

Research Article

Adequacy of the Legal Framework Governing Bulk Petroleum Procurement in Tanzania: Gaps and Wayforward

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Abstract

Bulk Petroleum Procurement System is one of the tools used to ensure sustainable supply of petroleum products in Tanzania and neighboring countries. The system has been instrumental in ensuring shipping and supply of petroleum products within and outside Tanzania. Since its establishment, the system has raised mixed reactions from stakeholders in terms of efficiency, inclusiveness and justice to end users and business community. While the government has been able to control petroleum quality, standards and prices and ensured petroleum stability, yet some stakeholders feel partly excluded due to legal and procedural requirements. At times, Oil Marketing Companies (OMCs) in Tanzania face challenges caused by geo-political factors, including shortage of foreign currency, price volatility and overdependence on fossil fuels as source of energy. These issues could be resolved through energy transition, policy and legal reforms. This paper critically examines the strengths and weaknesses of the existing legal instruments governing Bulk Petroleum Procurement in Tanzania. It further provides for areas of legal reforms in order to provide for an enforceable framework, binding to all stakeholders in the petroleum supply-chain and ensure sustainable shipping and supply of petroleum products within Tanzania and the neighboring countries. It applies doctrinal methodology in assessment of various rules in relation to procurement of petroleum products in Tanzania.

Keywords

Legal Framework, Bulk, Petroleum, Procurement, System, Tanzania

1. Introduction

Bulk Petroleum Procurement is a process that involves acquisition of large quantities of petroleum products such as gasoline, diesel, jet fuel, and other items in a systematic and strategic manner for various purposes including distribution, industrial use, and transportation. It is a process that involves government agencies, commercial entities, or large organizations with significant petroleum needs. Bulk Petroleum Procurement is vital in industries such as transportation, manufacturing, energy production, and defense, where operations require reliable and cost-effective petroleum products. It is designed to ensure that essential petroleum products are

procured in sufficient quantities at competitive prices, ensuring continuity of operations and cost-effectiveness. The Bulk Petroleum Procurement system was operational in Tanzania since the year 2011 whereby purchases of petroleum products are made from a pool of imports obtained from suppliers selected through a competitive bidding process.

Since establishment, the Bulk Petroleum Procurement System has brought a number of economic benefits to Tanzania, business entities and the people. A study by Saleh, Z., indicates a number of advantages of the system to the people, business community and the country at large [1]. First, ensuring cost efficiency

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Received: 14 July 2025; **Accepted:** 28 July 2025; **Published:** 12 August 2025



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through negotiating lower prices per unit leading to a reduction in overall procurement costs. Secondly, assurance of steady and reliable supply of petroleum products in the country; hence reducing the risk of shortages or disruptions that could affect economic operations. Thirdly, the system guarantees logistical efficiency because handling large quantities can be more efficient when it comes to transportation, storage, and distribution compared to smaller and most frequent purchases. Fourth, the government and business entities have been able to protect themselves from price volatility in the petroleum market by purchasing in bulk and locking in prices for extended periods through contracts or agreements. Fifth, economies of scale have been promoted by purchasing in bulk since mathematically per-unit costs decrease as the volume of purchases increases. Finally, the system has encouraged strategic planning because organizations can readily and effectively plan their operations and budget over long periods, aligning procurement with their strategic goals.

Despite the above economic benefits, concerns have recently been raised by various stakeholders, including Tanzania Association of Oil Marketing Companies (TAOMAC). While geopolitical factors such as the Russia-Ukraine war and dollar scarcity caused stock market turmoil and hiking of oil prices in the global market, there has been a debate on effectiveness of the existing Bulk Procurement system in Tanzania. Some of the allegations provided include: dominance of the system by strong oil companies vis-à-vis small companies, lack of sufficient competition among market players; acute shortage of the US dollars against the measure taken by the government; single receiving storage point which leads to wastage of time and money, and contraction of rules and policies regulating the system [2].

This paper intends to examine adequacy of the existing legal and institutional framework regulating Bulk Petroleum Procurement system in Tanzania. It squarely points out weaknesses and strengths of the regulatory framework and recommends possible remedial measures to improve the operations of the Bulk Procurement System, for the national benefit and benefit of neighboring countries. The study mainly applied doctrinal methodology to analyze provisions of principal and subsidiary legislations regulating bulk petroleum procurement in Tanzania and review of published information related to bulk petroleum procurement accessed from libraries and credible online platforms. The paper begins by presenting the rationale for establishment of Bulk Petroleum Procurement system in Tanzania. It then proceeds to critically analyze the existing legal framework governing Bulk Petroleum Procurement operations in Mainland Tanzania.

2. Rationale for Establishment of Bulk Petroleum Procurement System (BPS)

The Bulk Petroleum Procurement System (BPPS) was in-

troduced in Tanzania to address the challenge of fuel shortages caused by segregated import of petroleum products by private companies, where local companies had less chances of participation. Basically, the old petroleum procurement and distribution systems was faced by six main deficiencies. First, distribution of petroleum products in Tanzania was plagued by frequent supply disruptions and inefficiencies leading to regular shortages in certain regions and inconsistent availability [3]. Secondly, lack of centralized procurement led to fluctuating prices of petroleum products, making it hard for businesses and consumers to predict costs and plan budgets effectively [4]. Thirdly, lack of transparency and accountability in procurement processes culminated to suspicion of corruption, unfair business practices and inefficiencies in resource allocation.

Fourth, ensuring consistent quality standards of petroleum products was challenging without centralized oversight. The general public raised critical concerns on reliability and safety of fuels in the market. Fifth, efficient transportation and availability of petroleum products across the country was hampered by inadequate storage and distribution infrastructure. Finally, the national security and stability was at risk due to the erratic supply chains and external suppliers caused by geopolitical tensions or global market disruptions [5]. All the above objectives for establishment of bulk petroleum procurement appear to have been realized. A study by Marwa, C., shows that the system has reduce tax evasion, controlled quality and quantity of the products and reduced demurrages [6]. The system has further facilitated tax administration, improved tax collection, minimized fuel imports and protected consumers [7].

3. Legal and Institutional Framework Regulating Bulk Petroleum Procurement System in Tanzania

The rules and regulations are key tools in developing any good procurement system. Every procurement system shares certain core components, namely: budgeting, cash and debit management and accounting. Other ancillary components of procurement system may include: asset management and the Integrated Financial Management System. The Tanzania's Energy policy is designed to streamline procurement processes, increase transparency, and ensure competitive pricing through effective market strategies [8]. In particular, the Energy Policy has the following specific objectives: optimizing and effectively managing the petroleum resource base; developing and maintaining an efficient petroleum data and information system; and ensuring timely announcement and optimal development of petroleum commercial discoveries. Other policy objectives include: maximizing revenue for the government while ensuring investors recover prudently incurred costs and an appropriate share of profit; and enhancing availability of a reliable and affordable supply of petroleum

for the domestic market and its sustainable use.

More importantly, the Energy Policy seeks to develop petroleum infrastructure for refining, processing, liquefaction, transportation, storage and distribution; develop a competitive and efficient domestic and export market for oil and natural gas; and promote linkages with other sectors of the economy and rational use of petroleum resource. Thus, the existing laws governing bulk petroleum procurement in Tanzania should ensure that the above policy objectives are guaranteed for sustainable economic growth of the nation and the people. The following section critically analyzes whether or not the laws governing bulk petroleum procurement in Tanzania meets the above policy considerations.

3.1. The Petroleum Act No. 21 of 2015

The Petroleum Act regulates the oil and gas supply chain from the upstream to the downstream.¹ The Act vests oil and gas resources within the territorial boundaries of the United Republic and mandates management role exclusively by government on behalf of the people of Tanzania. As per section 2 (2) of the Act, it provides for the regulation of petroleum upstream operations, midstream and downstream activities to be administered by the institutions established, namely: the Petroleum Upstream Regulatory Authority (PURA) and Energy and Water Utilities Regulatory Authority (EWURA).² Whereas PURA is responsible for management of the upstream operations EWURA is responsible for regulating midstream and downstream petroleum and natural gas activities. EWURA is responsible for promotion of maximum participation of Tanzanians in the petroleum value chain, and encourage use of local goods and services produced and available in Tanzania. Similarly, it is responsible for gathering and provision of information relating to regulated activities.³

This Act aims at controlling the import, transport, storage, production, and refining of petroleum products in various ways. First, it requires every business entity seeking to undertake supply, distribution, and storage of petroleum products to be registered and licensed by EWURA, subject to conditions.⁴

Secondly, it provides for payment of specific royalty at a rate of 12.5% of gross production for onshore and shelf areas while offshore production receives a royalty of 7.5% of gross production. Basically, royalty is a charge levied by the resource owner on the extraction of resources usually paid from start of production regardless of the profitability of a project. There are two types of royalties, namely: ad-valorem royalties charged as percentage of value and unit-based royalties charged per unit of weight or volume. Principally, royalties are more stable and predictable than profit-related charges. Thus, payment of royalties ensures that a country is at least

compensated for the permanent loss of its resources. This express stipulation of royalty rates in the law guarantees certainty of tax regime in the country, unlike under the Petroleum (Exploration and Production) Act of 1980 whereby royalty payment rates were subject to negotiations in the Production Sharing Agreement (PSA).

3.2. The Petroleum (Bulk Procurement) Regulations, 2017 (as amended)⁵ and the Petroleum Bulk Procurement System Implementation Manual 2024⁶

These Regulations introduced the system currently used to import petroleum products known as the Bulk Procurement System. The Regulations vest powers to the Petroleum Bulk Procurement Agency (hereinafter known as PBPA)⁷ to manage the system through collecting procurement requirements, conclude and administer contracts with suppliers and conduct an international competitive bidding for procurement of petroleum products. Further, PBPA is responsible for implementing and enforcing the regulations, forecasting supply and demand of petroleum products, ensure that levies and taxes are paid by OMCs prior procurement of petroleum products and issuing directives for efficient procurement of petroleum products in the country.⁸

There are two conditions for procurement of petroleum through bulk procurement system. First, registration of an oil company (OMC) with the PBPA and applying for pre-qualification before being shortlisted.⁹ As a condition for registration, OMCs must submit an application letter accompanied by the following documents: certified copies of certificate of incorporation, business trading license, TRA importation license, petroleum wholesale license issued by EWURA, TIN and VAT certificates, Memorandum and Article of Association and hospitality agreement(s).¹⁰ Other important requirement for registration include: specimen signature of at least two representatives; list of staff responsible

5 Government Notice No. 198 of 2017 read together with the Petroleum (Bulk Procurement) (Amendment) Regulations, GN No.40 of 2024.

6 This Manual was developed by the Petroleum Bulk Procurement Agency (PBPA) and approved by the Minister responsible for petroleum affairs by virtue of Petroleum (Bulk Procurement) Regulations, 2017 (as amended). This Manual is binding to all stakeholders whose operations are provide for by the same (See paragraph 38

7 This is established by the Executive Agencies (the Petroleum Bulk Procurement Agency) (Establishment) Order 2015, GN N0.423 of 2015. It is headed by the Executive Director appointed by the Minister of Energy upon advice by the Public Service Recruitment Secretariat for a period not exceeding five years, subject to reappointment. It has three (3) Directorates, namely: Directorate of Business Planning and Operations, Directorate of Supply and Logistics, and Directorate of Business Support. It has supportive units namely: Information and Communication Technology (ICT), Internal Audit, Procurement and Legal Services Units.

8 Government Notice No. 198 of 2017 (as amended by GN No.40 of 2024), regulation 5(1)(a) -(t) and 5(2).

9 Government Notice No. 198 of 2017 (as amended by GN No.40 of 2024), regulations 13B and 13C (1).

10 Government Notice No. 198 of 2017 (as amended by GN No.40 of 2024), regulation 13D (1) and (2) read together with Petroleum Bulk Procurement System Implementation Manual, 2024, paragraph 3.1, sub-paragraph 1(a) and (b).

1 Petroleum Act No.21 of 2015, s.2(1).

2 Petroleum Act No.21 of 2015, s.11(1) read together with s.29(1).

3 Petroleum Act No.21 of 2015, s.30 (2).

4 Petroleum Act No.21 of 2015, ss.131, 132 and 133.

for handling and receiving petroleum products; letter from BRELA showing name of shareholders, directors and the last date of filing returns; tax clearance certificate; letter of credit from financing banker and a letter from the OMC's banker showing financial position.¹¹ Failure to open letter of credit or facilitate pre-payment within time specified shall amount to distortion of Bulk Petroleum System and be liable for penalties.¹² Finally, the applicant is required to pay registration fees of Tshs.5 million and enter into the importation contract with PBPA which clearly states terms and conditions governing relationship between PBPA and OMCs.¹³

Once registered, an OMC possesses qualifications to participate in the bulk petroleum procurement. Nevertheless, if the petroleum wholesale license expires or is revoked, such OMC is required to be deregistered, subject to application for re-registration.¹⁴ The second stage of petroleum procurement is to make application for pre-qualification to PBPA. An invitation for pre-qualification shall be made public through PBPA website, local and international newspapers and sending emails to various stakeholders including previous prequalified suppliers, other OMCs, international forums and institutions dealing with petroleum business and interested individual companies.¹⁵ As a principle, correspondences of PBPA via emails are binding.¹⁶ The prequalification of suppliers must be done in August after expiration of previous prequalification and the shared bidding document must state the prequalification criteria.¹⁷

Generally, prequalification criteria include: compulsory registration as a petroleum supply and trading company, with a gross trading turnover of at least USD 1 billion per year (international company) or asset base of at least TZS ten billion (local company). A company must have a minimum experience of three (3) years (international company) or five (5) years (local company), submit proof of payment of pre-qualification processing fees of USD 5,000 (international company) or TZS 5 million (local company), certified copies of contracts and Bill of Lading.¹⁸ The application for prequalification is done by application letter addressed to the Executive Director of PBPA, accompanied with relevant documents such as solvency statement, a no-legal liability statement, source of finance statement and joint venture

(where necessary).¹⁹

As a matter of procedure, advertisement for prequalification must be issued not later than 10th August and the deadline for submission of documents shall be 31st August of the year of prequalification. Evaluation of submitted documents shall be done within 10 days from the stipulated deadline followed by due diligence, the results of which must be presented within 45 days from the date of submission of applications.²⁰ The prequalification results must show the list of successful prequalified suppliers and the time frame (not exceeding three (3) years).²¹ Where the applicant for tender is aggrieved by the decision of PBPA, an appeal shall be made to the Minister responsible for petroleum affairs.

After successful prequalification, a competitive bidding process shall be conducted and evaluated by the Tender Committee composed of chairperson and five members appointed by the Executive Director and approved by the Board.²² Two out of these five members come from PBPA and three members come from OMCs as appointed by the PBPA Executive Director and approved by the Board.²³ However, prequalified suppliers or their affiliates cannot be appointed as members of the Tender Committee; hence addressing potential conflict of interest that may arise. Basically, tender opening and evaluation must be done in public and in presence of all bidders.²⁴

Once evaluation is completed, the next stage is award of the tender and clearance of previous tenders. As a matter of principle, it is the lowest responsive bidder who shall be selected by the Tender Committee.²⁵ Thereafter, the selected bidder is required to import petroleum products which meets specified specifications in terms of quality and quantity.²⁶ This is then followed by sampling and testing of the samples. Procedurally, four to five samples are taken and sealed by the Tanzania Bureau of Standards (TBS), PBPA and the Supplier. One sample is taken for testing by TBS according to Tanzania Standard No. TZS.644 while the three samples are retained by each organ.²⁷ It is only TBS that retains sole mandate to test quality of imported petroleum products, but where necessary PBPA may allow a supplier to nominate an independent inspector for testing quality of imported pe-

11 Petroleum Procurement System Implementation Manual 2024, paragraph 3.1 sub- paragraph 1(c)-(i).

12 Government Notice No. 198 of 2017 (as amended by GN No.40 of 2024), regulations 25(3), (4) and 27E.

13 Petroleum Procurement System Implementation Manual 2024, paragraph 3.1, sub- paragraphs (2), (3) and (4)

14 Petroleum Procurement System Implementation Manual 2024, paragraph 3.2, sub-paragraphs (a), (b) and (c).

15 Petroleum (Bulk Procurement) Regulations (as amended by GN No.40 of 2024) regulation 13C (1) read together with Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 4, sub-paragraphs (a), (b) and (c).

16 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 29.3, sub-paragraphs (a), (b) and (c).

17 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 4.0, sub- paragraphs (d) and (e).

18 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 4 (Prequalification Criteria for BPS Supplier), sub- paragraph (a) (1) to (7).

19 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 4.1, sub-paragraphs (2), (3), (4), (5), (6) and (7).

20 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 4.0, sub-paragraph (f).

21 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 4.2.

22 Petroleum Bulk Procurement Regulations, 2017(as amended by GN No.40 of 2024), regulations 18 and 19.

23 Petroleum Procurement System Implementation Manual 2024, paragraph 10.1, sub-paragraph (a), (b)and (c).

24 Petroleum Procurement System Implementation Manual 2024, paragraph 11.3, sub-paragraphs (a)-(f).

25 Petroleum Procurement System Implementation Manual 2024, paragraph 11.4, sub-paragraph (a)-(e).

26 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 20.

27 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 21(1) and (2) read together with Petroleum Procurement System Implementation Manual 2024, paragraph 18.3.3.

petroleum products.²⁸

Similarly, an OMC may appoint independent inspector to verify on the quality and quantity of any petroleum product received in SRT.²⁹

After successful testing, TBS shall communicate the results to PBPA and an Independent Inspector. In case of inconsistency of results between TBS and Independent Inspector, then the results of TBS shall be final as regards quality of petroleum product in Tanzania is concerned.³⁰ However, where PBPA or Supplier has reason to believe that TBS results are erroneous, then the former may request TBS to undertake retesting of the retained sealed samples of the particular petroleum products, subject to payment of costs and availability of witnesses, including independent inspector and PBPA.³¹ The retesting of petroleum product is conducted in accordance with terms stipulated by TBS. As a way to ensure quality of petroleum products in Tanzania, each OMC is obliged to notify PBPA and EWURA in the event of non-conformity to petroleum standard specifications.³²

Any supplier who fails to deliver petroleum products within stipulated period of time for any reason other than force majeure event, a penalty shall be imposed to compensate buyers for compromising minimum stocks.³³ To ensure compliance and enforcement of bulk petroleum procurement regulations, PBPA and the Board must conduct consultation with key stakeholders including staff from registered OMCs with required expertise for advice on management and operational issues.³⁴ Similarly, PBPA must engage all significant parties in the monitoring and evaluation processes and handle all operational complaints promptly and within the time limits prescribed in the working documents.³⁵ Where dispute arises, then frameworks and remedies established under specific contracts may be invoked or be referred to EWURA or ADR mechanisms as the case may be.³⁶

The above regulatory framework plays a vital role in protecting public interest on matters of purchase, supply and distribution of petroleum products in the country. First, it ensures transparency in the procurement process of petroleum products. This helps to prevent corruption and unfair business practices through competitive bidding. Secondly, through

bulk procurement system, the government is able to regulate prices of products, hence guaranteeing lower prices for consumers.

Thirdly, it provides for quality assurance of petroleum products procured in bulk. This ensures that the products meet required standards and are safe for use. Fourth, it guarantees public participation through consultative processes whereby different non-state actors including private sector are likely to provide inputs and opinions on matters that affect supply, quality and price of petroleum products. This would avert potential rise of conflicts that have been facing the petroleum sector for some time leading to scarcity and price increase of petroleum products. Finally, it provides flexible dispute settlement mechanisms whereby parties to contracts may adopt any Alternative Dispute Resolution, including mediation and arbitration. This respects freedom of parties to resolve conflicts out of court, creates friendly investment climate and reduces unnecessary costs.

Despite the above, these Regulations have inherent gaps which need to be resolved. First, enforceability and legality of the standards prescribed in the Petroleum Bulk Procurement System Implementation Manual 2024. This Manual prescribes procedural safeguards and standards governing bulk petroleum procurement in Tanzania. However, it only binds all stakeholders whose operations are covered by the same, namely: PBPA, OMCs, prequalified suppliers and prescribed government institutions and can only be enforced by the PBPA.³⁷ Further, it can be modified or reviewed whenever there is pressing a need, including change of laws and operational demands, subject to consultations and approval by EWURA and the Minister responsible for petroleum affairs.³⁸ Although this guarantees flexibility in regulating bulk petroleum procurement, it is likely to cause legal challenges due to geopolitics surrounding the petroleum sector. It is likely to be undermined by political influences due to discretionary powers vested to the Minister and other governmental departments. There is no requirement for laying down of the Manual to the National Assembly or Parliamentary Committee for scrutiny.

Conversely, it may also be undermined by the power and influences of OMCs and strong prequalified suppliers who control the international petroleum market. There is a risk of regulatory capture where the interests of regulated industries dominate the regulatory process, potentially leading to regulations that do not adequately protect public interests. EWURA as a regulator may not best address concerns of the public especially on matters of pricing, particularly when OMCs, suppliers and the general public allegedly accuse the government of disregarding public interests and investors interests. A good example is the issue of taxation of petroleum products in the Mainland Tanzania. On the same basis, pro-

28 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 21(3) and (4).

29 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 21A (1).

30 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 21A (2).

31 31 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 22(1), (2) and (3).

32 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 21B (2).

33 Petroleum Bulk Procurement Regulations, 2017 (as amended by GN No.40 of 2024), regulation 28(1), (2) and (3) read together with the Schedule to GN No.40 of 2024.

34 Petroleum Bulk Procurement System Implementation Manual 2024, paragraphs 28.1 and 28.2.

35 Petroleum Bulk Procurement System Implementation Manual 2024, paragraphs 31 and 32.

36 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 36 sub-paragraphs (a)-(e).

37 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 38.

38 Petroleum Bulk Procurement System Implementation Manual 2024, paragraph 37, sub paragraph (a)-(d).

cedural safeguards including: the bidding procedures, mandates of institutions, fines and penalties stipulated in the Manual should be prescribed under the Regulations or the Parent Act in order to subject the petroleum bulk procurement system to public scrutiny, including the National Assembly. Moreover, this would permit non-state actors to enforce the standards and procedures if violated by any regulated stakeholders, including legal action.

Secondly, the rules on testing of petroleum quality rules provide a room for tempering with quality of tested petroleum products. Tanzania Bureau of Standards is a leading quality control organ in Tanzania; hence its results should not be doubted by any person, except under extenuating circumstances. The rules should only require testing of samples first taken by TBS experts and not samples taken in the latter time. Further, the retesting of petroleum quality should be done by TBS experts in collaboration with independent inspectors at specified laboratory owned by TBS. Always testing by TBS should be regarded as the only true indicator of the quality of petroleum products.

Thirdly, the issue of public consultation is very limited in scope. Although consultative process is mandatory during review or amendment of the Manual, it should be as wide and inclusive as possible to allow other self-interest groups and not only stakeholders in the petroleum sector. For example, members of the public *vide* people-centred institutions such as Civil Society Organizations (CSOs), Community-Based Organizations (CBOs), consumer protection bodies or associations, Prevention and Combating of Corruption Bureau (PCCB), professional bodies and media clubs should be involved in the deliberation of standards, procedures and guidelines to regulate bulk petroleum procurement. This is because of potential corrupt practices which appears to be significant in the procurement sector in the world, including Tanzania [9]. As rightly argued by the Public Procurement Regulatory Authority (PPRA), integration of different stakeholders and whistleblowers including citizens in any procurement process is significant in addressing unethical behavior and corruption practices [10].

Fourth, the legal framework governing bulk petroleum procurement does not expressly provide for competition rules framework as one of the laws governing Petroleum Bulk Procurement. Although it entails the expression ‘any other relevant laws, the Petroleum Regulations and Petroleum Bulk Procurement System Implementation Manual ought to clearly contain provision which requires PBPA, OMCs and Suppliers to abide by competition rules set under the Fair Competition Act.³⁹ There is high potential of anti-competitive practices in the petroleum bulk procurement, especially collusion and bid rigging, manipulation of tender processes, and discriminatory practices which may reduce competition and affect price and delivery of petroleum products in the country. Thus, express inclusion of competition rules in the petroleum bulk pro-

curement Manual and Regulations is essential in order to guarantee equality and fairness among bidders.

The last but one, there is no adequate mechanisms for monitoring and evaluation. It is clearly stated that monitoring of contractual performance shall be done by significant parties to the contract in collaboration with PBPA, supplier, OMC, TBS, TPA and WMA. Critical question is with regard to co-ordination of monitoring and evaluation mechanisms under the BPS system. While the bid tendering and evaluation is coordinated by specific Committee, there is no any joint express committee which monitors performance of BPS. It is prudent if the BPS Regulations established a Monitoring and Evaluation Committee with specific composition or structure so as to effectively and timely plan, evaluate and issue reports to the Agency or Authority as case may be. The existence of joint committee would guarantee quick and easy sharing of information and resolve conflicts arising in the course of BPS implementation. This Committee should also be vested with research functions for purpose of devising mechanisms for improvement of the BPS system.

The last but not least, use of BPS system should be mandatory for both local and transit petroleum products. The differentiation of BPS and non-BPS petroleum products for domestic consumption should be stripped of from the statutes. Likewise, all types of petroleum products should apply the BPS system in order to eliminate any possibility of interference with BPS operations. The existing provisions do not oblige OMC undertaking transit business to use the BPS system.⁴⁰

To avoid situations where petroleum products on transit which is essentially not ordered under the BPS system is illegally supplied into the local markets, it should be compulsory that any petroleum product for internal and external consumption must be supplied under the BPS. This would require standardization of quality standards, adopting similar pricing and tax rates for petroleum products in respective countries, leading to harmonization of petroleum laws. Thus, the government of Tanzania through relevant Ministries should make negotiations with neighboring countries, such as Rwanda, Burundi, Zambia, Democratic Republic of Congo, and Uganda to use the BPS system for supply and shipping of their petroleum products. This will not only generate more revenue for the government of Tanzania but also encourage sustainable economic development among member states of SADC and EAC.

4. Conclusion

Bulk Petroleum System is one of the innovative machineries created by the government of Tanzania to regulate shipping and supply of petroleum products in the country. It

39 Cap 285 R.E 2023.

40 Petroleum (Bulk Procurement) Regulations 2017 (as amended by GN No.40 of 2024), regulation 15(1).

has guaranteed quality and adequate supply of petroleum products in Tanzania and regulated steady increase of prices for different petroleum products. Given the geographical advantage, Tanzania is likely to benefit its people and neighboring countries if it undertakes policy and legal reforms to address the gaps pointed above.

5. Recommendations

Amendment of the BPS Legal Regime

The government must undertake minimum legal and policy reforms to ensure sustainable use of BPS in procuring petroleum products for domestic and international consumption by doing the following. First, amendment of the BPS Regulations to require mandatory use of BPS system for all petroleum products whether for domestic or transit petroleum supply. Secondly, BPS Regulations should prescribe for procedural safeguards including bidding procedures, mandates, penalties and fines contained in the BPS Implementation Manual. This would promote compliance by regulated stakeholders, promote public scrutiny and enforceability of the standards by the members of public. A Manual is only an administrative instrument for the regulator or the Agency and its stakeholders and not the general public, who are beneficiaries of the BPS.

Thirdly, BPS Regulations should highly restrict retaking of petroleum samples and retesting of the same by any other organ except TBS. Re-testing of petroleum samples should be limited to the original samples and it should only be done once and be supervised by TBS. There is evidence on the ground that some OMCs have been involved in adulteration of petroleum products and selling of contaminated fuel.⁴¹ The rate of adulteration is reportedly to be decreasing [11] but no remedies available to innocent consumers. The only remedy available for such act is imposing fine and other compliance orders which at the end of the day do not redress harm caused to the final consumers. A good example is the case of *Energy and Water Utilities Regulatory Authority (EWURA) vs. Mohamed Hassan t/a Oilcom Nasser- Dodoma Service Station* whereby the applicant applied for the order that the respondent was in contempt of EWURA's order and be committed as a civil prisoner or punished for contempt of EWURA's order.⁴² The facts were that respondent was found selling adulterated petroleum product from which the respondent paid fines and continued to operate the station. Though not prayed for, the court did not make any orders as to the rights of consumers.

Fourth, BPS Regulations should clearly provide for fair competition rules or otherwise oblige BPS stakeholders to comply with competition rules during bidding and awarding of BPS tenders. As previously, shown procurement of petroleum faces malpractices which need to be controlled. On the other hand,

BPS Regulations should provide for mandatory and effective public participation in the making or amendment of the BPS standards and procedures. Participatory right should be extended to non-state actors, including consumer protection association(s) such as Tanzania Consumer Advocacy and Research. Basically, consumers of petroleum products have fundamental rights, including the right to safety, right to information, right of choice, right to be heard, right to redress, right to health and sustainable environment, and right to education. Thus, presence of consumer-based associations and availability of a consumer-protection law (which currently is non-existent) would guarantee the above rights.

Last but not least, BPS Regulations should establish a Monitoring and Evaluation Committee for effective monitoring and evaluation. This Committee should constitute representation from key BPS stakeholders, including Supplier, OMCs and TBS. Similarly, BPS Regulations should provide for periodic reporting by all BPS players sectors subject to its own procedural rules. Its recommendations should then be forwarded to PBPA or EWURA for appropriate decision as the case may be. Basically, existence of such Committee would ensure smooth coordination of BPS stakeholders and timely identification and settlement of emerging implementation issues.

Abbreviations

ADR	Alternative Dispute Resolution
BPS	Bulk Procurement System
BRELA	Business Registrations and Licensing Agency
EWURA	Energy and Water Utilities Regulatory Authority
GN	Government Notice
No	Number
OMCs	Oil Marketing Companies
PBPA	Petroleum Bulk Procurement Agency
PURA	Petroleum Upstream Regulatory Authority
S	Section
TIN	Tax Identification Number
TRA	Tanzania Revenue Authority
VAT	Value Added Tax

Author Contributions

Rwebangira Gaspardus is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

41 See Business Daily Africa News, 'the Tanzania gains as fuel adulteration forces transporters off Kenya route,' December 19, 2020.

42 Miscellaneous Civil Application No.18 of 2014, High Court of the United Republic of Tanzania at Dodoma (Unreported).

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