine Zeitung (Windhoek, Namibia), 13 September 2011; F. Links; C. Daniels, 'The Tender Board - Need for Root and Branch Reform', Anti-Corruption Research

major concerns have been the frequent use of exceptions to public infrastructure tender and the granting of tender awards to Chinese companies.¹⁰ Retroactive rectifications of costs, the importation of Chinese employees, and poor working conditions which violate the Namibian labour law, amongst other issues, have led to criticism of tender awards to Chinese companies.¹¹

According to the Permanent Secretary of the Tender Board of Namibia, key factors in the reform process are transparency and 'Namibianisation', which refers to the intention to enact a law favouring Namibian over foreign companies in the award process.¹² The introduction of a 51% Namibian ownership criterion for certain tenders has also been suggested.¹³

Although the reform has been ongoing for more than 10 years,¹⁴ it has not led to a satisfying outcome. Different drafts have been shared with research institutions and other stakeholders and it was promised that the bill would be due for approval in 2012.¹⁵ This date was subsequently postponed to 2013.¹⁶ A public procurement bill tabled in parliament in Sep-

Programme, Paper 3 (Institute for Public Policy Research: 2011), available at <http://www.az.com.na/fileadmin/pdf/2011/az/IPPR-09-12-11.pdf>; last accessed: 29 November 2015; 'Tender law needs urgent rewrite' (Newspaper article), *Namibian Sun* (Windhoek, Namibia), 12 September 2011.

10 Corruption Watch Namibia; Links; Daniels, p. 9,12.

11 'Hat Namibia seine Chancen genutzt? Eine Bilanz (Teil 4a/5)' (Newspaper article), *Allgemeine Zeitung* (Windhoek, Namibia), 13 April 2012; G. Henrich; V. Truong, 'Das Ende der "Charme-Offensive"? - Der Widerstand kleiner Länder in Südostasien und Afrika gegen die Hegemonialherrschaft Chinas ', (IMS Internationales Magazin für Sicherheit), available at <http://www.ims-magazin.de/index.php?p=artikel&id=1330677610,1,gastautor>; last accessed: 3 October 2012; H. Jauch, 'Chinese Investments in Africa - Twenty-First Century Colonialism?' (2011) 20(2) *New Labor Forum*, 49-55 at 52; 'Tender Board tightens rules to protect jobs' (Newspaper article), *The Namibian* (Windhoek, Namibia), 3 February 2010.

12 F. Links; C. Daniels, 'The Tender Board - Need for Root and Branch Reform; Appendix I - Interview with Tender Board Secretary Welma Enssle', (Institute for Public Policy Research: 2011), available at <http://www.az.com.na/fileadmin/pdf/2011/az/IPPR-09-12-11.pdf>; last accessed: 29 November 2015.

13 *Ibid.*, 20.

14 Links; Daniels, 'The Tender Board - Need for Root and Branch Reform', p. 1.

15 'Minister lays into Tender Board' (Newspaper article), *The Namibian* (Windhoek, Namibia), 26 April 2013.

16 'Parlament startet ins Jahresfinale' (Newspaper article), *Allgemeine Zeitung* (Windhoek, Namibia), 18 September 2012.

tember 2013 was withdrawn after heavy criticism¹⁷ and be re-tabled only in 2015. The 2015 bill was passed in November of the same year and only awaited assent by the president at the time of the finalisation of this dissertation.¹⁸ Reasons for this lengthy reform process seem manifold, including for example a lack of political will.

This dissertation will analyse the tender law in Namibia, putting special emphasis on transparency issues, secondary objectives and protectionist policies, using the WTO Government Procurement Agreement (GPA)¹⁹, the UNCITRAL Model Law,²⁰ and the South African public procurement legislation as standards for comparison. As it is not intended to provide a comprehensive comparative study of the above mentioned procurement systems not all provisions will be analysed in detail. Rather, the focus will be on key issues that may be helpful for designing public procurement legislation in Namibia with view to sustainable development. Moreover, the reform process itself will be analysed by identifying reform drivers and hindrances, responsibilities in the reform process, external influences and methodologies used in the reform approach. Given that the reasons for the delays and other shortcomings of the reform process might offer an insight into issues that have to be considered in order to carry out a successful and timely reform, the Namibian reform proceedings are critically analysed in the context of best practices recommendations. The lessons learned from the Namibian case study are not only important for other reform projects but also for the general discussion on procurement law.

The reasons for choosing Namibia as case study are manifold. Namibia is classified as one of the most advanced African countries in terms of

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- 17 'Bill Makes Finance Minister "Too Powerful"' (Newspaper article), *The Namibian* (Windhoek, Namibia), 24 September 2013; 'Procurement Bill Sparks Heated Debate' (Newspaper article), *The New Era* (Windhoek, Namibia), 3 October 2013.
 - 18 'Auf das neue Gesetz vorbereiten' (Newspaper article), *Allgemeine Zeitung* (Windhoek, Namibia), 12 November 2015; 'Six Bills passed' (Newspaper article), *The Namibian* (Windhoek, Namibia), 17 November 2015. According to Article 56 (1) of the Namibian Constitution, every bill passed by parliament requires the assent of the president in order to acquire the status of an act of parliament.
 - 19 The GPA is a plurilateral WTO agreement that came into force on 1 January 1996. A revised version was adopted in 2012.
 - 20 The United Nations Commission of International Trade Law has adopted the Model Law on Procurement of Goods, Construction and Services in 1994. The primary objectives are to assist reforms and foster harmonization. A revised version was adopted in 2011.

democracy and the rule of law. The 2013 Ibrahim Index of African Governance ranks Namibia 6th of 52 African countries surveyed.²¹ The ranking is composed of four different elements: safety and rule of law, participation and human rights, sustainable economic opportunity, and human development.²² The rule of law and accountability are particularly important in this context. Namibia scored 82.1 out of 100 for the rule of law and 68.1 for accountability²³ and was ranked 4th in both sub-categories.²⁴ Namibia's democracy is relatively stable, as is confirmed by the 2014 Bertelsmann Transformation Index.²⁵ In the category political transformation Namibia scores 8.5 out of 10 for stateness,²⁶ 8,8 for political participation, 7.3 for the rule of law, 7.5 for the stability of democratic institutions and 6.8 for political and social integration, resulting in an overall score of 7.75.²⁷ Apart from political transformation which is composed only of the sub-categories just mentioned, the index measures economic transformation, meaning the status of a state as a market economy including not only aspects such as economic performance, regulatory or competition policy and property rights but also elements of social justice, such as social safety nets, equality of opportunity and sustainability (6.29).²⁸ The status index rating is thus 6.99 whereby Namibia ranks 32nd of 128 development and transformation countries studied. In relation to other African countries Namibia is ranked 5th, surpassed only by Mauritius, Botswana,

21 Mo Ibrahim Foundation, '2013 Ibrahim Index of African Governance - Summary', (Mo Ibrahim Foundation: 2013), available at <http://www.afcgn.org/wp-content/uploads/2013/11/Ibrahim-Index-of-African-Governance-2013.pdf>; last accessed: 30 November 2015.

22 Ibid, 3.

23 Ibid, 20.

24 Ibid.

25 See Website of Bertelsmann Foundation, 'Transformationsindex BTI 2014 - Status-Index', <http://www.bti-project.de/index/status-index/> (last accessed: 6 September 2015).

26 The study defines "stateness" in reference to the state's monopoly on the use of force and basic administrative structures. See Website of Bertelsmann Foundation, 'Transformation Index BTI 2014 - Methodology', <http://www.bti-project.org/index/methodology/> (last accessed: 6 September 2015).

27 Ibid. For a detailed discussion of the Namibian results see Bertelsmann Foundation, 'BTI 2014 - Namibian Country Report' (Gütersloh: Bertelsmann Foundation 2014).

28 Website of Bertelsmann Foundation, 'Transformation Index BTI 2014 - Methodology', <http://www.bti-project.org/index/methodology/> (last accessed: 6 September 2015).

Ghana and South Africa. This democratic stability, comparatively good standard of the rule of law and acceptable market economy conditions are essential elements for successfully reforming public procurement law without having to consider other basic good governance or rule of law factors that might influence public procurement.

The analysis of the process leading to the enactment of a new law is one of the main pillars of this dissertation. When conducting the main research for this dissertation, Namibia has initiated a reform but not yet enacted the regulatory framework. Therefore, the timing seems particularly appropriate for this research project. The Namibian discussion can be factored into considerations deriving from the theoretical and comparative analysis. Furthermore, as the enactment of a new public procurement law is envisaged for the near future, its particular elements can be compared with the conclusions drawn from this assessment, providing for a control instrument and opportunities for further research.

'Namibianisation' is a particularly sensitive issue in Namibia and therefore deserves special focus. The inclusion of secondary objectives is a highly controversial issue; but as the objective to reduce the disparities of wealth resulting from colonialism and especially apartheid seems of specific importance in this context, this discussion has become a hot button issue. Although Namibia is not a party to the GPA it is important to note that certain protectionist public procurement policies might violate the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) which are applicable to Namibia as a WTO member state and/or bilateral trade agreements Namibia has signed and ratified. The promotion of socio-economic objectives through public procurement is controversial but many developing countries suffering from stark socio-economic disparities, widespread poverty, unemployment and other socio-economic problems regard public procurement as an opportunity to tackle such problems. The Namibian example might produce lessons in regard to the effectiveness and the possible embodiment of secondary objectives. If pursuing certain secondary objectives is found to be useful in achieving the larger objectives, certain factors important in regard to their application might be identified that can be transferred to projects in other developing countries.

The Namibian reform is not only relevant locally but also for its trading partners. Moreover, it is very important for the general objective of promoting development in Namibia. Germany, for example, has a significant interest in the successful outcome of Namibia's public procurement reform: although Germany is not directly involved in the project, it is deeply

committed to promoting socio-economic development. A successful outcome would therefore be in line with Germany's general efforts and confirm its approach to achieving these objectives.

Germany has been an important donor country for Namibia and Namibia is the largest recipient of development aid from Germany in Africa. Since independence, Germany has given Namibia about N\$8 billion within the framework of development cooperation.²⁹ In November 2013, Germany made a commitment to provide about N\$2 billion (€147.5 million) for 2014 and 2015.³⁰ Thematically, the development cooperation between Germany and Namibia addresses three core issues: management of natural resources, sustainable economic development, and transport.³¹ For the latter two fields an efficient and effective Namibian public procurement law is of particular relevance. As an aspect of the promotion of sustainable economic development Germany puts special emphasis on the inclusion of private industry³² because the participation of small and medium-sized enterprises (SMEs) in tenders for public contracts can be an important aspect for development. This can, however, only be ensured if the public procurement system is transparent, fair and accountable. Because the expansion of the transportation infrastructure primarily occurs through public procurement, the efficiency and effectiveness of the public procurement system has a strong impact on the success of infrastructure development. Although the awarding of tenders that are financed by external donors is often governed by special conditions, insufficient procurement practices would thwart the aim of improving infrastructure. The third core area of German-Namibian development cooperation, the management of natural resources, can be influenced by public procurement. The introduction of ecological criteria into procurement criteria, as for example practiced by the European Union,³³ might induce contractors and service providers -

29 Website of Auswärtiges Amt, 'Beziehungen zu Deutschland', http://www.auswaertiges-amt.de/sid_A3C9729CE456796974FEB3D235FE39C8/DE/Aussenpolitik/Laender/Laenderinfos/Namibia/Bilateral_node.html#doc352362bodyText3 (last accessed: 16 April 2014).

30 Ibid.

31 Website of BMZ, 'Namibia - Situation und Zusammenarbeit', http://www.bmz.de/de/was_wir_machen/laender_regionen/subsahara/namibia/zusammenarbeit.html (last accessed: 26 September 2015).

32 Ibid.

33 In 2008 the European Commission recommended the setting of common criteria for green public procurement in the EU member states and has since then developed more than 20 common criteria. See Communication from the Commis-

and in the wider sense consumers and service recipients – to pay increased attention to environmental and ecological aspects.

Beyond the three key aspects of the German-Namibian development cooperation, the German Federal Ministry of Economic Cooperation and Development (BMZ)³⁴ is providing assistance to Namibia to overcome social divisions.³⁵ In particular, Namibia faces the problem of having a predominant white elite and a new black middle class, on the one hand, while the majority of population lives in poverty,³⁶ on the other. The question of whether the inclusion of secondary objectives in public procurement policy to redress this situation by redistribution through the award of tenders is of general relevant importance in this context and clearly will have implications for German development policy. The reform of public procurement law in Namibia is thus a matter of consequence for the prospects of success of the German development policy goals.

Apart from the specific importance of an efficient and effective public procurement system for the achievement of the German development policy goals, its relevance for the wider goals of good governance and the achievement of the MDGs has to be stressed. An efficient and effective public procurement system is an essential part of good governance and, in particular, of a government's ability to manage resources; it is a key factor for responsible administration and the provision and protection of public goods and services for all members of society.³⁷ Moreover, governance is only effective and efficient if, among other things, processes and institu-

sion to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Public procurement for a better environment, COM/2008/0400 final and the information on the website of the European Commission: http://ec.europa.eu/environment/gpp/gpp_criteria_en.htm (last accessed: 10 November 2015).

34 Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung.

35 Website of BMZ, http://www.bmz.de/de/was_wir_machen/laender_regionen/sub_sahara/namibia/zusammenarbeit.html (last accessed: 26 September 2015).

36 For a comprehensive discussion of poverty in Namibia see H. Jauch, 'Poverty, Unemployment and Inequality in Namibia, TEMTI Series of Economic Perspectives on Global Sustainability, EP 02-2013', (Theme On The Environment, Macroeconomics, Trade And Investment (TEMTI) / International Union for the Conservation of Nature (IUCN) / Commission on Environmental, Economic and Social Policies (CEESP): 2012), available at https://cmsdata.iucn.org/.../temti_ep_02_2013.pdf; last accessed: 26th November 2015.

37 Cf. A. Bösl, 'Good Governance als Paradigma moderner Entwicklungspolitik - Bad Governance und schwierige Partnerschaften: Herausforderungen des 21. Jahrhunderts' (2007) 2/07 KAS-Auslandsinformationen, 6-34 at 17-18.

tions produce results that meet needs while making the best use of resources.³⁸ An insufficient public procurement system severely hinders the achievement of these results. As with general efforts to improve good governance, in public procurement transparency, efficiency and effectiveness, responsiveness, forward visions, and rule of law belong to the basic elements that need to be addressed.³⁹ Hence, there is an interaction between the objective of good governance and the provision of an effective and efficient public procurement system. Furthermore, effective procurement systems are a key part of development.⁴⁰ On the one hand, a best possible deployment of resources for public procurement ensures that tax money is not wasted and is available to be spent directly on socio-economic development and, hence, for the achievement of the MDGs. On the other hand, a well-functioning public procurement system is important for guaranteeing that goods and services are delivered in the proper quality and quantity, ensuring infrastructure development and stimulating trade and economy, which are in turn necessary preconditions for socio-economic development. In the broader sense, it can therefore be said that the reform of public procurement law in developing countries is essential for the promotion of good governance and the achievement of the MDGs.

3. Literature Review

The recognition of the importance of an effective and efficient public procurement system has only developed in the past two or three decades and

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- 38 UNDP, 'Good governance - and sustainable human development', Governance for sustainable human development, a UNDP policy document (UNDP: 2014), p. 2, available at https://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CC4QFjABahUKEwiLseG64eLHAhXJDiwKHf7FALo&url=http%3A%2F%2Fwww.undp.org%2Fcontent%2Fdam%2Fundp%2Flibrary%2FDemocratic%2520Governance%2FDiscussion-Paper--Governance-for-Sustainable-Development.pdf&usq=AFQjCNEvOh06Nurz-Fh77G0ue_Njz4gvSQ&bvm=bv.102022582,d.bGg&cad=rja; last accessed: 6 September 2015.
- 39 Cf. Website of OECD Directorate for Public Governance and Territorial Development, 'Principal elements of good governance', <http://www.oecd.org/gov/principalelementsofgoodgovernance.htm> (last accessed: 12 October 2012).
- 40 The Second Meeting of the OECD/DAC Task Force on Procurement - Summary of meeting by the UN Procurement Capacity Development Centre, Cusco, Peru, 4th-6th May 2011: 2.

has influenced and stimulated research, government strategies and reform initiatives alike. Public procurement was long regarded as an administrative function and has been paid little attention by most countries.⁴¹ Beyond that it has long been a neglected area of academic research⁴² and only gained attention in the recent decades.⁴³ Since the early 1990s this attitude has changed and the field of public procurement attracted notice by government, public interest groups, international financial institutions and international organisations⁴⁴ and has also significantly increased calls for research to investigate, analyse and develop guidance for practice.⁴⁵ The growing complexity of public procurement, which, inter alia, arises from increasing globalization of trade and investment, the pressure to cut costs in times of scarce resources and calls for better transparency and accountability might have also been conducive to the increasing interest for public procurement.⁴⁶ The World Bank and other development banks, e.g., have assisted developing countries with evaluations of their national public procurement systems and have supported reform processes. Moreover, in the past two decades, several academic conferences regarding public procurement have taken place. Of particular relevance is the “International Public Procurement Conference”, which has taken place every two years since 2004 and has brought together academics and researchers from all over the world. These conferences have not only been an important forum for exchanging research findings and experiences from all over the world,

41 Wittig, 'Building Value through Public Procurement', p. 4.

42 K.V. Thai, 'Public Procurement Re-Examined' (2001) 1(1) *Journal of Public Procurement*, 9-50 at 10., see also L. Knight; et al., 'Public Procurement: An Introduction', in L. Knight; et al., *Public Procurement: International cases and commentary* (London and New York: Routledge, 2007), p. 1.

43 G. Quinot; S. Arrowsmith, 'Introduction ', in G. Quinot; S. Arrowsmith, *Public Procurement Regulation in Africa* (Cambridge et al.: Cambridge University Press, 2013), p. 1.; see also Knight; et al., 'Public Procurement: An Introduction', p. 1.

44 K.V. Thai, 'International Public Procurement: Concepts and Practices', in K.V. Thai, *International Handbook of Public Procurement* (Boca Raton, Florida: Taylor & Francis Group, 2009), p. 2.

45 Knight; et al., 'Public Procurement: An Introduction', p. 1.

46 Basheka, 'Public Procurement Reforms in Africa', p. 133; N. Caldwell; E. Bakker, 'Procurement Process in the Public Sector: An International Perspective', in K.V. Thai, *International Handbook of Public Procurement* (Boca Raton, Florida: Taylor & Francis Group, 2009), p. 428; Thai, 'International Public Procurement', p. 2.