



THE STATE OF OPEN CONTRACTING IN SELECTED AFRICAN COUNTRIES

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Acronyms and Abbreviations

AfDB	African Development Bank
AGPO	Access to Government Procurement Opportunities
AMP	Aid Management Platform
ANRMP	National Authority for Public Procurement Regulation
ARB	Administrative Review Board
ARMP	Public Procurement Regulatory Authority
ATPS	African Technology Policy Studies Network
BAAC	Business Action Against Corruption Network
B-BBEE	Broad-based Black Economic Empowerment
BEE	Black Economic Empowerment
BIF	Business Integrity Forum
BPP	Bureau of Public Procurement
CBD	Central Business District
CBL	Capacity Building Levy
CGS	Central Government Stores
CID	Criminal Investigation Department
CNP	National Council of Employers
COJO	Tender Evaluation Commission (la Commission d'ouverture de plis et de jugement d'offres)
CONGAD	Council for Development Support NGOs
CoP	Community of Practice
CoST	Construction Sector Transparency
CRM	Customer Relationship Management
CSD	Committee for Settlement of Disputes
CSI	Corporate Social Investment
CSOs	Civil Society Organizations
CTB	Central Tender Board
DCMP	Central Directorate for Public Procurement
DG	Director-General
DMP	Public Procurement Directorate (Direction des Marches Publics)
DPP	Director of Public Prosecutions
EACC	Ethics and Anti-Corruption Commission
e-GP	e-Government Procurement
eGPF	e-Government Procurement Forum
ERM	Enterprise Risk Management
ESIA	Environmental and Social Impact Assessment
EPWP	Expanded Public Works Programme
FEC	Federal Executive Council of Ministers
FOI	Freedom of Information
GACC	Ghana Anti-Corruption Coalition
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GHANePs	Ghana Electronic Procurement System
GIFMIS	Ghana's Financial Management System
GODI	Global Open Data Index
GoG	Government of Ghana
GoK	Government of Kenya
GoS	Government of Senegal
HRMIS	Human Resource Manager Administration & Information System
ICS	Internal Control System
ICT	Information, Communication and Technology
IFMIS	Integrated Financial Management Information System

JAC	Journalists Against Corruption
KENAO	Kenya National Audit Office
LANets	Local Accountability Networks
M & E	Monitoring and Evaluation
MDAs	Ministries, Departments and Agencies
MELR	Monitoring, Evaluation, Learning and Reporting
MFMA	Municipal Finance Management Act 56 of 2003
MIPS	Malawi Institute of Procurement and Supply
MoEFP	Ministry of Economy, Finance and Planning
MOF	Ministry of Finance
MPI	Market Price Index
MTP	Medium Term Plan
NCPP	National Council on Public Procurement
NIC	National Integrity Committee
NOCOPO	Nigeria Open Contracting Portal
OAG	Office of the Auditor General
OC	Open Contracting
OCP	Open Contracting Partnership
ODI	Open Data Institute
ODPP	Office of the Director of Public Procurement
OECD	Organisation for Economic Co-operation and Development
OFNAC	National Anti-Corruption and Fraud Office
OFNAC	National Anti-Corruption and Fraud Office
OGP	Open Governance Partnership
PAC	Presidential Advisory Committee Against Corruption
PAI	Project Area of Impact
PAS	Performance Assessment System
PESTEL	Political, Economic, Social, Technological, Ecological and Legal
PFMA	Public Finance Management Act
PMS	Performance Management System
PPA	Public Procurement Act
PPA	Public Procurement Authority
PPADA	Public Procurement and Asset Disposal Act
PPARB	Public Procurement Administrative and Review Board
PPDA	Public Procurement and Disposal Act
PPP	Public Private Partnership
PPOA	Public Procurement Oversight Authority
PPPFA	Preferential Procurement Policy Framework Act
PPRA	Public Procurement Regulatory Authority
PWD	Persons living with Disabilities
SDG	Sustainable Development Goals
SMEs	Small and Micro Enterprises
SMMEs	Small, Medium & Micro Enterprise Businesses
SSA	Sub-Saharan Africa
SYGFIP	Public Finance Management System
SYGMAP	Public Procurement Management System
TSA	Treasury Single Account
UNCAC	United Nations Convention against Corruption
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organisation

Executive Summary

Public procurement reforms among African countries are not significantly different in terms of stages of reform, components of reform strategies, and implementation. In most African countries, public procurement reforms have been preceded by assessments of the existing system, either by consultants or by external donor agencies particularly the World Bank, AfDB, Hivos, Open Contracting Partnership, and Transparency International among others through country procurement reports. However, there has been increasing interest across Africa to open up procurement systems and embrace open contracting, a system of procurement that allows disclosure of procurement data at all stages of procurement and allows for engagement and feedback from other stakeholders. Therefore, various interventions are advancing Open Contracting (OC) in Africa, with diverse results and degrees of progress in order to ensure accountability and proper use of government funds in public projects that have led to huge losses across the continent due to corrupt practices. It is against this background that a study is required to assess what's working well, lessons learnt, replicated and scaled up to realize open contracting in Africa.

The study sought to document current levels of openness in public contracting in targeted countries/institutions; identify and assess existing systems and data sources within the government for collecting, analysing, and sharing procurement data; gauge the level of openness, transparency and accountability across the various stages of public procurement; identify key stakeholders and their capacities and enthusiasm for advancing open contracting, and provide recommendations on realistic targets and use cases for open contracting moving forward. A cross-sectional design was used to collect data using different techniques as found necessary in each of the study countries. Snowball, cluster and purposive sampling techniques were used in data collection. Quantitative data were collected using both open-ended and closed questionnaire instruments whereas the qualitative data were collected through focus group discussions (FGDs) to gather in-depth information from the respondents. Quantitative data were analysed using SPSS whereas the qualitative data were categorised and themes generated, then manually analysed using content analysis.

The study revealed that many African countries have been making significant progress towards implementing open contracting by enacting procurement policies that are in tandem with most of the principles and practices of open contracting. Increasingly, African countries are putting in place institutional frameworks that are geared towards enacting laws and regulating procurement procedures in their countries. However, these institutional frameworks have not fully embraced the participation of other stakeholders in the whole procurement process. Challenges have emerged that range from untimely reporting or release of procurement data, improper data management, lack of compliance monitoring and proactive disclosure to a lack of user-friendly digital tools for procurement. Some countries have embraced e-procurement systems but there are capacity challenges across the various spectra of stakeholders hence, defeating the need to have them meaningfully participate in the entire processes. Procurement entities across the study countries do not proactively disclose all procurement data at all stages of procurement, most notably at the stages involving

payment, service delivery (implementation) and the evaluation reports. Progress has significantly been made by some countries towards engaging various user groups (such as civil society, media and private sector) in the procurement processes as well as in the procurement authorities.

The study recommends the following actions in order to make further strides in the implementation of open contracting and increasing transparency, participation and accountability in public procurement in the study countries:

- i) Strengthening the enforcement of existing policies and institutional frameworks while reviewing those that are unfavourable to the advancement of open contracting.
- ii) Capacity building and strengthening of relevant actors across the open contracting value chain. Issues of capacity have been prominent in the study countries. With new technologies being essential, the stakeholders need to continuously be retooled.
- iii) Ensure inclusivity and stakeholder engagements across all the procurement steps. Inclusivity is critical in enhancing transparency and accountability.
- iv) Adjust the bidding thresholds to ensure all-inclusive participation in order to accommodate every citizen especially the marginalized groups to meaningfully participate and get opportunities.

1. INTRODUCTION

1.1 Background

Governments worldwide spend an estimated US\$ 10 trillion¹ on public contracting. It is a major part of any economy- up to 30% in developing countries. According to the World Bank, public procurement accounts for nearly 15% of GDP per capita in sub-Saharan Africa (SSA) (Djankov et al, 2016). Contracting is an essential step in delivering goods and services that people care about: quality education, quality health care, safe roads and clean drinking water. Public procurement is a controversial subject in both developed and developing countries due to various reasons such as corruption. Some forms of corruption are more prevalent in certain countries, according to the United Nations Office on Drugs and Crime (United Nations Office on Drugs and Crime [UNODC], 2013). Corruption in public procurement is manifested in unnecessary projects, substandard and unnecessarily expensive work, the diversion of resources, and unjustified and unexpected price increases resulting in inequity and inequality. This has been exacerbated by the absence of appropriate accountability mechanisms to ensure targeted funding of essential services such as education, health and transport. Ghost funding and poor service delivery have been the trend in many African countries and yet there have been efforts across Africa to open up contracting.

Open contracting is an approach to improving public procurement through three core elements: (1) proactive disclosure of open data, documents and information about the planning, procurement, and management of public contracts, (2) participation and use of contracting data by state and non-state actors, and (3) accountability and redress by governments agencies or contractors acting on the feedback that they receive from civil society and companies. Various interventions are advancing Open Contracting (OC) in Africa, with diverse results and degrees of progress. Various implementing actors have approached their programming in different ways. It is against this background that a comparative study is required to assess what's working well, lessons learnt, replicated and scaled up to realize open contracting in Africa. Publishing and using structured and standardized information about public contracting can help stakeholders to:

- Deliver better value for money for citizens,
- Create fairer competition and a level playing field for business, especially smaller firms,
- Drive demand for higher-quality goods, works, and services for citizens,
- Prevent or combat fraud and corruption, and
- Promote smarter analysis and better solutions for public problems.

Public access to open contracting data can build trust between government and citizens, and help to ensure that the trillions of dollars spent by governments annually result in better services, goods, and infrastructure projects.

¹ <https://www.open-contracting.org/what-is-open-contracting/>

1.2 Rationale for Open Contracting in Africa

Procurement constitutes an average of 50% of government expenditure in low-and middle-income countries (Transparency International UK, 2017). Corruption is a major problem during the contracting process. The Organisation for Economic Co-operation and Development (OECD), the European Commission, and the UNODC all cite public procurement as the largest corruption risk for governments (Open Contracting Partnership [OCP], 2016). According to the UNODC (2013), corruption reduces the value of a public contract by 10 to 25%. The financial cost—not to mention the human cost of corruption in this sector is significant. The importance of open contracting goes well beyond anti-corruption. A clear case can be made that it has a significant impact on government efficiency, value for money, and fair competition. There is a very clear correlation between publishing more information about tenders and a reduced likelihood of single-bid contracts which have been reported to be 7–10% more expensive (Fazekas and Kocsis, 2015). As open contracting focuses on disclosure of more and more information, citizen/stakeholder engagement has been seen as a critical element in ensuring accountability and meaningful use of the opened up contracting data. The different stakeholder categories have very different and critical roles to play in the whole process of open contracting in order to achieve the meaningful benefits of it. For instance, the infomediaries will interpret the open contracting data to provide meaningful information to the less technical stakeholders (Dietrich, 2017). This policy brief, therefore, provides specific policy recommendations which if implemented, will go a long way in promoting open contracting across Africa.

1.3 Objectives of the Study

This study aimed to gauge the state of openness of public procurement processes in 10 African countries. They include Kenya, Uganda, Tanzania, Nigeria, Zambia, Malawi, Ghana, Senegal, Côte d’Ivoire and South Africa each of the target countries. It assesses the levels of progress, innovations, collaborations and typologies of reforms that can be replicated and scaled up. This will include understanding the key capacities and interests of key procurement actors and identify opportunities for procurement reform and the adoption of open contracting principles. As such, this study seeks to:

- i) Document current levels of openness in public contracting in targeted countries/institutions;
- ii) Identify and assess existing systems and data sources within the government for collecting, analysing and sharing procurement data;
- iii) To gauge the level of openness, transparency and accountability across the various stages of public procurement;
- iv) Identify key stakeholders and their capacities and enthusiasm for advancing open contracting; and
- v) Provide recommendations on realistic targets and use cases for open contracting moving forward.

2. UNDERSTANDING PUBLIC PROCUREMENT AND TERMINOLOGY

The term “public procurement” refers to the process through which public entities (governments, government agencies, sub-national governments, etc.) purchase goods and services. There are five phases in the procurement process:

- a) **Planning:** Prior to seeking a supplier to provide specific goods or services, governments undertake a planning process to determine the goods or services needed. Planning includes drafting procurement plans, and may also include the conduct of various assessments (public needs, environmental, social impact, etc.) and outreach efforts (public hearings, site visits, etc.) aimed at understanding the nature of the intervention required.
- b) **Tender:** The second phase of procurement is the issuance of a tender, often referred to as an invitation to bid (ITB). Governments are often required by law to publicize ITBs to ensure that potential tenderers, or bidders, have the opportunity to bid. While there are many different types of tender process (open, limited competitive, reverse-auction, etc.), the tender period is of fixed length. At the end of the tender phase is an evaluation period during which the procuring entity selects a winning tenderer.
- c) **Award:** Once a bidder has been selected, the procuring entity notifies the winning tenderer, now called the “supplier.” The procuring entity also notifies the losing tenderers that they have not been selected.
- d) **Contract:** Once a supplier has been selected, the supplier and procuring entity sign a contract. Sometimes there is an opportunity for negotiation on the final goods and services to be provided and contract amount. Although necessary, negotiation also provides an opportunity for corruption to enter the process.
- e) **Implementation:** Once a contract has been finalized, the implementation process begins. Depending on the size and scope of the contract, the supplier must oftentimes meet set milestones to receive payments, which are dispersed throughout the implementation period. At the end of implementation, an evaluation of the contracting period should take place.

While each legitimate contracting process enters into all the five (5) phases at some point in time, the phases may take on distinctive appearances depending on the country, the procuring entity, the contracting method, and multiple other factors. A partial consequence of the distinctiveness of procurement processes is the proliferation of the lexicon used in describing them. Even when describing the same process or actor, the terminology used may differ. For instance, a “supplier” may also be referred to as a “contractor” or a “tenderer” (even if the term “tenderer” may also refer to the entity that has issued the tender).

3. METHODOLOGY

3.1 Study Design

A cross-sectional design was used in this study to gauge the state of openness of public procurement processes in Kenya, Uganda, Tanzania, Nigeria, Zambia, Malawi, Ghana, Senegal, Côte d'Ivoire and South Africa each of the target countries. In this study, both snowball and cluster techniques were used as per country needs. The respondents were categorized as academic institutions; consumer organizations; development organizations; civil society actors; policymaker/Government Official /legislator/county official; private research and training institutions; public research and training institutions; trader, producer/producer organizations. The researcher used snowballing and purpose techniques to reach out to study participants where appropriate.

3.2 Study Areas

This study was conducted in ten (10) purposively selected countries in Africa. The countries were selected based on previous OC projects and initiatives implemented by Hivos and other funding organizations. The researcher used the platform to gauge each country's readiness to embrace and implement open contracting in the public procurement processes on the continent. The selected countries included Kenya, Uganda, Tanzania, Nigeria, Zambia, Malawi, Ghana, Senegal, Côte d'Ivoire and South Africa.

3.3 Data collection

This study applied two main methods of data collection in the ten (10) study countries. The methods include:

- a) *Desk research-* literature review was conducted for each target country where secondary sources of data were reviewed. These include policies on public procurement, financial systems, reports on previous studies and projects. Journal papers, research papers, policy briefs, opinion pieces on procurement systems were also reviewed.
- b) *Key Informant Interviews (KIIs)* were conducted targeting key stakeholders in each of the target countries. These key stakeholders were drawn from government, private sector, media, civil society organizations and other interested parties.

A data collection tool was developed that had six (6) sections, each of which contained a set of pertinent questions relating to each section. These sections covered a range of issues that would provide insight into the state and potential for implementing OC intervention in a given polity. They include:

- i) *Institutional arrangements:* the structure of the political institutions as they related to the procurement process;
- ii) *Legal framework:* the structure of laws around procurement and disclosure of information;
- iii) *Policy context:* the view of the government on information disclosure and open contracting;

- iv) *Technical assessment*: the procurement management systems, data collected during the procurement process and quality of that data;
- v) *User engagement*: efforts and initiatives by the government and other stakeholders to engage with procurement data, both in the present and past; and
- vi) *Stakeholder Identification*: with subsections related to the government, civil society/media, private sector actors shaping the procurement landscape, their technical capacities, use cases and opportunities for collaboration.

The methodology was designed to facilitate the gathering of data using various qualitative and quantitative research methods, including interviews, review of law/regulation/policy documents, website reviews, and data analysis. The questionnaire was designed such that each target key informant respondent was able to respond to 2 or 3 sections at most. To ensure that each section receives sufficient input, we provided a list below (Table 1) indicating a suggested number of responses that should be obtained to each section of the methodology, and the profiles that researchers should target in gaining responses to each section.

Introduction letters were provided requesting access to data, or they may refer the request to other individuals. The final country reports, covered below, will contain write-ups of findings related to each section of the methodology. Data were coded and entered in excel sheets then exported to SPSS for analysis. Tables and graphs were used in the presentation of findings.

Table 1: Distribution of target respondents across the various sections of the data collection tool

Key issues	No. of Interviews	Methodology	Primary Target Groups
1. Institutional Arrangement	3+	Desk research and Key Informant Interviews	National and subnational procurement agency staff (heads of services), other gov't agency staff (procurement policy board, key line ministries), legal professionals, Civil Society Organizations (CSOs) staff
2. Legal Framework	3+	Desk research and Key Informant Interviews	National and subnational procurement agency staff (heads of services, technical staff), line ministry staff, legal professionals/procurement analysts
3. Policy Context	3+	Desk research and Key Informant Interviews	National and subnational procurement agency staff (heads of services, agency communications officers), CSO leaders
4. Technical Assessment	3+	Desk research and Key Informant Interviews	Data owners, ICT technical staff, Data users (CSO technical staff, infomediaries)
5. User Engagement	4+	Desk research and Key Informant	CSO staff, infomediaries, open data advocates

		Interviews	
6. Stakeholder Identification: Government, CSOs, Media, Donors and Private Sector	4+	Desk research and Key Informant Interviews	Procurement analysts, CSO leaders National and subnational procurement agency policy staff

3.4 Data analysis and reporting

The collected data both qualitative and quantitative were organized and entered into SPSS for analysis. Quantitative data analysis mainly consisted of descriptive statistics (frequencies and percentages) and inferential statistics. The frequencies and percentages were used to determine the respondents' views on the various aspects of public procurement being investigated. Content analysis was used in the analysis of qualitative data. These were re-organized it into meaningful shorter sentences. A thematic approach was used to analyse qualitative data where themes, categories and patterns were identified. The recurrent themes, which emerged in relation to each guiding question from the interviews were presented in the results. The results were presented in tables and graphs. The findings and discussion were organized into four (4) major areas derived from the six (6) aspects that were investigated. These are: a) Policy, Legal and Regulatory Framework; b) Institutional Arrangements; c) Technical Assessment of Procurement Processes; and d) Stakeholder Identification and User Engagement. These were compared in the ten (10) study countries and country case studies developed to demonstrate what works and what doesn't and why.

4. FINDINGS AND DISCUSSION

This chapter provides the findings and discussion of the state of open contracting in Africa and country-specific analysis of policy, legal, institutional frameworks as well as the technical assessment of procurement processes. The participation and engagement of stakeholders in the study countries are also analysed.

4.1 Overview of Public Procurement in Africa

Since the international conference on reforms of public procurement in Africa held in Abidjan in 1998, most governments have instituted reforms in public procurement. In line with its commitments under the Paris Declaration, the African Development Bank (AfDB) group has been working together with other development partners in establishing tools and strategies to move towards the use of country systems regarding procurement. Assisting African governments to modernize and strengthen their public procurement systems at both regional and national levels, it is believed it will open the way for development partners to use country procurement systems, which will facilitate the implementation of projects and improve the overall public financial management capacity of implementing countries. The major goals of these reforms are to encourage competition, improve financial transparency, and ensure accountability in public institutions. Procurement reforms in Africa have to some extent brought modernity, transparency, competition, as well as fairness in the procurement process. Notwithstanding the improved administrative and structural systems put in place to enhance efficiency in public procurements, these reforms have not gone without blemish. Indeed, the implementation of procurement reforms in Africa has been fraught with cultural insensitivity, the disregard for countries' political, socio-economic, ethical, and environmental structures and systems. The result is the lack of interest and political will to confront the challenges of the reform leading to haphazard and lacklustre approach towards its implementation (Hunja, 2003).

African countries have various reasons for wanting to undertake procurement reforms. Some countries undertake reforms to support essential internal administrative improvements, others accept reform programs to help qualify for international financing from multilateral institutions, or to help integrate a country into the multilateral trading system. Procurement reforms are often seen as an important feature of anti-corruption efforts that can help promote good governance (Thai, 2008).

Transparency in public procurement is an important issue for all countries. Developed countries have established various means to create and sustain transparency. It has become imperative for African governments to incorporate monitoring and control systems into public procurement to consolidate the modest gains especially in areas of transparency, equity and fairness in their current structures (Wittig, 1999). In recent years, the impetus for reforms have increased, partly in consequence of requirements set by the World Bank and other donor organisations as a condition for providing development aid, but principally because the inefficiencies of unreformed systems have become self-evident. Most donors

consider that a well-functioning procurement system is an essential requirement if their funds can be used effectively to promote development (Abeillé, 2003).

In most African countries the aim of accepting and instituting these reform programs is to establish a strong and well-functioning procurement system that is governed by a clear legal framework establishing rules for transparency, efficiency and mechanisms of enforcement, coupled with an institutional arrangement that ensures consistency in overall policy formulation and implementation (Hunja, 2003).

The aftermath of the Abidjan conference saw several African countries embark on procurement reform programs with the support of the AfDB, the World Bank and other development partners, and the assistance of sub-regional organisations such as the Common Market for Eastern and Southern Africa (COMESA), the West African Economic and Monetary Union (WAEMU), which have adopted regional directives on public procurement (AfDB, 2009). The Organisation for Economic Co-operation and Development (OECD), as a global platform for knowledge sharing and good practice dissemination, stands ready to collaborate with the AfDB, the WB and the African countries to modernize public procurement systems across the continent and contribute to elevating the already high standard of procurement practices that can be found in many places. Public procurement reform requires sustained country ownership, political will and commitment, together with appropriate technical solutions. Other initiatives that are promoting open contracting in Africa include the e-Government Procurement Forum (eGPF) and the Open Governance Partnership (OGP).

4.1.1 E-Government Procurement (e-GP) in Africa

With respect to eGPF², the representatives recognized the value e-GP can bring in establishing a more effective, efficient, and sustainable procurement environment, benefiting not just the government and participating vendors, but the public at large by providing unrestricted open access to procurement information and business opportunities. A Community of Practice (CoP) of public procurement officials in the African region has been established as a platform to exchange knowledge and experiences over e-GP. Countries agreed to take urgent strategic and tactical actions to accelerate and sustain achievements by:

- Elevating public procurement to a strategic function to enable it to contribute to realizing the sustainable and socio-economic aspirations of the African countries;
- Strengthening the integrity of public procurement systems;
- Substantially increasing capability building in public procurement and contract management through capacity development and professionalization of the public procurement function;
- Ensuring public procurement is effective in making PPP succeed in Africa; and
- Harnessing Information Technology (IT) for efficient public procurement.

The eGPF, led to the following key action items:

² <https://wbnpf.procurementinet.org/featured/africa-high-level-public-procurement-and-electronic-government-procurement-forums>

- a) Countries to develop e-Government Procurement (e-GP) implementation strategy and design of e-GP systems to consider the use of cloud services, open contracting, geo-tagging, smartphone applications, social media and integration with other relevant e-Services;
- b) Progression of e-GP in Africa be driven by innovation and integration with other e-services;
- c) Develop and adopt indicators to measure the extent of e-GP implementation based on the objectives of the country reflected in the e-GP strategy; and
- d) The countries to analyze and use procurement data to influence procurement policy decisions, performance monitoring, and the development of Small and Micro Enterprises (SMEs) marketplace.

"Thehas demonstrated that, notwithstanding challenges, great strides have been made in public procurement reforms and eGP development in Africa," said Mr. Kwadwo Osei-Lah of the Government Procurement and Competition Division, World Trade Organization (WTO). "I left the event with three main takeaways:

- (1) that public procurement in Africa is increasingly becoming a strategic function, with local industry development an important objective;*
- (2) that eGP is a vital tool for improving transparency, governance, value for money, and SME access to opportunities in public procurement markets; and*
- (3) that there is a trade dimension that, however, needs to be further developed and harnessed in order to deliver improved overall outcomes linked to the AfDB Hi5 goal of integrating Africa.*

In these circumstances, strategic public procurement in Africa today is, beyond the basic process of buying goods and services, closely aligned with creating the very conditions necessary for peace, opportunity and prosperity for current and future generations of Africans, consistent with the UN Sustainable Development Goals. In short, it is, in my view, a question of 'development procurement'."

4.1.2 Open Government Partnership (OGP) Initiative

The OGP³ is an initiative that brought together government leaders and civil society advocates to create a unique partnership that combines these powerful forces to promote accountable, responsive and inclusive governance. Seventy-eight (78) countries and a growing number of local governments- representing more than two billion people- along with thousands of civil society organizations across the world are members of OGP. Currently, eleven African countries are OGP members- Burkina Faso, Cabo Verde, Côte d'Ivoire, Ghana, Kenya, Liberia, Malawi, Nigeria, Sierra Leone, South Africa, and Tunisia.

The Steering Committee of the OGP endorsed the "Paris Declaration on Open Government" on 7 December 2016. This Declaration set collective actions where governments and civil society organisations would work together to push open government forward, and advance reform at global, national and sub-national levels. Countries and civil society organisations

³ <https://www.opengovpartnership.org/about/>

committed to open public procurement and make the process open by default. This was to be achieved through publishing contract and contracting information according to open data standards to help tackle corruption, increase competitiveness and improve service delivery. In addition, partners are required to engage with civil society and business throughout the public procurement cycle. Only eight (8) out of the eleven (11) OGP members in Africa have made commitments on open contracting and procurement in their national action plans, which have been reviewed by the Independent Reporting Mechanism (IRM)⁴. These are Cote d'Ivoire, Ghana, Kenya, Liberia, Malawi, Sierra Leone, South Africa and Tunisia.

4.2 Cote d'Ivoire

4.2.1 Overview of the General Country Context

The government of Côte d'Ivoire has taken steps to increase transparency and make commitments to good governance, including through the establishment of the High Authority for Good Governance (Haute Autorité pour la Bonne Gouvernance) in 2013. The President of Cote d'Ivoire is the head of state and holds executive powers, in a multi-party system whereas the Legislative power is vested in both the government and parliament. The country has recovered significantly over the past few years after a long time of civil conflicts. The Government sought to improve governance, transparency, economic efficiency, and strengthen the basic functions of government, based on accountability and the rule of law. The program focused on implementing the key elements of the Ouagadougou Accord⁵; restoring basic infrastructure and social services; restoring fiscal and debt sustainability; and sustaining an incipient economic recovery through structural reforms in the key energy, cocoa, and financial sectors. This involved supporting public financial management (PFM) as well as the cocoa and energy sectors, which are the two key generators of exports and public revenues. On the expenditure side, the plan included continued and deeper reforms to strengthen PFM to improve efficiency and effectiveness in public resources and hold the Government accountable for the appropriate use of public funds. On the revenue side, the plan included enhancing transparency and accountability of state institutions and processes in the cocoa and energy sectors.

4.2.2 Policy, Legal and Regulatory Framework

Ordinance No. 2019-679 of 2019

Ordinance No. 2019-679 of 24 July 2019 establishing the Public Procurement Code was published, on 11 December 2019. This legislation transposes the directives of the West African Economic and Monetary Union (WAEMU)⁶, which organizes the framework of public procurement in West Africa. The policy introduces several novelties to the institutional and procedural aspects regarding public procurement in Côte d'Ivoire. Compliance with the regulation pertaining "*to the environmental, social and labour matters, and the protection of disabled persons and gender*" is now one of the cornerstone principles governing the public procurement in Côte d'Ivoire, which was added to the already existing fundamental principles of equal treatment, transparency in procedures and free competition.

⁴ <https://www.opengovpartnership.org/documents/independent-reporting-mechanism/>

⁵ <https://peaceaccords.nd.edu/accord/ouagadougou-political-agreement-opa>

⁶ <https://www.imf.org/en/Publications/SPROLLs/WAEMU-362#sort=%40imfdate%20descending>

Sustainable development matters are more and more significant insofar as the new text provides that the economically most advantageous compliant tender will be determined by the tender committee on the sole basis of the:

-price criterion "*under the condition that the sole object of the public contract is the purchase of standardized services or supplies whose quality is not susceptible to variation from one economic operator to another*"; or

-the price or cost determined according to a global approach which may take into account elements in pecuniary terms, some of which relate to lifecycle costs, such as after-sales service and technical assistance, the availability of spare parts, benefits and performances in terms of the goods or services' security purchased and environmental protection or innovative character.

From an institutional point of view, the Administrative Conciliation Commission is in charge of settling the disputes arising in connection with the award, performance, or settlement and control of procurement contracts. The policy substitutes the commission for the National Authority of Regulation of Public Procurement (*Autorité Nationale de Régulation des Marchés Publics* or ARNMP in French). A person responsible for public procurement will now be designated for each ministry to ensure coordination of the activities of the directorates and services involved in the chain of awarding and executing public contracts. Moreover, all officials, public or private officers of the contracting authorities or other entities involved in the award, control, execution, settlement or regulation of public procurements will be subject to a Code of Conduct and Ethics which will be established by decree.

The procurement contracts subject to this new Ordinance have been precisely defined and concern not only the various traditional procurement contracts (works, supplies, services and mixed contracts) but also specific procurement contracts (cost-plus contract, management and maintenance contract based on service levels, turnkey contract, design-build contract, design-build, operation or maintenance contract, innovation contract and the framework agreement). As a matter of principle, a bid bond is required from candidates when they submit their tenders, except for candidates taking part in negotiated tenders, mutual agreement tenders or intellectual services procurement. The bid bond used to be released to the candidates within 30 days after the award of the procurement. The new Public Procurement Code reduces this period to 15 days unless a shorter period is stipulated in the tender documentation.

Any decision by the contracting authority to postpone the contract for more than three months, or any successive postponement for more than three months, entitles the contractor to terminate the contract. This period used to be six months. Moreover, the Ordinance expressly provides that the contractor will be entitled to apply to the competent jurisdiction for termination of the contract in the event of his non-payment following a formal notice which has remained without effect for three months. The Ordinance moves towards a dematerialization of procurement procedures. Thus, in the event of a dispute, a preliminary recourse (*recours préalable*) may be exercised by any applicable means, including electronic communication, within seven business days (previously it was within 10 business days).

Furthermore, the new Ordinance introduces a new form of judicial review, namely the possibility of bringing an action for annulment on the grounds of misuse of power (*recours en annulation pour excès de pouvoir*) against a decision of the public procurement regulator. As a matter of principle, this appeal is not suspensive except on request for a stay of execution before the competent court. All disputes arising out of the performance or settlement of public procurement contracts may be submitted either to the courts having jurisdiction in administrative matters or to an arbitral tribunal. The obligation to submit the dispute to the rules of the “Organisation pour l'Harmonisation en Afrique du Droit des Affaires”, which translates into English as Organisation for the Harmonization of Business Law in Africa (OHADA)⁷ Uniform Act on arbitration is no longer binding. The parties may agree on the choice of any other arbitral tribunal.

Other important policies that are important in public procurement and contracting include:

- Directive No 04/2005/CM/UEMOA of 9 December 2005, which is the West African Community legislation regulating the procedure and execution of government contracts in the West African Economic and Monetary Union (UEMOA);
- Directive No 05/2005/CM/UEMOA of 9 December 2005, related to the control and regulation of the procurement of government contracts, and public service delegations in the UEMOA;
- Directive No 01/2009/CM/UEMOA of 27 March 2009, establishing the Code of Transparency in the management of public finances in the UEMOA;
- Directive No 04/2012/CM/UEMOA of 28 September 2012, related to the ethics and deontology in government contracts and public service delegations within the UEMOA jurisdiction;
- Directive No 02/2014/CM/UEMOA of 28 June 2014 on the regulation of delegated public services management within the UEMOA; and
- Ministerial Decree No 692 of 16 September 2015.

West Africa Economic and Monetary Union (Union Economique et Monétaire Ouest Africaine [UEMOA])

Since 1994, eight Francophone West African countries (Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, and Togo) have been a part of this monetary and economic union. Member countries share a common currency, a central bank, and harmonised banking and financial services and practices. Guidelines, policy advisories and certain regulations come from the Union to all member states. Côte d'Ivoire's procurement policy landscape, therefore, is highly influenced by the directives of the UEMOA.

Access to Public Information and Documents Commission (Commission d'Accès à l'Information d'Intérêt Public et au Documents Publics [CAIDP])

In December 2013, the government adopted its Access to Public Information law, and in 2014 created the CAIDP as the oversight body of the nation. The CAIDP is an independent

⁷ <https://www.ohada.org/index.php/en/>

body under the auspices of the Presidency. However, its implementation has been very slow over the years (OCP, 2016a).

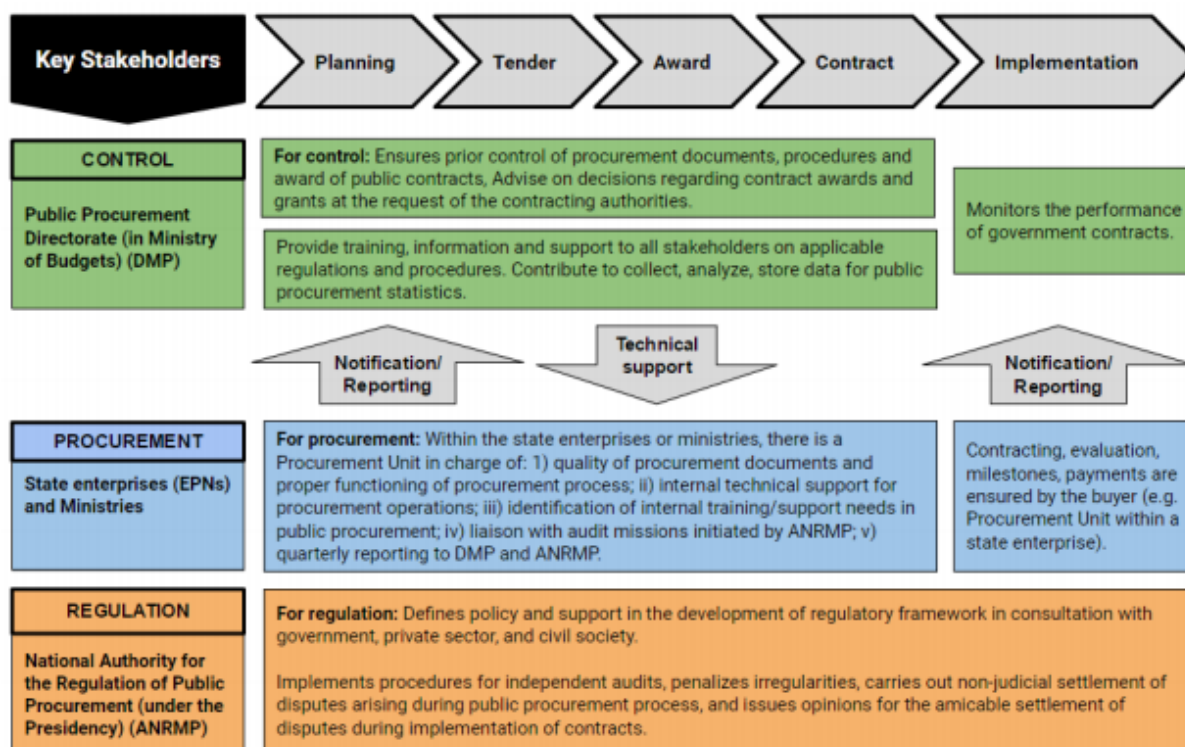
High Authority for Good Governance (Haute Autorité pour la Bonne Gouvernance [HABG or Haute Autorité])

Côte d’Ivoire adopted an anti-corruption law in 2013, which stated that established the Haute Autorité. This Authority was fully constituted in 2014, with a mandate not only to fight corruption but is to uphold good governance. Similar to the CAIDP, the Haute Autorité is also an autonomous agency that reports to the Presidency.

4.2.3 Institutional Arrangements

Cote d’Ivoire’s public procurement system is organized around four key government stakeholders, whose roles and responsibilities vary throughout the procurement process: the Tender Evaluation Commission (la Commission d’ouverture de plis et de jugement d’offres [COJO]) which manages the tendering process; the Public Procurement Directorate (Direction des Marches Publics [DMP]) which oversees procurement activities; state enterprises and ministries, which are often the individual procuring entities; and the National Authority for Public Procurement Regulation (Autorite Nationale de Regulation des Marches Publics [ANRMP]) that is responsible for regulating the procurement system (OCP, 2016a). Figure 1 below provides the breakdown of institutions and their role in the procurement process in Cote d’Ivoire.

Figure 1: The institutional arrangement of public procurement in Cote d’Ivoire



Source: OCP, (2016a)

The National Authority for Public Procurement Regulation (Autorite Nationale de Regulation des Marches Publics [ANRMP])

ANRMP is an independent administrative authority under the Presidency, endowed with financial and administrative autonomy. As the primary legal oversight organization of the procurement process, the ANRMP regulates the procurement process by issuing opinions, guidelines and recommendations that define procurement policies and assist in their implementation. It is responsible for a posteriori controls, punishing fraud or corruption, evaluating the system for awarding contracts and audits, and for proposing regulatory reform.

Public Procurement Directorate (Direction des Marches Publics [DMP])

DMP is the central operational point that oversees, authorizes and manages public procurement in Cote d'Ivoire. The Procurement Code requires that all state agencies, ministries, departments, including the Presidency, should go through DMP for contracts where the national budget is involved. DMP does not manage transactions, but is in charge of the policy framework and oversees the due process (OCP, 2016a). Although DMP has validated that it has direct access to all ministries, other stakeholders from other ministries and private sector recommend that DMP should be restructured as an Entity for efficiency purposes (OCP, 2016a).

State Enterprises and Ministries

Every Ministry has a Department of Financial Affairs (Direction des Affaires Financières [DAF]) that serves as the focal authority for all procurement related to the Ministry. State enterprises (Entreprises Publiques Nationales [EPN]) are private companies that receive their budget from the state. An EPN signs a contract for delegation of powers, and there may be more than one donor in projects. The EPNs enjoy a level of autonomy in procurement, though they remain under the auspices of their respective state authorities.

4.2.4 Technical Assessment of Procurement Processes

Ordinance No 2019-779 of 24 July 2019, set up the new code of procurement of government contracts – this code regulates all procurement of government contracts in Côte d'Ivoire. However, since Côte d'Ivoire is a member of WAEMU, it is bound to comply with other regional policies. WAEMU disclosure regulations for the planning, tender and award phases require procurement plans be published annually by December 1, tender notices at least 7 days after the procurement plan, procurement statistics each trimester, provisional award notices within 3 days of bid evaluation, and final award notices within 15 days of provisional award (OCP, 2017a).

The tender procedure begins with the constitution of the tender documents by the contracting authority. Then the publication of the notice of tender in the National Gazette of Government Contracts. Note that when it is an international tender, the notice of tender must be also published in the international newspaper of announcement. The candidates are required to

tender their offer within 30 days for a national tender and 45 days for an international tender (Articles 66 and 68 GPC). Finally, the publication of the results by the relevant authority (Commission des plis et de jugement des offres). Any other procedure must be justified and approved by the Minister in charge of public procurement.

The Public Procurement Code recognizes three main procurement methods that can be used by procuring entities when purchasing goods, works, services or other items. These are:

- **Direct attribution (by mutual agreement)** (gré-a-gré): refers to a non-competitive procurement method that is permitted in cases of extreme urgency (such as to ensure the continuity of public service) or when only one supplier is able to provide the requested service, good or work.
- **Restricted tenders (need pre-qualifications)**: This is a two-stage process where a state enterprise or ministry sends a direct request for proposals to at least the first three candidates selected through a call for expression of interest. Candidates must be invited by state enterprises or ministries to submit a proposal.
- **Open tenders (open to companies)**: A contracting authority awards the contract after a competitive tender, without negotiation, to the bidder that a) complies with the bid criteria and b) that submits the lowest-price bid. In open tender processes, any tenderer can submit an offer. The open tender, which is the most often used tender method, may include a prequalification phase, which officially should be open to any company, but only certain businesses may qualify.

4.2.5 Stakeholder Identification and User Engagement

Côte d'Ivoire surpassed the participation criteria for OGP, although it has not formally signalled its intent to join OGP. Côte d'Ivoire's participation in a partnership of countries aiming to enhance government openness would provide validation of open data advocacy by local actors. There is no obligation in the law to promote proactive disclosure. In practice too, institutions only rarely proactively provide information given a prevailing culture of secrecy. Proactively disclosed information is rarely up to date when it is provided. On a scale of 1 to 10, institutions and agencies are only rated a 3 for their effective use of information and communication technologies to help in this regard (ShareAlike 4.0 International [CC BY-SA 4.0], 2017). Institutional also only rarely use mechanisms or means of disseminating information that assists rural or disadvantaged communities, such as through brochures or roadshows. Proactive disclosure is thus not a strong alternative avenue for accessing information. When information is provided, it is never in a language that the average requester can understand and it will never be translated. The location from which the information is provided is generally inaccessible, as well. This severely affects stakeholders to meaningfully participate in the procurement processes. However, civil society is actively trying to assist this - a coalition of civil society organisations has summarised and translated the ATI law into four local languages: baoulé, bété, dioula, and koulango.

Procuring entities are not compelled to engage citizens in the procurement process, but some of the regulations and laws provide citizens with an opportunity to participate. For example,

citizens or civil society cannot observe bid openings but can issue a complaint at any stage of the procurement process by filling out an online form on the procurement portal. In addition, publishing contracting information online allows interested citizens or civil society organizations to follow or track individual procurement processes.

4.3 Ghana

4.3.1 Overview of the General Country Context

Ghana has committed to open contracting focusing specifically on the sector of extractive industries. Ghana's procurement regime is governed by the Public Procurement Act 663 (2003) and the new Public Financial Management (PFM) Act 921 (2016), which provides further guidance on public procurement. Act 663 sets forth the Public Procurement Authority (PPA) as the lead agency on procurement oversight and regulation, the Ministry of Finance (MOF) as the primary policy institution, and the Auditor-General (A-G) as the lead auditing body. The Parliament of Ghana's Public Account Committee reviews audited accounts of all public institutions and makes recommendations for redress or prosecution to the Attorney General. Each government ministry, department and agency on the national and sub-national level serves as a procuring entity (PE) and is tasked with carrying out its procurement operations activity.

Despite Ghana having one of the most transparent procurement systems in the region, there remain several challenges to data sharing and the effective conduct of procurement. Although Ghana has an electronic procurement planning system, not all PEs have the capacity or training to use it (PPA conducted a nation-wide training on the system in 2007/8 and continued to offer training to the PEs) and some PEs do not comply with the PPA's reporting standards. As not all payments are made through Ghana's Financial Management System (GIFMIS), there are significant delays that prevent smaller businesses from participating.

While the Government of Ghana (GoG) has adopted a commitment to implement open contracting as part of its engagement in the Open Government Partnership, many government officials interviewed for this report were unaware of this promise. The new administration, which was elected in December 2016, made combating corruption through overpricing and opaque procurement practices a centerpiece of its campaign. It has given assurances of its intention to continue to combat corruption, particularly concerning the awarding of public contracts, in part through implementation of open contracting and a business ownership registry. However, Ghana is considering the adoption of e-procurement, which presents an opportunity for engagement on open contracting principles. It has also adopted a law that would create a beneficial ownership registry, which has potential to make Ghana a leader with respect to business governance, particularly if this registry is linked to GIFMIS and an e-procurement system. There are also many opportunities to work with civil society and the private sector in support of an open contracting agenda.

4.3.2 Policy, Legal and Regulatory Framework

The Constitution

The Constitution of Ghana is the supreme law of the Republic of Ghana. It was approved on 28 April 1992 through a national referendum after 92% support. It defines the fundamental political principles, establishing the structure, procedures, powers and duties of the government, structure of the judiciary and legislature, and spells out the fundamental rights and duties of citizens.

Public Procurement Act 663, 2003

The Act provides for public procurement, established the Public Procurement Board; make administrative and institutional arrangements for procurement; stipulate tendering procedures and provide for purposes connected with these. The Public Procurement Board was established by this Act to be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. The Board may acquire, hold, manage or dispose of any movable or immovable property in connection with the discharge of its functions and may enter into contracts and transactions that are reasonably related to its functions.

Public Financial Management (PFM) Act 921, 2016

The Act was established to regulate the financial management of the public sector within a macroeconomic and fiscal framework; to define responsibilities of persons entrusted with the management and control of public funds, assets, liabilities and resources, to ensure that public funds are sustainable and consistent with the level of public debt; to provide for accounting and audit of public funds and to provide for related matters. This Act regulates the financial management of the public sector within a macroeconomic and fiscal framework. (2)

It established:

- (a). a framework to support a sound fiscal policy and the macroeconomic management of public funds;
- (b). processes for the preparation, approval and management of a transparent, credible and predictable annual budget;
- (c). mechanisms for the operation of the Consolidated Fund;
- (d). mechanisms for the management of public funds, assets and liabilities;
- (e). internal and external audit frameworks and correlative reporting and accounting systems; and
- (f). a mechanism to oversee the matters specified under paragraphs (a) to (e).

The Ghana Companies Act, 2019

The Companies Act, 2019 (Act 992) has been in the works since 2018 and replaces the Companies Act, 1963 (Act 179). At a very high level, the new Act seeks to introduce improved corporate governance standards for companies operating in Ghana. The Act draws on the experience of more developed Jurisdiction and specifically includes international best practices from jurisdictions such as the United Kingdom, New Zealand, South Africa and Mauritius. The Companies Act, 2019 establishes “the Office of the Registrar of Companies” which is an autonomous governmental body with perpetual succession. It set up to register and regulate businesses and corporate bodies operating in the country. The Registrar of Companies is to be appointed by the President of Ghana and shall be separate from the

Registrar General. This office which shall be run by a governing board with full financial autonomy and full control over the use of internally generated funds (IGFs). Its sole purpose is the registration and regulation of companies in Ghana. The passages of the Beneficial Ownership Register⁸ as part of the Amended Companies Act (Act 920) is expected to help the public to get involved with the procurement process. This Register is expected to avail information on the natural owners of companies and thereby contribute to detecting conflict of interest and collusion during procurement. This makes the Beneficial Ownership Register a very significant open contracting commitment by the government which would further boost the transparency drive.

4.3.3 Institutional Arrangements

The Public Procurement Authority (PPA)

The PPA has been mandated to regulate all procurement entities in accordance with the Public Procurement Act (Act 663 of 2003; amendment Act 914 of 2016) and approves all procurement activities. In particular, the PPA is supposed to ensure compliance in public procurement and prevent abuse of public funds. The PPA's responsibilities include:

- the development of standard tender documents for procurement,
- approval for use of Single Source and Restrictive Tendering Methods; which is actually done by the Board of PPA,
- capacity building and assessment of procurement activities as they occur in the entities,
- approval of all contracts emanating from various procuring entities,
- sanctioning of procurement entities and suppliers and
- running the web portal⁹, which helps to manage the procurement process and interaction with procuring entities. However, some information, such as procurement plans, are not disclosed publicly.

The Ministry of Finance (MOF)

This is the key policy institution with respect to procurement, responsible for issuing procurement regulations, administrative instructions and other monitoring rules to PEs in consultation with the PPA's Board. In Section 97 (1) of the Public Procurement Act, the Minister of Finance, in consultation with the Procurement Board, may make regulations through legislative instruments (OCP, 2017b).

The Ghana Anti-Corruption Coalition (GACC)

GACC is a unique cross-sectoral grouping of public, private and CSOs with a focus on promoting good governance and fighting corruption in Ghana. GACC was registered on March 13, 2001 under the company's code. GACC has over the years built the capacity of CSOs on anti-corruption and whistleblowing nationwide. It has mobilized grassroots to demand accountability from duty bearers nationwide through the formation of Local

⁸<https://www.graphic.com.gh/features/features/shining-more-light-on-public-procurement-a-case-for-open-contracting-data-standard-in-ghana.html>

⁹www.ppaghana.org

Accountability Networks (LANets) and has advocated and lobbied for the passage and amendment of the Whistle-blower and the Public Procurement Acts. The organisation has developed indicators for monitoring corruption in Ghana, built media capacity and formed the Network for Journalists Against Corruption (JAC), in addition to coordinating the Business Action Against Corruption Network (BAAC) and Business Integrity Forum (BIF) in Ghana for businesses to build self-monitoring mechanisms to promote business integrity. GACC has also been addressing the problem of corruption in the private sector by actively contributing to advocacy efforts against, and education on, corruption pertaining to SMEs in their efforts to follow and comply with United Nations Convention Against Corruption (UNCAC) and national laws and regulations.

4.3.4 Technical Assessment of Procurement Processes

The Public Procurement Act, 2003 (Act 663) specifies a number of rules, process, procedures and ethics for the whole procurement process. These rules aim to secure efficiency in the use of public funds to ensure non-discrimination, fairness, transparency and accountability in the procurement process. Management of the procurement process is very much concern with efficiency and effectiveness, they control the performance of procurement function to achieve this. It is very important to assess how well the procurement process has gone, identify any weakness or problems and needed action to prevent it from future occurrence. The assessment is conducted based on a determined criterion already in the tender documents. The PPA has been conducting annual procurement assessment via its Benchmarking, Monitoring and Evaluation Directorate. The main objective of the assessment is to find out how the procurement ‘good practices’ enshrined in the Act and its accompanying documents are being employed in the public entities and to inculcate into the public sector entities that need to monitor and evaluate procurement performance.

The Performance Assessment System (PAS) adopted by Ghana Procurement Authority is a step in the right direction. The PAS gives a qualitative report on the performance of PEs as captured by the assessment exercise using the Public Procurement Model of Excellence. The PAS report looks at four (4) main areas: *Management Systems, Information and Communication, Procurement Process, and Contract Management*. **Management system** covers leadership, human resources, monitoring and control system, ethics and compliance with the regulatory framework, and complaints, appeals and disputes resolution mechanism. **Information and communication** category examine entities’ capacity to give out information in the right format, and ability to utilize information received including the market place, data analysis, and knowledge of Apex Body. **Procurement Process** category provides information on the entities’ knowledge of the procurement cycle and how they conduct their activities at each stage. This covers procurement planning, notice, preparation of tender documents invitation for tenders, submission of tender, tender opening, tender evaluation and contract award. **Contract Management** measures how entities follow through the performance of the contracts they award. This includes planning and mobilisation, implementation, supervision, inspection, inventory control and disposal, and reporting.

The PPA has introduced a new electronic procurement system known as the Ghana Electronic Procurement System (GHANePs), which is currently in the pilot phase and was designed to be OCDS compliant. The PPA launched the new electronic procurement system which was the first of its kind in West Africa. The system when fully implemented would allow procurement and public contracting to be done online, reducing the human interface that is so auspicious for corruption. This will also enable individuals to get involved in the process because they can monitor the contracts in real-time and make the necessary contribution that would help bring the needed transparency. There is a need for more engagement on the benefits of employing OCDS compliant platforms in the procurement process at all levels, especially at the District Assembly or local government level to help flush out the endemic perception associated with public procurement. Different skill sets in ICT has had mixed effects on the procurement processes using e-procurement. There are contrasting capacity levels within public sector PEs. According to the OCP (2017a) key personnel were trained in skills such as uploading procurement plans onto the PPA's portal while staff at lower level institutions did not have the same skill-sets.

4.3.5 Stakeholder Identification and User Engagement

In Ghana, many well-meaning citizens believe that their participation in the scrutiny of public contracts would help eliminate corruption. Citizens and civil society most often engage in the procurement process during the monitoring of projects at the implementation stage. It is rare for citizens to be consulted during the procurement planning phase to understand their needs or desires. There has been a sudden interest in the procurement process because of the perception that government contracts are laced up in corruption. It includes media reports that exposed corruption at the Public Procurement Authority which was set up to prevent such practices. The nerves of citizens were touched and this sparked off a public outcry which has informed the government to find the right mechanisms to make procurement processes more transparent. The perception that public procurement is fraught by corrupt practices could slow down national development since citizens must trust, to some extent, in such processes to render the needed support to the government in developing the country.

The Ghana Anti-Corruption Coalition (GACC), through its Dialogue on Open Contracting, has brought together civil society and procurement authority leadership to help bridge multi-stakeholder voices on open contracting (OCP, 2017a). In February 2020, for instance, the GACC brought to a successful end a partnership with the Africa Freedom for Information Centre (AFIC) that helped to implement a project titled, "Strengthening Disclosure and Citizen Participation to improve Value for Money in Public Contracting in Africa". The project aimed to strengthen the disclosure of contracting data to facilitate citizen's access to information and participation in the procurement process. That was to help the country in realising better value for money in public contracting.

4.4 Kenya

4.4.1 Overview of the General Country Context

Accountability in the public procurement system in Kenya in the past decade has undergone significant changes. From a system with no regulations in the 1960s to a system regulated by Treasury Circulars in the 1970s, 1980s and 1990s, and finally the introduction of the Public Procurement and Disposal Act (PPDA) of 2005 and the Procurement Regulations of 2006 setting new standards for public procurement in Kenya. There have been transformations in the recent past. Public procurement in Kenya is now regulated by the Public Procurement and Asset Disposal Act, adopted in December 2015. The procurement system is decentralized, with each procuring entity conducting procurement procedures separately, using standardized tender documentation. The public procurement law has some transparency elements, but mostly accommodates paper-based procurement that is prevalent in the country. Electronic procurement is offered as one option (electronic reverse auction) among many and can only be used in “exceptional cases” if the procuring entity has a procurement portal that is approved by the Public Procurement Authority. The National Treasury is charged with policy development, while the Public Procurement Regulatory Authority (PPRA)¹⁰ is given the management role, which includes monitoring of processes, data collection and analysis, developing standard documentation, dispute resolution, and so forth.

The issue of public procurement in Kenya has proven to be perverse over the years. While the government has been keen on fast-tracking major reforms to enable efficient procurement procedures in contracting, far much more needs to be done to realize some of the gains envisaged in the existing legal frameworks such as the Integrity Act, the Procurement and Asset Disposal Act and the Public Service Act. It’s also worth noting at this point that Kenya has widely been recognized for being amongst the pioneer countries in Africa to establish the first-ever Open Data portal¹¹. So, it is not a question of non-existent policies or systems to increase accountability and efficiency in procurement processes but rather the critical steps that can be taken using the existing frameworks to wade off corruption.

4.4.2 Policy, Legal and Regulatory Framework

Public procurement in Kenya is guided by several laws enacted to weed out inefficiencies in the procurement process, remove patterns of abuse, and the failure of the public purchaser to obtain adequate value in return for the expenditure of public funds. Such laws include the Public Procurement and Asset Disposal Act, 2015, Public Finance Management Act, 2012, the Public Officers’ Ethics Act, 2003 among others. The objective of having these laws has never been fully achieved in practice. Beyond being a constitutional requirement, public participation and civilian oversight remain one of the most powerful tools in demanding for increasing transparency, accountability and efficiency in public procurement.

The Constitution of Kenya 2010

The Constitution of Kenya 2010 sets new standards with regard to procurement. Article 227 requires public procurement systems to be fair, equitable, transparent, competitive and cost-effective. Article 227 also requires Parliament to pass procurement regulations that will

¹⁰ <http://ppra.go.ke/about-us/>

¹¹ <https://www.opendata.go.ke/>

provide for preferential allotment of contracts, protection of disadvantaged categories of persons and sanctions against non-performing contractors, and those guilty of corrupt practices, tax violations and labour laws.

The Public Procurement and Asset Disposal Act, 2015

Public procurement in Kenya is governed by the Public Procurement and Asset Disposal Act 2015, whose full title is "An Act of Parliament to give effect to Article 227 of the Constitution; to provide procedures for efficient public procurement and assets disposal by public entities; and for connected purposes". This legislation came into effect on 7 January 2016, repealing the previous PPDA of 2005, and all state organs and public entities within Kenya are required to comply with this law in regard to planning and undertaking procurement, inventory management, asset disposal and contract management. An exception is where the provisions of the Public-Private Partnership Act, 2013 already apply to procurement and disposal of assets, or where procurement and disposal of assets take place under bilateral or multilateral agreements between the Government of Kenya and any other foreign government or multilateral agency. The law provides for the National Treasury to be responsible for public procurement and asset disposal policy formulation.

Access to Government Procurement Opportunities (AGPO)

The Access to Government Procurement Opportunities (AGPO)¹² program is founded on the Constitution of Kenya, 2010 Article 227 on the fair equitable, transparent and cost-effective public procurement of goods and services, the Constitution of Kenya, 2010 Article 55 on affirmative action and the Public Procurement and Asset Disposal Act, 2015. The AGPO Program aims to facilitate the youth, women and persons with disabilities owned enterprises to be able to participate in government procurement. The legal requirement for women, youth and persons with disabilities to access 30% of Government Procurement opportunities is being implemented within the context of the AGPO program which was officially launched by His Excellency the President, Uhuru Kenyatta on 16th October 2013.

The Executive Order No. 2, 2018

In June 2018, the President signed the Executive Order No. 2 requiring all procuring entities to publish procurement information (detailed information about the tender winner, description of the subject of the procurement, members of the Evaluation and Inspection Committees) on a variety of public platforms, and obligating the National Treasury to ensure that all procurement is undertaken through the e-procurement module by January 1, 2019 (Republic of Kenya, 2018). The National Treasury already runs an e-procurement system, however, it is part of the Integrated Financial Management Information System (IFMIS) that is currently accessible only for registered suppliers and not to outside observers. The presidential order points to a realization of the importance of moving away from a paper-based system to an electronic one. This is a positive development that should pave the way

¹² <https://agpo.go.ke/>

for a full-scale transition later down the line. Centralized e-procurement offers tremendous benefits related to increased efficiency due to elimination of record-keeping needs, speeding up of procurement processes, slashing corruption by reducing human-to-human contact, boosting competition through the elimination of geographic barriers and various fees, and automatic generation of data that can be used for analysis. Currently, a large part of Kenya's public procurement legislation and guidelines prepared by the Procurement Authority deal with the management of public procurement records. Moving to a centralized e-procurement system would eliminate this problem by removing the need to keep physical documents altogether.

Pursuant to the presidential Executive Order, the PPRA also runs a public procurement information portal, where procuring entities are required to upload tender notices and results each month. However, the database does not seem to be complete; e.g. inspection/evaluation information is completely absent. This observation is in line with experience from other public procurement information portals, whereby, despite legal obligation, procuring entities fail to be consistent in uploading the required information and documents. The only cases where this problem is not serious enough to be a cause for concern are public procurement systems that are fully electronic and centralized, where information completeness is ensured due to the automated nature of procurement procedures. For example, Georgia and Ukraine both have centralized e-procurement portals and have negligible problems with the completeness of uploaded information.

Public Finance Management Act, 2012

For the purposes of this Act, all procurement of goods and services required for the national government or a national government entity is to be carried out in accordance with Article 227 of the Constitution and the relevant legislation on procurement and disposal of assets. It also provides that all procurement of goods and services and disposal of assets, required for the county government or a county government entity are to be carried out in accordance with Article 227 of the Constitution and the Public Procurement and Asset Disposal Act.

The Public Officers' Ethics Act, 2003

Part III of the Act sets out a general Code of Conduct and Ethics for public officers. A public officer shall, to the best of his ability:

- carry out his duties and ensure that the services that he provides are provided efficiently and honestly;
- carry out his duties in a way that maintains public confidence in the integrity of his office; treat the public and his fellow public officers with courtesy and respect;
- to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;
- if a member of a professional body, observe the ethical and professional requirements of that body;

- professionally discharge any responsibilities; carry out his duties in accordance with the law and in carrying out his duties, he/she shall not violate the rights and freedoms of any person under Part V of the Constitution.
- Also, a public officer shall not use his office to improperly enrich himself or others; improperly use his office to acquire land or other property for himself or another person, whether or not the land or property is paid for; or
- for the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties and that is not public.

With regard to conflict of interest, the Act goes on to say that a public officer shall use his best efforts to avoid being in a position in which his interest conflict with his official duties. In case of conflict, the public officer is required to declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict and refrain from participating in any deliberations with respect to the matter.

Ethics and Anti-Corruption Commission Act, No. 22 of 2011

Parliament enacted the Ethics and Anti-Corruption Commission Act, No. 22 of 2011 which came into effect on 5th September 2011. The Act amended the Anti-Corruption and Economic Crimes Act (ACECA) by repealing the provisions establishing Kenya Anti-Corruption Commission and its Advisory Board while retaining all other provisions relating to corruption offences and economic crimes, their investigation and prosecution. Being the successor institution to the Kenya Anti-Corruption Commission (KACC), the Ethics and Anti-Corruption Commission (EACC) is mandated to implement the provisions of the Anti-Corruption and Economic Crimes Act.

Bribery Act, 2016

The Bribery Act, 2016 came into force on 13 January 2017 with the object of providing a framework for the prevention, investigation and punishment of bribery and related offences in Kenya. The Act applies to all individuals and entities in the private and public sectors. Previously, the law did not impose significant responsibilities on the private sector in the fight against corruption. Importantly, the Act now imposes express duties on private entities and individuals; for example, the duty to prevent and report incidents of bribery, as well as the requirement to have in place procedures for the prevention of bribery. It prescribes penalties for private entities and individuals who fail to adhere to the provisions of the Act. Under the Act, a person gives a bribe if *'the person offers, promises or gives a financial or other advantage to another person, who knows or believes the acceptance of the financial or other advantage would itself constitute the improper performance of relevant function or activity.'*

This Act has extra-territorial application in relation to bribery-related offences carried out outside Kenya. Persons covered include Kenya citizens, public or private entities, as well as persons associated with these entities whether as employees, agents or otherwise. Accordingly, all acts of bribery committed by a Kenyan citizen, a public or

private entity or a person associated with such a private entity outside Kenya is treated as if the act of bribery took place in Kenya. Any bribery of a foreign public official in order to influence his or her capacity is also an offence under the Bribery Act.

Access to Information Act, 2016

Access to Information Act 2016 has been law since September 2016. It upholds the right to information set down in Kenya's 2010 constitution. Article 35 of the constitution gives citizens the right to information held by the state; and information held by another person and required to exercise or protect of any right or fundamental freedom. Every person also has the right to the correction or deletion of untrue or misleading information that affects them. The state must also make public any important information that may affect the nation. Citizens may ask for information from a public or private entity, or another person. A "person", according to the constitution, includes a company, association or other group of people, whether incorporated or unincorporated. A private body may mean any non-state organisation that receives or uses public resources, provides public services or has exclusive contracts to exploit natural resources. This body may also hold information of public interest – information needed, for example, to protect human rights or public health, or expose illegal actions.

4.4.3 Institutional Arrangements

The Constitution of Kenya requires that any state organ or public entity contracting for goods or services must do so within a system that is fair, equitable, transparent, competitive and cost-effective. The Constitution further establishes a number of oversight bodies and mechanisms to ensure adherence to these requirements. Key among these is the Office of the Auditor General (OAG), the Parliamentary Oversight Committees and the Ethics and Anti-Corruption Commission (EACC). However, these organizations oversight what has already been done by the PPRA whose mandate is to provide guidance in the procurement processes.

Public Procurement Regulatory Authority (PPRA)

In January 2016, the Public Procurement and Asset Disposal Act, 2015 was enacted. This massively changed the mandate of the Public Procurement Oversight Authority (PPOA) as it largely assumed the regulatory function which then transited to the Public Procurement Regulatory Authority (PPRA). The Act establishes the Public Procurement Regulatory Authority among other functions, to monitor, assess and review the public procurement and Asset Disposal system to ensure they respect the National values and other provisions including Article 227 of the constitution on public procurement. PPRA is expected to play a crucial role in ensuring that the public procurement system is efficient, effective and economical to facilitate the implementation of various government projects. Additionally, the Authority enforces compliance with the preference and reservation schemes for SMEs and other special groups to spur economic development by increasing their participation and uptake of public procurement opportunities. As the regulator of the public procurement and asset disposal system, PPRA is expected to fight corruption in public procurement and asset disposal by enforcing public procurement guiding principles and national values and principles enshrined in Article 10 of the Constitution of Kenya.

The National Treasury

The National Treasury derives its mandate from the Constitution 2010, the Public Management Act 2012 and the Executive Order No.2/2013. It is made up of five (5) directorates. The Directorate of Budget, Fiscal and Economic Affairs is the one responsible for public procurement and asset disposal under the public procurement department.

Office of the Auditor General (OAG)

The Office of the Auditor General (OAG) was established as an independent office under Article 229 of the Constitution of Kenya. The office is required to audit expenditures of all government Ministries, Departments and Agencies (MDAs) and confirm that public resources are applied lawfully and effectively (Republic of Kenya, 2012). It has a primary oversight role of ensuring accountability between the three arms of government as well as County Governments, Constitutional Commissions and Independent Offices (Institute of Economic Affairs, 2018). The Constitution mandates the office to audit and reports its findings to the National Assembly, Senate or relevant County Assemblies. This constitutional mandate requires the OAG to not only look at fiscal accountability but also to confirm whether programmes implemented lead to the planned results and outcomes. Reports of the Auditor General over the past have consistently revealed irregularities in the use of public funds, as well as glaring corruption in the public sector. Most of the misappropriations reported are linked to breaches in procurement requirements.

Public Accounts Committee

The Committee is established under the Standing Orders of a respective National and County Assemblies as Select Committees. The Committee is responsible generally, for the following functions:

- Examine accounts showing appropriations to meet public expenditure
- Examine reports, accounts and workings of the County public investments
- Examine whether affairs of the County Public investments are managed with sound financial or business principles and prudent commercial practices.

In addition, the Committee is responsible for receiving and discussing at first instance, reports from the Auditor General. With the assistance of the Auditor General, the Committee develops recommendations which it must implement. The Auditor-General is required to follow up to confirm whether the recommendations have been implemented.

Ethics and Anti-Corruption Commission (EACC)

The EACC is mandated by the ACECA to provide technical and advisory services to both public and private sector organizations on preventing corruption and to educate the public on the damages of corruption and economic crime. Its mandate gives it the responsibility of investigating corruption and economic crimes.

Public Procurement Administration Review Board (PPARB)

The Public Procurement Administrative Review Board (PPARB) was set up as an appeal board for those whose rights have been violated during the public procurement process. The administrative fee is Ksh. 5,000 for tenders with an ascertainable value of a minimum Ksh. 20,000 depending on the value in question. The complainant must state why specifically he thinks his rights have been violated. Section 28 of the new Public Procurement and Asset Disposal Act describes the Powers and functions of the board, which will now have 15 members instead of nine as follows: 28. (1) The functions of the Review Board shall be— (a) reviewing, hearing and determining tendering and asset disposal disputes; and (b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law. (2) In the performance of its functions under subsection (1) (a) of this section, the Review Board shall have powers to develop rules and procedures to be gazetted by the Cabinet Secretary. (3) The Authority shall provide secretarial and administrative services to the Review Board.

4.4.4 Technical Assessment of Procurement Processes

The PPAD Act provides for procurement methods to be applied, advertising rules, time limits, specifications of tender documents and how they are drawn, procedures for the whole line of the tendering process and alternative dispute resolution mechanism at all levels of the supply chain management of the government and its entities. Procuring Entities are required to establish a functional and effective Procurement Unit. The size and level of staffing depend on the procurement workload, considering the volume, value, complexity and type of procurements carried out throughout the year. The head of the procuring entity ensures that the procurement unit is staffed with personnel with appropriate technical skills and high integrity. The Head of the Procurement Unit must be a procurement professional who reports to the Head of the procuring entity. This reporting structure will enhance transparency and separation of powers within the procuring entity. The Procurement Unit's main responsibility is to coordinate procurement activities from inception through to completion in total compliance with the applicable rules and regulations. This includes active involvement in the planning and contract management of projects. Despite having very elaborate procedures involving various committees across every step of the procurement process, there are always issues that emerge.

There are great disparities across government. Some Ministries have highly professional units and procure for large amounts yearly, whereas others are in dire need of assistance in the procurement process. Procuring entities assessed by PPRA established issues of understaffing, some not members of the supplies professional bodies while others have the inadequate technical expertise to handle technical specifications.

The GoK has put in place measures to try and streamline the procurement processes. These include ensuring that public procurement is linked to the budget in order to ensure no procurement is undertaken or commenced before the budget and availability of funds to pay the supplier or contractor is ascertained and that procurement of goods, works and services of the public entity are within the approved budget and timelines.

The inadequate specification in bid documents remains a challenge as attested to by annual assessment reports undertaken by PPRA. Delays in preparation of technical specifications, the scope of work, or terms of reference were also cited as major challenges including procurement methods and bidding procedures, the invitation to bids are absent, evaluation and award criteria are not announced and procurement information is not disclosed or made public. It was also noted that unsuccessful bidders are not notified or not given reasons for being unsuccessful. Some of the areas identified that are prone to abuse include:

- Extension of Tender Validity Period (Maybe prompted by Conflict of interest)
- Cases of procuring entities not adhering to the evaluation criteria (unfair evaluation) or using criteria not specified in the tender documents is a recurrent feature in annual procurement assessments and reviews.
- Tender evaluation and specifications- Out of 613 complaints handled, 46% were in respect to flaws (IEA, 2020).

Section 75 of the Act allows for modification of tender documents at any stage by the procuring entity – This makes the procurement process open to integrity risks. The main compliance issue is the failure to maintain complete procurement files and failure to submit mandatory reports to the Authority. According to IEA (2020), audits conducted in 2017/2018 in selected County Governments and Country Assemblies, had an average compliance score of 39.7% which is considered non-compliant and a high-risk level of 60.3% for County Executive. The score of 46.6% on compliance with procurement audits and a risk score 53.4% for County Assemblies.

4.4.5 Stakeholder Identification and User Engagement

Stakeholder participation can only be effective when the public has access to relevant information in order to objectively evaluate procurement processes. Information needs to be made available in a simple and easily understandable manner. In countries with advanced use of ICT, e-procurement systems have been used to publicly disclose information and users can compare prices and terms. In Kenya, some information on the procurement of public goods and services are provided on the procurement portal, hence, stakeholders can begin to interrogate these. According to Taurigana and Chamisa (2014), Good governance has eight elements or characteristics. The characteristics include transparency, participation, rule of law, accountability, being responsive, effective and efficient, consensus-oriented and inclusiveness. There are many CSOs and NGOs that have been very vocal in pointing out irregularities in public procurement processes over the years. Kenya should consider including civil society representatives in dispute resolution processes. CSOs bring perspective about the challenges of the public procurement system to the table, allowing for a fairer dispute resolution. The public procurement laws should include a mechanism for wider consultations with the business sector, civil society and the general public on public procurement policy matters. This mechanism will prove increasingly useful if Kenya decides to continue transitioning from a paper-based to an electronic procurement system by allowing policymakers to take into account the needs and suggestions coming from all possible stakeholder groups.

Most of the cases reported to the EACC relate to irregularities in the procurement process, such as non-compliance with the procurement procedure, bid-rigging, irregular award and management of contracts, inflated cost of goods and services and conflict of interest, among others. Due to the increasing number of complaints related to public procurement, the Commission adopted a strategy to detect and prevent corruption, taking urgent appropriate action. This has led to the disruption of corruption networks, especially in procurement, leading to billions of shillings being saved. In one such case, a member of the public reported a case of an irregular procurement process at a tertiary institution leading to the suspension of a procurement contract. The contract had been awarded to a bidder who was ranked at number four in the evaluation stage and the Tender Committee had not met to award the contract as required by the procurement law. In another case, citizens held a public demonstration against the Narok County Council, which had awarded a tender to one of the leading financial institutions in the country. Owing to the delay in processing the complaint, the citizens moved to the High Court and sued the financial institution and the Council, seeking to have the contract nullified and tendered afresh. This highlights the importance of citizen action. One of the areas of robust action by citizens has been the court process where many have initiated private civil prosecutions. This has been primarily necessitated by the inaction on the reported cases by the competent authorities. Most of the court cases have been initiated in relation to the management of devolved funds, especially Constituency Development Funds (CDF), in which citizens have successfully obtained court orders stopping certain Members of Parliament from managing the funds on grounds such as irregular procurement until the cases are determined, or obtain court orders compelling the Members of Parliament to complete certain community projects. Community-based empowerment programs have also been adopted by some public agencies and CSOs, notably the EACC and Transparency International (Kenya) respectively, to build the capacity of citizens to hold duty bearers accountable, especially in the procurement process. The Community Based Anti-Corruption Monitors and Facilitators program of the EACC aims to empower citizens to proactively participate in governance processes at the local level. The Commission offers training for civil society, to develop their capacity to detect, prevent and monitor corruption in their localities. As a result of this program, participants have raised awareness in their localities, reported alleged cases of mismanagement of public funds to EACC, undertaken social accountability mechanisms such as social audits, public education and expenditure tracking in the public service and partnered with other stakeholders in improving governance.

4.5 Malawi

4.5.1 Overview of the General Country Context

Malawi continues to enjoy a stable and democratic government. Since the end of the one-party regime in 1993, it has organized five peaceful presidential and parliamentary elections, one of which was tripartite in 2014 (including local government elections). Former President Arthur Peter Mutharika began his first five-year term in 2014. The controversial 2014 elections that were decided by the high court created a divided Parliament, and that, coupled

with widespread popular discontent over high living costs, weak governance, and rampant corruption, means political stability will be fragile for the foreseeable future. Weak support from donors, who suspended direct budgetary support to the government following a huge and unprecedented corruption scandal in 2013, will continue to have serious political implications.

Dependence on highly volatile agricultural output will remain a major political risk throughout the forecast period. Public procurement in Malawi is regulated by the Public Procurement and Disposal of Assets Act of 2017 and other secondary legislation. Lack of limited enforcement mechanisms of the Public Procurement Act of 2003 led to the enactment of the Public Procurement and Disposal of Assets Act, 2017, which established the Public Procurement and Disposal of Assets Authority (PPDA) as an impartial and independent institution responsible for the regulation, monitoring, oversight and enforcement of public procurement and disposal of assets in Malawi. The PPDA is now transitioning from being a government department to a fully-fledged Authority. Even though the Malawian public procurement system is currently paper-based, relevant stakeholders should consider the option of transitioning to a centralized open e-procurement system, which would be run by the PPDA and enable it to fulfil its functions with much greater efficiency.

The opening of public procurement information would also help anti-corruption efforts and make it much harder to hide large-scale illicit activity. A major scandal a few years ago, commonly referred to as Cash gate, showed how easy it can be for officials to engage in corruption when procurement information is closed. The scandal involved public officials having concealed records of appropriating more than USD 30 million of public funds by making payments to companies for goods and services that were never performed. Malawi has a long way to go since the country's public procurement law leans more towards confidentiality of procurement information. For this reason, as a preliminary step, a discussion should be launched on the merit of confidentiality in public procurement, considering the apparent benefits of opening up this information and the lack of negative effects that can be observed in countries that already made the transition to open PP.

4.5.2 Policy, Legal and Regulatory Framework

The Malawi Constitution

The constitution grants all persons in Malawi the right of access to information held by the state or its institutions. The constitution equally gives the media the right to report and publish freely as well as access to public information. However, the exercise of these rights to the public and the media is subject to the provisions of acts of Parliament, the most important in this context being the Public Procurement Act and other related laws.

The Public Procurement and Disposal of Assets Act 2017

The public procurement system in Malawi is regulated by the Public Procurement and Disposal of Assets Act (2017) and other secondary legislation. Prior to 2003, Malawi had a centralized procurement system characterized by the presence of the Central Tender Board (CTB) that was responsible for all procurement above a prescribed threshold for Government

Ministries and Departments. The Central Government Stores (CGS) used to procure for Government Ministries and did its procurement without much control from the Government. This was one of the gaps that led to the enactment of the Public Procurement Act (PPA) of 2003, which decentralized procurement responsibility to procuring entities and established the Office of the Director of Public Procurement (ODPP) as a public office with the responsibility of regulation, monitoring and oversight of public procurement in Malawi.

Lack of limited enforcement mechanisms led to the enactment of the Public Procurement and Disposal of Assets Act of 2017 which established the Public Procurement and Disposal of Assets Authority (PPDA) as an impartial and independent institution responsible for the regulation, monitoring, oversight and enforcement of public procurement and disposal of assets in Malawi. The PPDA is now transitioning from being a government department to a fully-fledged Authority. The PPDA operates independently, i.e. Director-General is appointed through competitive means and not appointed by the President like in other oversight bodies. This provides an opportunity for greater independence of the procurement authority. The PPDA is equipped with relatively wide authority, which includes investigation and sanctioning of procuring entities and granting permission to use the direct procurement procedure. The Act describes the rules for and methods of public procurement, which are to be applied, as well as setting out the main principles and procedures for the different types of procurement available to the MDA's. Finally, it identifies the tenderer's right to request a review, as well as the need to undertake an audit of procurement activities and the production of an annual report by the Director to the Minister of Finance.

Procurement Regulations act of 2004

The purpose of these Regulations is to establish detailed rules and procedures for fulfilling the objectives and implementing the provisions of the Act. (2) These Regulations apply to all procurement covered by section 3 of the Act. (3) Compliance with these Regulations is obligatory for procuring entities and other participants in procurement. Although some of the provisions have been overtaken by events following the enactment of the PPDA Act of 2017, such as the requirement that the Director of Public Procurement to periodically issue an updated compilation of the main legal texts governing public procurement. DPP office has since been replaced by a Director General in the established PPDA. There is need to revise these Regulations to be in line with the PPDA Act of 2017.

The National Anti-Corruption Strategy II (NACS II)

The first strategy NACS I was launched by the late Dr. Bingu Wa Mutharika, the former president of the Republic of Malawi, in 2009 under the theme "Fighting Corruption: Responsibility for All." The strategy was implemented by the National Integrity Committee (NIC), which is composed of members drawn from all sectors of Malawi. The second strategy (NACS II) (2019-2024) seeks to operationalize all efforts the Government of Malawi is undertaking to fight against corruption in the country to achieve Malawi's development aspirations, as outlined in the MDGS III. The strategies are relevant to open contracting because it is aimed at reducing corrupt practices in all sectors including public procurement. Having the Head of State spear-head the initiative

demonstrates the importance the government of Malawi has placed on transparency and accountability, especially in the procurement and management of public goods, works, and services.

NACS II draws on multi-stakeholder consultations and extensive research on the state and drivers of corruption in Malawi, plus a political economy analysis. The methodology is based on a review of international evidence about best practices in drafting national anti-corruption strategies. With the support of an expert advisory group, the NACS II drafting committee was able to analyse this wealth of evidence to identify goals, priorities and key areas of activity that respond to the actual challenges and expectations of all sectors of Malawian society. NACS II has concrete, complementary goals that Malawians across the board care about:

- Improving the quality and accessibility of public services.
- Promoting rule of law by strengthening the ability of law enforcement agencies to investigate and prosecute corrupt individuals and recover their illicit assets.
- Promoting a culture of integrity and accountability.

These goals are closely related to those aimed at improving public procurement processes. Strengthening the rule of law, for example, allows law enforcement agencies to better tackle corruption in service delivery. Social audits by civil society organisations can help promote integrity in public services.

Public Finance Management Act (PFMA) 2003

This was enacted in to foster and enhance effective and responsible economic and financial management by Government, including adherence to policy objectives;

- to provide accompanying accountability arrangements together with compliance with those arrangements;
- to require the Government to produce statements of proposed budget policy, confirmation of adherence to fiscal discipline, economic and fiscal statements, including economic and fiscal forecasts and updates, and performance information, including comprehensive financial statements; and
- for matters connected therewith and incidental thereto.

The PFMA forms the regulatory framework for public financial management (PFM). It specifies the responsibilities and requirements of government, including reporting on fiscal policy and budgetary issues and the responsibilities of the Minister of Finance, together with the powers he may delegate to senior officials. The Act also defines the responsibilities of the Secretary to the Treasury as well as those of the Controlling Officers, who are appointed by the President to be the Head of a Ministry or Department and are responsible for the collection, receipt and disbursement of public money. Importantly, paragraph 38 of the PFMA was amended in August 2006 to limit the discretionary powers of the Minister for Finance to grant tax concessions in situations of natural disaster or calamity.

4.5.3 Institutional Arrangements

Public Procurement and Disposal of Assets Authority (PPDA)

The PPDA is one of the autonomous State institutions for governance and was established in 2017 replacing the Office of the Director of Public Procurement to monitor and oversee all public sector procurement activities. The mission of the Authority is to provide a regulatory, monitoring and oversight service on public procurement and asset disposal matters in a professional, efficient and effective manner with a view to realise value for money. The following are the functions of the Authority:

- to develop and enhance the efficiency and effectiveness of public procurement and disposal of assets operations;
- to develop standardized and unified procurement and disposal of assets regulations, instructions, and bidding documents which shall be binding on all procuring and disposing entities, in consultation with concerned professional and official entities, for issuance by the relevant authorities for use throughout Malawi;
- to establish and maintain institutional linkages with Malawi Institute of Procurement and Supply and other professional bodies having interest in regulating the ethical behaviour and standards of supply chain management professionals;
- to collect and establish a data and information base on public procurement and disposal of assets and monitor the performance of procuring and disposing entities and suppliers, contractors, consultants and other service providers to ascertain efficiency and compliance with applicable legislation;
- to maintain and circulate lists of debarred bidders, suppliers, contractors, consultants and other service providers;
- to provide an annual report of procurement and disposal activities carried out by procuring and disposal entities within three months of the close of the financial year through the Authority to the Minister, who shall lay it before the National Assembly, not less than six months from the date of the report.
- to refer some violations of this Act and the regulations relating to public procurement and disposal of public assets to the relevant budgetary and law enforcement authorities for appropriate action;
- to facilitate administrative review of bid protests; and
- to carry out economic studies on public procurement and disposal of assets, comparisons, and future projections, so as to provide advice to the Government in respect of the mid-term and long-term policy it may formulate in public procurement and disposal of Assets' matters;

Malawi Institute of Procurement and Supply (MIPS)

The Malawi Institute of Procurement and Supply (MIPS) was established on 20th November 2008 as a limited company by guarantee. The Official Launch of the Institute was conducted on 31st January 2009. The Institute's main objective is to regulate professionalism and develop the interest of procurement professionalism in all sectors in Malawi. In addition, the Institute is responsible for accrediting local training programs, scrutinizing and approving international certification for use by different stakeholders in the country. The Institute is also responsible for developing benchmarks within the procurement field in Malawi against which

performance by various individuals is measured. Following the enactment of the Malawi Institute of Procurement and Supply (MIPS) Act, all procurement and supply chain management professionals are being asked to register with MIPS to be recognised as authentic members of the profession. The requirement applies to professionals working both in the private and public sectors.

4.5.4 Technical Assessment of Procurement Processes

The Public Procurement and Disposal of Assets Act of 2017 provides clear procedures for public procurement. It gives PPDA all the authority to monitor and oversight service on public procurement and asset disposal matters in a professional, efficient and effective manner with a view to realising value for money. This includes the development of regulations and procedural guidance of the process. The Malawian public procurement system does not use a system of classification of goods, works and services. The CPV system (Common Procurement Vocabulary) is one such option that can be introduced in order to avoid confusion and to have a way of keeping track of what is being purchased.

This study found that PPDA has been unable to fulfil one of its main functions of collection of procurement information from procuring entities, who, despite being obligated by law to keep records of all procurement activities and send them to the PPDA, often fail to do so. This problem has negatively affected the public procurement information platform run by the PPDA. The platform is only able to offer minimal information about ongoing procurement opportunities in the country. The portal is however not always functional and is not regularly updated when online. Regular publication of procurement documentation (including tenders, bids, and names of awarded companies, products or services procured and their costs) are however published on the PPDA website. It was however reported by all the respondents in the study in Malawi that there were restrictions in access to some procurement data. It was also noted that there are weak skills-base for procurement in government and that, although procurement officers have attended workshops, they do not put into practice what they learn. The institutional context within which procurement officers operate appears seems not to incentivize them to follow the changed rules.

On 1st July, 2020, the Government of Malawi (GoM) suspended award of contracts in Malawi to pave way for a quick audit to ascertain a number of issues including transparency and credibility of the processes and procedures followed and the decisions made (Nkhoma, 2020). This further highlights the weakness in the procurement processes as well as institutional arrangements.

4.5.5 Stakeholder Identification and User Engagement

The Malawi public procurement laws only allow tender participants that claim loss or damage to appeal to the Director General of the PPDA or the procuring entity. The Malawi Local Government Act, which establishes the decentralization and the local government system, is the bedrock for stakeholder participation on varied issues of national importance in Malawi. The primary focus of this decentralized governmental administration is the transfer of functions, powers, responsibilities, and resources from the central government to the

decentralized units in a systematic way that promotes local development and democracy. The procurement laws do not explicitly emphasize the participation of stakeholders in the procurement processes. Lack of disclosure of public procurement documents has discouraged scrutiny from non-participating stakeholders. Some procuring entities have been organizing ad-hoc meetings with contractor associations, CSOs and others. The Malawi Confederation of Commerce and Industry (MCCCI) uses tender information to monitor procurement, although there is no other evidence of public contracting information being used by stakeholders.

There is a constitutional guarantee of access to information, as well as a specific law. There are also sectoral laws that can provide avenues for access, such as the Declaration of Assets, Liabilities and Business Interests Act, 2013 and the Public Procurement and Assets Disposal Act, 2017. One can sometimes access information when requested although when it is eventually given, it is sometimes provided with conditions on its use. The practice also seems to require requesters to explain why they are requesting information, which can be problematic and is not made clear in the law itself (and make it easier to discriminate against particular types of requesters). This is a major deterrent for stakeholder participation in procurement processes. It is however encouraging that there is steady progress in the implementation of the Access to Information Act of 2017, which when fully implemented will greatly enhance access to information.

4.6 Nigeria

4.6.1 Overview of the General Country Context

With a promise to fight corruption, the Buhari-led administration received majority support from Nigerians at the 2015 national elections. On assumption of office, the government has led several reform efforts to root out corruption and, ultimately, meet the primary function of providing welfare and security to Nigerians - a function that is largely achieved through public procurement. On the home front, a Presidential Advisory Committee Against Corruption (PAC) has been set up, several high-profile prosecutions of top security officials accused of procurement fraud are ongoing, efforts to expand the IFMIS are underway, and the application of the Treasury Single Account (TSA) to enable traceable receipt of all government revenue is now fully operational.

At the international level, Nigeria also committed to institutionalizing open contracting in the public sector through both the Open Government Partnership framework and the 2016 London Anti-Corruption Summit. But for many, the dividends of democracy and the fight against corruption are trickling down to the people too slowly. The excitement of overtaking South Africa as the largest African economy was short-lived and did not have any real impact on Nigerians. The plunging value of the Naira due to over-dependence on declining oil revenue along with the overall impact of an economy in recession have taken their toll on Nigerians. Nigerians are eager to benefit from public services.

The anti-corruption rhetoric in Nigeria dates back to the 1960s and was used to justify back-to-back military coups. Since returning to democracy, the fight against corruption has topped the agenda of every administration. However, in reality, systemic corruption continues to have a devastating effect on all facets of Nigerian society, most notably in the inefficient delivery of public services. Nigeria's public sector, including awards of public contracts, is deeply rooted in cronyism rather than based on merit. For decades, public finance information was considered classified by the state, and there was no accountability for the performance of public contracts. In recent years, access to publicly-held information has been guaranteed by statute, but the prevalent systems and government culture still need to advance. In some cases, a complete overhaul of the current system is required in order to support the free flow of information, as linkages between key datasets held by various government bodies have been virtually non-existent. Aside from recently established IFMIS, most of the current systems for channelling information are limited to a unit or department.

The civil society in Nigeria is taking the lead in developing powerful analysis tools for public contracts. The Budeshi platform aims to open up to public scrutiny processes through which public services are delivered. Budeshi also connects procurement data to the government budget and, eventually, to public services.

4.6.2 Policy, Legal and Regulatory Framework

The Public Procurement Act (PPA) of 2007

Until 2007, Nigeria did not have a statute that specifically regulates public procurement. This led to the enactment of the Public Procurement Act (No. 14) of 2007, which requires public institutions and other relevant parties to ensure that all public procurements are conducted in a manner that is transparent, timely and equitable and based on the agreed guidelines, thresholds and standards. The Procurement Act established the Bureau of Public Procurement (BPP), which oversees the procurement activities of all the procuring entities (and indirectly, oversees all public procurement affected by the provisions of the Procurement Act) and is responsible for the issuance of procurement "Certificates of No Objection". A Certificate of No Objection is the document that confirms that due process was followed in the conduct of a procurement process and authorizes the procuring entity to enter into the relevant contract. In addition to several other duties, the BPP is authorized by the Procurement Act to formulate general policies and guidelines relating to public sector procurement for the approval of the National Council on Public Procurement (NCPP), monitor the prices of tendered items and keep a national database of standard prices, prevent fraudulent and unfair procurement and where necessary, apply administrative sanctions. The BPP is supervised by the NCPP which is headed by the Minister of Finance. The Procurement Act also sets out a code of conduct for public officers that are involved in public procurement and prescribes penalties for public procurement related offences. The Act indicates that the extent of participation by local personnel, the encouragement of employment and the transfer of technology must be analyzed in the evaluation of a proposal.

Freedom of Information (FOI) Act of 2011

On 28 May 2011, Nigeria's President Goodluck Jonathan signed into law the Freedom of Information (FOI) Act. With the coming into force of the Act, every person now has a legal

right of access to information, records and documents held by government bodies and private bodies carrying out public functions. This revolutionary law provides a good opportunity to put to test the wider issue of the government's commitment to transparency, accountability and good governance. Before the promulgation of the Act, Nigeria had no law which guaranteed access to public records and information. On the contrary, many Nigerian laws have secrecy clauses prohibiting the disclosure of information, for example, the Official Secrets Act, the Criminal Code, the Penal Code, the Evidence Act, etc. The Official Secrets Act, for instance, prohibits the unauthorized transmission of any information which has been classified by any government branch as being prejudicial to the security of Nigeria. As such, the arbitrary classification of any information was sufficient to deprive the public of relevant information. Similarly, the Evidence Act recognised that material evidence may be withheld from the court where such evidence was within government custody and constituted unpublished official records relating to affairs of state, except with the permission of the officer at the head of the department concerned, who had the discretion to give or withhold such permission as they saw fit. Also, the courts lacked the jurisdiction to compel a public officer to disclose communications made to him in official confidence where the concerned public officer considered that the public interest would suffer by the disclosure. Therefore, it was a matter falling within the sole discretion of the concerned public officer. It is important to note that the Act expressly supersedes any preceding legislation which is inconsistent with its force and tenor. The virtue of the law is aptly captured in its preamble which reads as follows:

'An Act to make Public Records and Information more freely available; provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.'

4.6.3 Institutional Arrangements

Nigeria's Public Procurement Act of 2007 (PPA) creates two institutions with the responsibility for oversight and regulation of the procurement process: The National Council on Public Procurement and the Bureau of Public Procurement.

The National Council on Public Procurement (NCPP)

NCPP is tasked with responsibility for approving public procurement policies. The NCPP is, in theory, a multi-stakeholder establishment composed of representatives from the public, private and citizens' sector. Its composition includes the Minister of Finance, the Attorney General, representatives from professional bodies and civil society organizations. As the approving authority, NCPP should ensure that all operational policies are aligned with the principles and objectives of a competitive, transparent, and value-driven procurement process are achieved. Its multi-stakeholder composition is meant to ensure high-level coordination, buy-in and independence of the public procurement process, thus addressing several of the

challenges documented in the country's procurement assessment report. However, to date, the NCPP has never actually been assembled.

The Bureau of Public Procurement (BPP)

The BPP was established by the PPA as custodian of the law, harmonizing and operationalizing the policies approved by the NCPP, educating stakeholders on provisions of the law, and building mechanisms to ensure compliance. BPP is, therefore, the main oversight authority on public procurement and is respected by all stakeholders as such. The mandate of the BPP applies to everyone who engages with the procurement process, particularly the procuring entities and bidders who are directly involved in public procurement. PPA establishes the BPP as secretariat to the NCPP, and the Director-General of the BPP as secretary to the NCPP. To ensure its independence, the PPA requires the DG of the BPP to be appointed by the President on the recommendation by the NCPP after a competitive selection process. In the absence of the NCPP, the appointment of the DG by the President has been without any recommendation thus limiting the independence of the office.

The Procuring Entities (PEs)

The procuring entities are the various MDAs that buy or dispose of public goods, works and services. The procuring entities are responsible for ensuring that the value-for-money objective of the PPA is achieved by following the outlined procedure for procurement. Each procuring entity has a procurement unit or department that is made up of procurement officers, and their procuring activities are overseen by the BPP. In order to professionalize the procurement process across procuring entities and prevent procurement staff from undergoing the interdepartmental transfers to which core civil servants are subject, the BPP carries out a course that converts applicants to the procurement cadre. Once a procurement officer is certified as a member of the procurement cadre, he/she can no longer be transferred outside of procurement-related functions. The converted procurement officers are then exposed to further procurement training throughout their careers. The study showed that the majority of procurement officers in the head Ministries had been converted to the procurement cadre, while most of the procurement officers in the smaller procuring entities had not converted. As a result, the head ministries have more stable, professionalized procurement staff, while procurement officers in smaller procuring entities remain prone to the regular inter-departmental transfers that occur in the civil service. This significantly reduces the capacity and depth of experience within the procurement units of smaller procuring entities.

The Federal Executive Council of Ministers (FEC)

FEC comprises the President's cabinet of ministers. In practice, it approves all major contracts that fall within the highest monetary threshold. Unlike other roles clearly stated in the PPA, FEC has no statutory responsibility to award public contracts. Rather, the PPA requires that the NCPP approve monetary thresholds within which contracts would be awarded by various approving authorities. In the absence of the NCPP to prescribe these award thresholds, the BPP has established them instead, with the FEC approving all major contracts since the enactment of the PPA. This has been a constant cause of agitation for various stakeholders who believe that there is a fundamental breach in the application of the

PPA. In particular, this tension stems from the fact that one of the main objectives of the Nigerian procurement reforms was to professionalize the process to the extent that procurement decisions are removed from political interference and influence.

4.6.4 Technical Assessment of Procurement Processes

Planning, tender and awards data are available online and in hard copy. As of 2016, these data were not in the open data format and were therefore difficult to link data across various stages of the procurement process (Hivos, 2016c). The BPP developed and commissioned a web-based procurement planning software based on the need to achieve one of its functions stipulated in Section 5(i) of the Public Procurement Act, 2007 and to ensure that procurement plans submitted by MDAs contain the right information and in the approved format. The Procurement Planning Software automates the preparation and submission of procurement plans to the Bureau. The system offers the following:

- As a Web-based Planning Software, users who have internet connection can access it from anywhere at any time.
- It has eliminated the difficulties associated with the collation of procurement items from units/departments within an MDA
- It minimizes embarrassing data entry errors
- The Software guides the officers through the procurement planning process (in its sequential order)
- It guides officers in the selection of appropriate Procurement Methods and Approval Authority based on estimated Contract amount and the Approval threshold.
- It eliminates selection of over-lapping dates and non-working days in the planning process, hence realistic timelines in the procurement plan.
- At the click of a button, it generates Report which contains the entire Procurement Plan for a Procuring entity in the acceptable format.

The Nigeria Open Contracting Portal (NOCOPO) was conceived by the BPP in line with Section 5(r) of the Public Procurement Act, 2007 and was co-created with CSOs in fulfilment of Commitment 2 of the Nigeria National Action Plan¹³ of the Open Government Partnerships which is *"Full implementation of Open Contracting and adoption of Open Contracting Data Standard in the public sector"*. The portal is about opening up public procurement in Nigeria through increased disclosure of procurement information to all stakeholders with a view to ensuring improved transparency and accountability, improve competition, prevent corruption, enhance active citizen participation towards achieving better service delivery and improved ease of doing business in Nigeria. The BPP's NOCOPO won global Government Innovation Award in 2017¹⁴. *"The award is conferred as part of the Open Contracting Innovation Challenge, a competition (with 88 teams from 40 countries) run by the Open Contracting Partnership and the Open Data Institute (ODI) to recognize ground-breaking data-driven ideas for improving public procurement. The Innovation*

¹³ <https://www.opengovpartnership.org/documents/nigeria-national-action-plan-2017-2019/>

¹⁴ <https://www.open-contracting.org/news/government-innovation-award-winner-six-grand-prize-finalists-open-contracting-innovation-challenge-announced/>

Challenge honours original ideas for managing, analysing, and monitoring how the government buys goods and services, as well as cutting-edge approaches to publishing what gets bought, when, from whom, and for how much.”

4.6.5 Stakeholder Identification and User Engagement

In open contracting and public spending, a collaborative partnership between government, civil society and the private sector is often referred to as the “golden triangle”. Nigeria’s Budeshi project has the potential to become a powerful practical application of this model. Citizen projects, such as Budeshi, show how infomediaries can initiate reforms by demonstrating the value of joined-up contracting information in and outside of government and demonstrating the value of contracting information to other users who care more about the delivery of the service than the process by which they are delivered. The bridging role that infomediaries can play between other actors is clearly important, but it requires them to be proactive and opportunistic to reach out to others. The Budeshi team first built a relationship with the Universal Basic Education Commission in Nigeria and delivered a service of real value to their objectives to prove the wider value of open contracting to others. This role clearly requires a reasonably high level of government buy-in, so infomediaries will need to build trust as well as technical capacities of others.

Procuring entities are legally required to invite civil society and professional bodies to observe every procurement process. But the procurement authority (BPP), going beyond the satisfaction of legal requirements, provides procuring entities with a list of accredited civil society organizations so that they can be contacted whenever there is a bid opening process. With respect to policy development, BPP hosts consultative meetings during revision processes for standard bidding documents and an annual national procurement conference where civil society, private sector and the various arms of government hold robust discussions and devise recommendations to further reform the procurement process. The BPP has recently formed a working group with civil society to facilitate its adoption of open contracting principles as part of an OGP commitment (OCP, 2017a). In some instances, due to the lack of procurement data, CSOs monitoring of public projects are obliged to use budget data to compensate, which can cause inefficiencies and confusion.

4.7 Senegal

4.7.1 Overview of the General Country Context

On March 20th, 2016, Senegal held a referendum to strengthen its political system by reducing the length of the presidential term from seven to five years, creating a new consultative assembly, allowing independent candidates to participate in elections, and establishing an official status for the opposition leader. Some articles of the constitution (republican form of the State, mode of elections, term of the presidential mandate, the consecutive number of mandates) can no longer be changed. Senegal is also a member country of WAEMU. The WAEMU Commission oversees public financial management policies, including procurement, within its member countries by issuing guidelines on key institutional, legal and technical reforms to be implemented. It also evaluates the performance

of member countries in regards to those guidelines. Senegal's 2004 Investment Code provides basic guarantees for equal treatment of foreign investors and repatriation of profit and capital. It also specifies tax and customs exemptions according to the investment volume, company size and location, with investments outside of Dakar receiving eligibility for greater tax exemptions. The Government of Senegal enacted a Public-Private Partnership Law in 2014 that amended the 2004 Build Operate and Transfer Law to facilitate expedited approval of public-private partnerships for projects that include a minimum share of domestic investment. With the help of the World Bank, the Government of Senegal established in 2013 the National Anti-Corruption and Fraud Office (OFNAC), with the mission of reducing corrupt practices within Senegal's civil service by promoting the reporting of acts of corruption and increase investigations of fraud, bribery, and embezzlement. Senegal was the first country in WAEMU to adopt a transparency code in 2012.

According to the IIAG, Senegal compared to other West African countries is particularly well-performing in indicators such as "Corruption in Government and Public Officials" (60/100 in 2015 with a +20 points progress between 2011 and 2015), "Corruption and Bureaucracy" (57.1/100 in 2015 with a 14.2 points progress between 2011 and 2015) and "Public sector Accountability and Transparency" (73.2/100 in 2015 with a 6.2 points progress between 2011 and 2015). Senegal scored 44 points out of 100 on the 2015 Corruption Perceptions Index reported by Transparency International. The Corruption Index in Senegal averaged 33.94 Points from 1998 until 2015, reaching an all-time high of 44 Points in 2015, indicating a reduction in the perception of corruption by citizens.

The Government of Senegal (GoS) showcased its commitment towards establishing an Open Data policy and roadmap by hosting-related events and integrating networks and partnerships aimed at improving the openness of data in the country. The 2015 Global Open Data Index (GODI) edition, Senegal is ranked 58 among 122 countries with procurement tenders only 45% open. According to the World Bank (2017), Ease of Doing Business report, Senegal is doing better than Sub-Saharan Africa and OECD high-income countries in terms of starting a business, particularly in the number of procedures and days required to register a firm. In Senegal, since November 2007 businesses can register at the one-stop shop which takes care of what was formerly done in several different procedures.

4.7.2 Policy, Legal and Regulatory Framework

Public procurement laws and regulations issued by GoS - including guidelines, laws, decrees and ordinances - are compiled in the Compendium of Legal Texts on Public Procurement. Published by the ARMP and DCMP, the Compendium includes all of the relevant legal texts to support the work of the ARMP, DCMP and PEs. All of the legal texts are available either on the procurement portal or the ARMP's website. Senegal's national legal framework for procurement is grounded in guidelines provided by the WAEMU and which are likely to be revised in the near future. These guidelines include:

- ***Guideline N° 04/2005/CM/UEMOA of 09 December 2005*** on procedures for the award, execution and settlement of public contracts and public service delegations in the West African Economic and Monetary Union (WAEMU). The aim of this

Guideline is to improve public spending and combat corruption, encourage the professionalization of public procurement actors through implementation of sound institutional mechanisms, promote small and medium-sized enterprises, promote intra-community trade, develop economic convergence through the development of public procurement and ensure effective remedies.

- ***Guideline N° 05/2005/CM/UEMOA of 09 December 2005*** Controlling and regulating public procurement and public service delegations in the West African Economic and Monetary Union (WAEMU). This guideline defines the principles and modalities for the functions, mechanisms and procedures for the approval and regulation of procurement by public service delegations in WAEMU member countries. Through this Guideline, the Member States undertake to: i) implement procedures to ensure separation and independence of the functions of oversight and regulation; ii) set up centralized & decentralized administrative entities for public procurement monitoring; iii) set up institutions to ensure independent regulation of public procurement and a tripartite and equal representation of the Public Administration, the private sector and civil society, and iv) introduce procedures for denouncing and penalizing irregularities in public procurement.

Senegal's legal framework for procurement is defined largely through the following national texts:

- ***Decree N° 2014-1212 of 22 September 2014*** on the New Public Procurement Code. This is the primary legislative text that governs the procurement process. It establishes the rules governing the planning, tendering, execution and oversight of contracts entered into by GoS, local authorities, and public agencies. The Code emphasizes the reduction of deadlines, the easing of procedures and the accountability of the Procuring Entities by internalizing control of small contracts within PEs. The code is fairly dynamic, for example having been updated three times between 2007-2014 due to institutional and procurement sector changes.
- ***Decrees N° 2007-546 of 25 April 2007 and N° 2007- 547 of 25 April 2007*** establishing the Public Procurement Regulatory Authority (ARMP) and the Central Directorate for Public Procurement (DCMP). These decrees define the organization, composition, functioning, roles, responsibilities and mandates of the ARMP and DCMP.
- ***Ordinances implementing Decree N° 2014-1212 of 22 September 2014*** relating to the public procurement code. To implement some of the components of decree N°. 2014-1212 on the New Public Procurement Code, this ordinance was adopted to standardize the organization and functioning of PUs within PEs, the number and criteria for selection of members of Procurement Commissions within PEs, and the establishment of Local Procurement Commissions in regions beyond Dakar.
- ***The Code of Obligations for the Public Administration (COA)***. In order to ensure the efficiency of public procurement and the proper use of public funds, the code states that the contracting process: i) requires a prior definition of their needs by public purchasers; ii) presupposes the existence of sufficient appropriations in accordance

with the principle laid down in Article 17 of the COA; and iii) must respect the principles of free access to public procurement, equal treatment of suppliers and transparency of procedures.

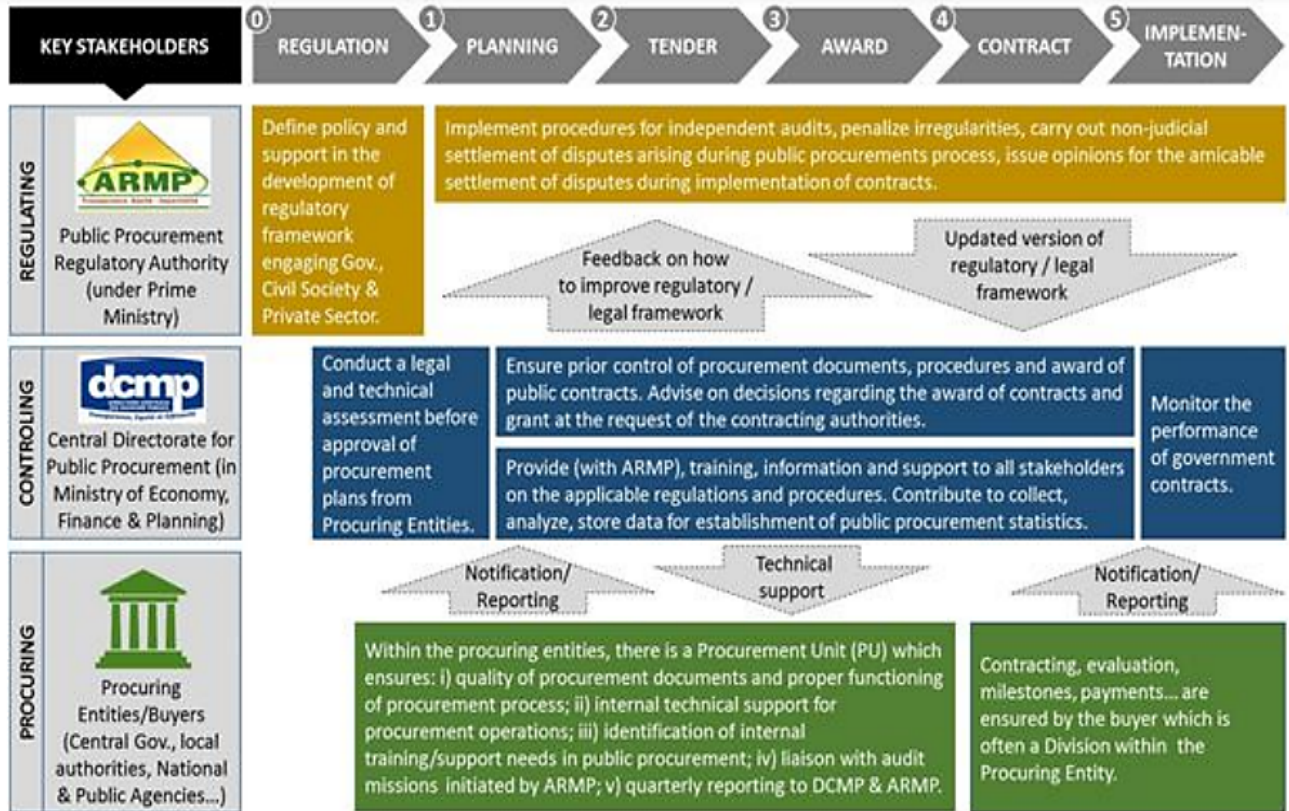
Since the legal texts regulating public procurement are viewed as being confusing, ARMP compiled them in a "Compendium of legal texts on public procurement" that have been translated to Wolof (the main Senegalese local language). ARMP also shared with DCMP and PUs the checklists which are simplified one-pagers for preparation and monitoring of documents for each procurement method.

The Government of Senegal has already made a significant investment in data collection and open procurement. Providing additional information to interested parties would be a relatively low-effort process, and implementing OCDS would take advantage of an existing institutional framework. Senegal has been a member of the OGP since 2018 and is working to develop its first action plan within that framework, promoting transparency, accountability, and citizen engagement. OGP takes advantage of new technologies to strengthen governance in partnership with civil society and the private sector – thus offering an opportunity to advance procurement reforms through open data.

4.7.3 Institutional Arrangements

Senegal's public procurement system is organized around three key government stakeholders, whose roles and responsibilities vary throughout the procurement process. In general, the Public Procurement Regulatory Authority (ARMP) is responsible for regulating the procurement system, the Central Directorate for Public Procurement (DCMP) for overseeing procurement activities, and Procuring Entities - government ministries, local authorities, public agencies, etc. - for conducting procurement.

Figure 2: The institutional arrangement of public procurement in Senegal



Source: OCP (2017c)

The Public Procurement Regulatory Authority (ARMP)

The ARMP is an independent administrative authority under the Prime Ministry, endowed with

financial and administrative autonomy. The Director General of ARMP is appointed by decree, on a proposal from the Regulatory Board, for a term of three years, renewable once. As the primary oversight legal organization of the procurement process, the ARMP regulates the procurement process by issuing opinions, guidelines and recommendations that define procurement policies and assist in their implementation (OCP, 2017c). It is responsible for a posteriori controls, punishing fraud or corruption, evaluating the system for awarding contracts and audits, and for proposing regulatory reform (*Ibid*). There are three main entities in the ARMP i) the Regulatory Board, for general policy and strategic guidance; ii) The Committee for Settlement of Disputes, which responds to complaints and; iii) The Executive Management, which ensures the technical, administrative and financial management. The ARMP's role includes:

- Training stakeholders of the public procurement system on effective policy implementation;
- Developing the procurement framework and assessing stakeholder execution;
- Performing investigations and implementing procedures for independent audits;
- Adjudicate any irregularities noted (including blacklisting companies violating procedures), conducting non-judicial dispute resolution and facilitating amicable settlement of disputes during implementation of contracts.

The Central Directorate for Public Procurement (DCMP)

The DCMP is a Directorate within the Ministry of Economy, Finance and Planning (MoEFP). It is responsible for monitoring all government procurement and the awarding of contracts. It monitors procedures prior to the award of government contracts and grants procurement authorizations as required by the Code. The DCMP, which possesses an interdisciplinary staff, conducts legal and technical reviews before the approval of all projects as required by law and monitors the performance of government contracts (OCP, 2017c). As part of this process, it grants requests from procuring entities to authorize or exempt certain actions (such as requests to conduct direct, or sole-source, procurement). In collaboration with the ARMP, it trains, informs and advises all stakeholders in the procurement sector on the applicable regulations and procedures (*Ibid*). The DCMP is also responsible for the collection, analysis and publication of information and statistics provided by procuring entities (such as procurement plans, tender documents, award notices, reports).

4.7.4 Technical Assessment of Procurement Processes

According to OCP (2017c), there are three disconnected information systems used throughout the procurement chain in Senegal to gather data and information on the procurement process. While some key data fields are published, others are collected and used for internal purposes. No key data is published after the award phase, meaning that contracting and implementation data remain solely within the government. Civil society, businesses and the media cannot effectively follow up on government procurement to help regulators ensure that public funds are being put to use effectively.

The technical management of the procurement process is hosted at the DCMP and includes an

information system composed of three independent tools: i) the Public Procurement Management System (SYGMAP), which allows semi-electronic procurement management; ii) the DCMP's Internal Information System (Dashboard), which manages the procurement oversight processes at DCMP and produces statistics on public procurement; and iii) the Electronic Archiving System (SAE), which manages the dematerialization of documents held in the archives and documentation office (OCP, 2017c). The procurement information system suffers from several shortcomings. It does not allow a 100% digital procurement process as the Dashboard, where the largest amount of information is captured, does not offer the possibility to upload the hard copy of documents sent by procuring entities. The SYGMAP does not meet the needs of all procurement stakeholders, particularly procuring entities, as data can be entered but not visualized or downloaded - even related to their own work or sector (OCP, 2017c). Procuring entities also suffer significant duplication of efforts. For example, even if they enter data in SYGMAP and send hard copies of tender documents, the DCMP still requests that they regularly fill out an Excel template containing all contracting data. For SAE, scanned versions (in PDF or JPG) of archives do not offer possibilities for data analysis. But the main weakness of the procurement information system is that it is composed of disconnected tools that do not exchange data and are not linked to other core government systems, the Public Finance Management System (SYGFIP) or the Aid Management Platform (AMP) for traceability of funds (OCP, 2017c).

4.7.5 Stakeholder Identification and User Engagement

Oversight authorities-led by the ARMP-are making efforts to conduct activities aimed at engaging citizens and facilitating private sector participation in the contracting process in Senegal. CSOs and private sector representatives sit on the regulatory authority's (ARMP) Regulatory Board and Committee for Settlement of Disputes (CSD). This opportunity (afforded as the result of WAEMU Guideline N° 05/2005/CM/UEMOA of 09 December 2005) provides these actors limited influence on procurement-related decisions (OCP, 2017c). One of the representatives of civil society within the Regulatory Board is the President of the Council for Development Support NGOs (CONGAD), a consortium of 178 Senegalese, African, European, American, and international non-governmental organizations. CONGAD seeks to promote responsible citizenship and community involvement in development processes. The National Council of Employers (CNP), a confederation of 30 business groups and Associate Members from various sectors (including industry, commerce, agriculture, etc.) is a private sector representative (OCP, 2017c). Representation on the CSD allows civil society to monitor the ARMP's independence, and, for the private sector, an opportunity to ensure the implementation of Article 52 of the Procurement Code. Public Procurement Laws (guidelines, laws, decrees and ordinances) have been compiled and published by the ARMP and DCMP through a "Compendium of legal texts on public procurement," including the procurement Code. It is also available in Wolof, the most spoken Senegalese local language which over 80% of the population speak (*Ibid*). This has increasingly generated attention among the public leading to increasing trends in participation.

The demand for reform of Senegal's public procurement system was first expressed by the private sector, followed by development partners (World Bank and AfDB), with different interests. International CSOs and their local representatives are also active in monitoring public procurement and advocating for greater transparency in public finance management, while private sector actors focus largely on encouraging the application of protectionist measures. Whistleblowing in Senegal has become easier due to the introduction of innovative ways of engaging citizens. A mobile application recently launched by the National Anti-Corruption and

Fraud Office (OFNAC), seeks to promote the reporting of acts of corruption and increase investigation of fraud, bribery, and embezzlement. Another key example is the possibility given to any person to make an anonymous complaint at any phase of the procurement process of a given contract, by filling out an online form on the procurement portal directly sent to the CSD (OCP, 2017c).

4.8 South Africa

4.8.1 Overview of the General Country Context

South Africa is a founding member of the World Trade Organisation (WTO) and is classified as a developed country. Despite this, South Africa has been able to negotiate favourable conditions and extended implementation periods for some of its sensitive economic sectors in

the General Agreement on Tariffs and Trade (GATT). South Africa is also a signatory to the WTO Agreement on Government Procurement (GPA) with certain reservations. Reforms in public procurement in South Africa were initiated to promote the principles of good governance, and the National Treasury introduced a preference system to address socioeconomic objectives. The reform processes were due to inconsistency in policy application and the lack of accountability and support structures as well as fragmented processes. Matthee (2006) asserted that a uniform implementation approach to procurement was required, due to a research study on opportunities for reform processes in the South African government (2000) conducted by the Joint Country Assessment Review (CPAR) and the World Bank in 2001. The deficiencies and fragmentations in governance, interpretation and implementation of the Preferential Procurement Policy Framework Act (PPFA) Act No 5 of 2000, resulted in the introduction of supply chain management (SCM) in the public sector as a policy tool (National Treasury, 2005)

The principal piece of legislation that regulates public procurement is the Constitution of the Republic of South Africa, 1996 (Constitution). Section 217 of the Constitution requires that when an organ of state contracts for goods and services, it must do so under the principles of fairness, equitability, transparency, competitiveness and cost-effectiveness. This constitutional requirement is echoed in section 51(1)(a) of the Public Finance Management Act 1 of 1999 (PFMA), which states that an accounting authority for, among others, a national or provincial department or public entity must ensure that the particular department or entity has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. The PFMA is implemented through the regulations published under it, namely the National Treasury Regulations.

4.8.2 Policy, Legal and Regulatory Framework

The Constitution of the Republic of South Africa, 1996

The Constitution permits organs of the state (such as departments of government and public entities) to implement a preferential procurement policy that advances persons previously disadvantaged by unfair discrimination. The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- b) Non-racialism and non-sexism.
- c) The supremacy of the constitution and the rule of law.
- d) Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Section 217 of the Constitution requires that when an organ of state contracts for goods and services, it must do so in accordance with principles of fairness, equitability, transparency, competitiveness and cost-effectiveness. Section 217(3) of the Constitution requires that national legislation prescribe a framework within which the preferential procurement policy must be implemented. The PPFA was promulgated in response to this constitutional

imperative. Procurement by organs of the state (national and provincial departments, municipalities, constitutional entities and public entities) is also governed by a number of other pieces of legislation (See Figure 3).

Broad-Based Black Economic Empowerment Act 53 of 2003

Broad-based black economic empowerment (B-BBEE) is a government policy to advance economic transformation and enhance the economic participation of Black people (African, Coloured and Indian people who are South African citizens) in the South African economy. The BBEE act of parliament was amended and became operational from 24th October 2014. It seeks to offer Africans, that is blacks, Asians, and coloured citizens of South Africa, equal opportunities accorded to whites as affirmative action.

The Preferential Procurement Policy Framework (PPPFA) Act of 2000

The Preferential Procurement Policy Framework Act (PPPFA) provided for the implementation of a procurement policy for a category of preference in awarding contracts, and for the protection and/or advancement of persons or categories of persons disadvantaged by unfair discrimination. The Act was aligned with the policy framework aims of the B-BBEE Act. Regulation 9 provided for local content/designation. The Act prescribed a two-stage bidding process, with functionality and content considered in the first stage, and price and B-BBEE in the second. In the proposed changes the Minister must prescribe a framework for preferential treatment for categories of preferences, and the protection or advancement of persons, or categories of persons, previously disadvantaged by unfair discrimination, in procurement.

The framework envisaged in subsection (1) must consider the Broad-Based Black Economic Empowerment Act and include—

- a preference point system and applicable thresholds;
- measures to advance a category or categories of persons or businesses or a sector;
- measures for preference to set aside the allocation of contracts to promote—
 - (i) a category or categories of persons or businesses or a sector;
 - (ii) goods that are manufactured in the Republic;
 - (iii) local technology and its commercialisation;
 - (iv) services that are provided by a citizen or citizens of the Republic;
 - (v) the creation of jobs or intensification of labour absorption;
 - (vi) enterprises based in townships, rural or underdeveloped areas;
 - (vii) enterprises based in a particular province or municipality for goods, services or infrastructure based in that province or municipality;
- measures regarding the participation of a manufacturer of goods in a bid to supply the goods it manufactures;
- measures aimed at advancing industrial development; and
- measures aimed at advancing small medium and micro enterprises in high value procurement.

Persons referred to in this section include, but are not limited to, women, youth and people with disabilities. The Minister must consult with the Minister responsible for women, youth,

people with disabilities, small businesses, trade, industry, competition or infrastructure before making a regulation under this Chapter relevant to that Minister.

Public Procurement Bill (for public comment 19 Feb 2020)

The Bill establishes a Public Procurement Regulator within the National Treasury and provides for the functions of the Regulator, which include, amongst other things- (a) ensuring that institutions comply with the Bill and engage in the prudent spending of public funds on procurement; (b) reconsidering decisions of institutions; (c) continuously revising and providing guidance on procurement and the procurement system; (d) promoting and ensuring the integrity of the procurement system; and (e) establishing and maintaining register for debarred bidders and suppliers.

The PPPFA Regulations of 2017

The revised Preferential Procurement Regulations 2017 (PPPFA Regulations 2017) issued in terms of the Preferential Procurement Policy Framework Act, 2000, came into effect on 1 April 2017. The PPPFA Regulations 2017 have repealed the 2011 PPPFA Regulations in their entirety, and have introduced a number of key changes aimed at using procurement to promote local industrial development, socio-economic transformation and the empowerment of small business enterprises, cooperatives, and rural and township enterprises. Notwithstanding the repeal of the 2011 Regulations, the designated sectors and minimum thresholds determined for local content and production in terms of regulation 9 of the 2011 Regulations remain valid.

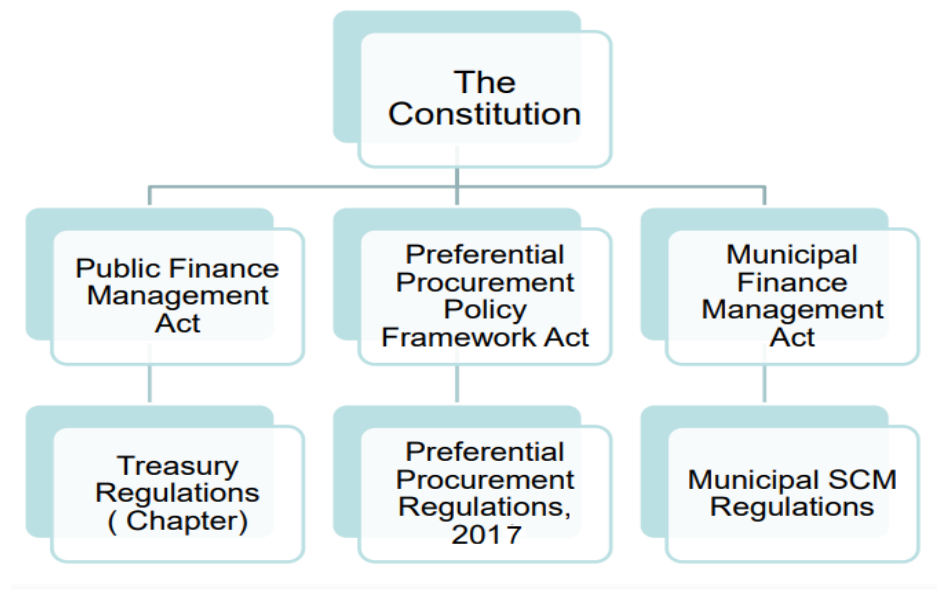
The Municipal Systems Act 32 of 2000

The Local Government: Municipal Systems Act 32 of 2000 and the Municipal Finance Management Act 56 of 2003 (MFMA) regulate, among others, the manner in which municipal powers and functions are exercised and performed and the management of the financial affairs of municipalities and other institutions in the local sphere of government. These require that the entities to which they apply, adhere to the PPPFA. This was enacted to provide for the core principles, mechanisms and processes that are necessary to enable municipalities:

- to move progressively towards the social and economic upliftment of local communities and ensure universal access to essential services that are affordable to all;
- to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures;
- to provide for the manner in which municipal powers and functions are exercised and performed;
- to provide for community participation;
- to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government;

- to provide a framework for local public administration and human resource development;
- to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts;
- to provide for credit control and debt collection;
- to establish a framework for support, monitoring and standard-setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment;
- to provide for legal matters pertaining to local government; and
- to provide for matters incidental thereto.

Figure 3: Public Procurement Legislative Hierarchy in South Africa



Public Finance Management (PFMA) Act 1 of 1999

The objective of the Public Finance Management Act (PFMA) was to secure transparency and sound management of revenue, expenditure, assets and liabilities, by institutions. Key provisions of the Act for State-Owned Companies (SOC) were the timely submission of corporate plans and budgets; auditing of financial statements by the Auditor-General; and the submission of an annual borrowing plan to the Minister of Finance. PFMA was enacted to regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith.

The Municipal Finance Management (MFMA) Act 56 of 2003

The Local Government: Municipal Finance Management Act 56 of 2003 intends to secure sound and sustainable management of the financial affairs of municipalities and other

institutions in the local sphere of government; establish treasury norms and standards for the local sphere of government; and provide for matters connected therewith.

The Municipal Fiscal Powers and Functions Act 12 of 2007

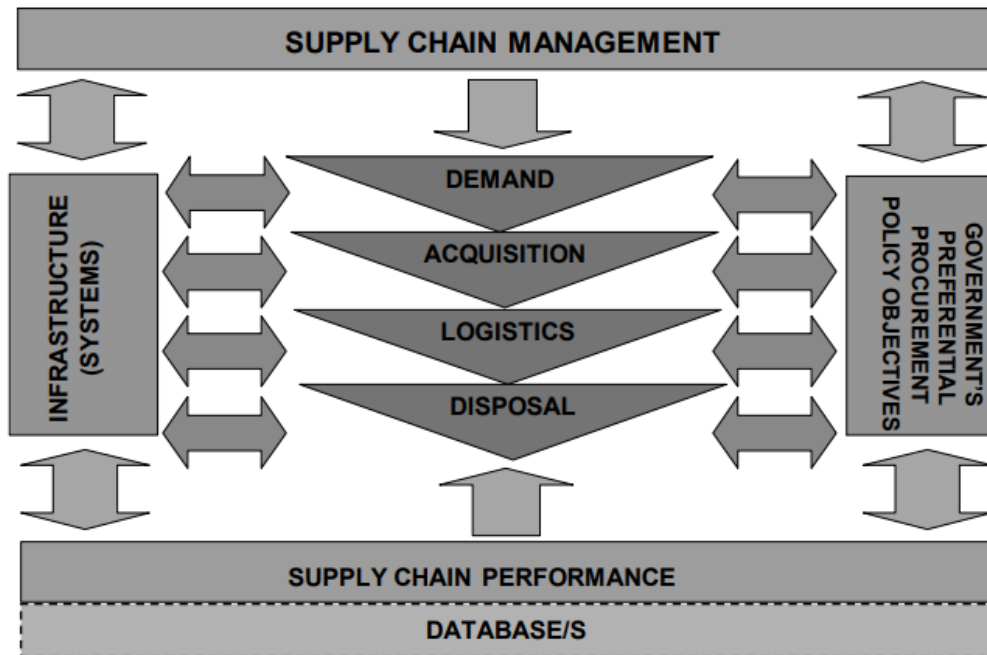
The Municipal Fiscal Powers and Functions Act 12 of 2007 was established to regulate the exercise by municipalities of their power to impose surcharges on fees for services provided under section 229(1)(a) of the Constitution; provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229(1)(b) of the Constitution; and to provide for matters connected therewith.

Supply Chain Management Policy and Procedures 2016

In September 2003, Cabinet adopted an integrated supply chain management (SCM) policy to be implemented across all spheres of government. In addition, an SCM guide for accounting officers and accounting authorities was compiled to provide comprehensive guidelines to mobilize these reform processes at ground level (National Treasury, 2004). This SCM Policy and Procedure Manual represents the minimum standards that staff members are expected to apply in their procurement activities. It has been reviewed at least annually to comply with new policies and regulations. The elements of the SCM are shown in Fig 4. The overall objective of this policy and procedure manual is:

- To ensure efficient, effective and uniform planning for and procurement of goods, services and/or works, required for proper functioning of Municipality as well as the sale and letting of assets;
- To give effect to section 217 of the Constitution of the Republic of South Africa by implementing a system that is fair, equitable, transparent, competitive and cost-effective;
- To comply with all provisions of MFMA including the Municipal Supply Chain Management Regulations published under GN868 in Government Gazette 27636 30 May 2005 and any National Treasury Guidelines issued in terms of MFMA;
- To ensure, that the goods and services required, are aligned to both the Integrated Development Plan (IDP) and budget.
- To obtain the best value for money when procuring goods and services.
- To ensure that the objectives of uniformity in supply chain management systems between organs of state, in all spheres, is not undermined and that consistency with national economic policy on the promotion of investments and doing business with the public sector is maintained.

Figure 4: Elements of supply chain management



Source: https://www.environment.gov.za/sites/default/files/legislations/accountingofficer_scmguide.pdf

The Promotion of Administrative Justice Act 3 of 2000 (PAJA)

The Promotion of Administrative Justice Act (PAJA) 3 of 2000 prescribes that “administrative action” should be lawful, reasonable and procedurally fair. The PAJA applies to public procurement because the award of a contract by an organ of state constitutes administrative action. The PAJA provides anyone aggrieved by an administrative action with a right to receive written reasons from the relevant administrative body. It also enables an aggrieved or interested party to challenge administrative action.

The Prevention and Combating of Corrupt Practices Act 12 of 2004 (PCCA)

The Prevention and Combating of Corrupt Practices Act 12 of 2004 (PCCA) makes a range of corrupt activities an offence, including those related to public procurement – it establishes a Register that places restrictions on those convicted of corrupt activities relating to tenders and contracts and requires that persons in positions of authority report corrupt transactions.

4.8.3 Institutional Arrangements

The National Treasury

To make sure that all treasuries are acting in unison, the National Treasury, as with the implementation of the PFMA, draws up a checklist to make sure that all relevant aspects of procurement are addressed and will also monitor the process of phased implementation to ensure success. The State Tender Board Regulations have been amended by means of a promulgation in the Government Gazette to allow accounting officers of national departments to procure goods and services in terms of the PFMA. The National Treasury issues a limited number of practice notes in terms of the framework to guide uniformity in practices and procedures in the different spheres of government whilst provincial treasuries issue further practice notes in a cascading fashion to guide the more detailed implementation of SCM functions. An SCM Office has been established in the National Treasury to oversee the

implementation of the SCM policy, in conjunction with provincial treasuries. Its main functions are to:

- (i) Formulate and advise on SCM policy;
- (ii) Administer national procurement legislation and regulations;
- (iii) Promote communications and liaison between different SCM units;
- (iv) Monitor the performance of SCM Units at national, provincial and local government level;
- (v) Serve as a linkage between the national government and the SCM units located in institutions;
- (vi) Issue regulations to ensure uniform application of the national SCM policy, including:- (a) Addressing the requirement for consistency with other policy initiatives in government; (b) Ensuring that material construction standards become increasingly aligned with those standards that support international best practice; (c) Establishing selection standards for the appointment of consultants; (d) Observing the principles of co-operative governance as expounded in the Constitution; and (e) Promoting the policy objectives outlined in the PPPFA and accompanying Regulations;
- (vii) Establish minimum reporting requirements for accounting officers/authorities;
- (viii) Investigate complaints received from the public regarding bid procedures and irregularities;
- (ix) Maintain a database of non-preferred suppliers;
- (x) Monitor the manner in which policy is implemented in respect of government's procurement reform objectives, the manner in which targets are set and attained, value for money obtained and delivery mechanisms; and
- (xi) Facilitate the arrangement of transversal contracts, provided that they are cost-effective.

The Office of the Chief Procurement Officer (OCPO)

OCPO in the National Treasury has introduced the central supplier database to reduce the administrative burden on both the supplier and the administrator. The OCPO has also led the compulsory implementation of the e-Tenders portal, which is expected to save the government ZAR 400m (almost US\$3m) a year in advertising costs for procurement notices.

The Open Democracy Advice Centre (ODAC)

The Open Democracy Advice Centre (ODAC) is a non-profit organization aimed at promoting an open and transparent democracy, fostering a culture of corporate and government accountability, and assisting the South African people in realizing their human rights. ODAC seeks to contribute to social and economic justice through realizing the right to know to help make a material and tangible difference to the lives of the poor. ODAC provides practical and niche services to individuals and organizations with a social justice agenda to help citizens access their rights with respect to access to information laws.

4.8.4 Technical Assessment of Procurement Processes

All organs of state in the national, provincial and local sphere of government, and any institution identified in national legislation, must comply with procurement regulations. Organs of the state include government departments and public entities. National and provincial government departments, national and provincial public entities, constitutional institutions and provincial legislatures are subject to the PFMA. Municipalities and municipal entities are subject to the MFMA, which also applies to national and provincial organs of state, but only to the extent of their financial dealings with municipalities. Private companies are not subject to procurement regulation. However, the PCCA does make certain corrupt activities related to private procurement an offence, and the BEE Act incentivizes private entities to procure their goods and services from persons historically disadvantaged on account of their race, gender or disability.

Procurement regulations apply whenever an organ of state contracts for goods or services, sells or lets state assets (including the sale of goods no longer required), or concludes a public-private partnership (PPP), such as in respect of an infrastructure project. The phrase “contracts for goods and services” is interpreted widely and includes the steps leading up to the award of a tender, such as procurement negotiations or the advertisement of a tender, even if those steps do not finally result in a contract.

Many government departments need to procure the same types of goods and services every year. For this reason, government departments are expected to set up databases of suppliers to provide quotations for goods and services. This applies to both verbal and written quotes. Most departments also require suppliers to register on the database if they wish to participate in the competitive bidding processes. If bidders need to register on a department’s supplier database in order to be considered, this requirement is usually included in the tender advertisement. In line with the public procurement principles, any qualified individual, organization, or company must have the chance to be added to these databases. At least once a year, government departments should therefore use the media to advertise opportunities to register on their supplier databases. Individuals or companies interested in becoming government suppliers can obtain a supplier registration form from the website of the National Treasury, the relevant provincial treasury, or municipality. Prospective suppliers usually also have to submit:

- details about the company/organization, its finances, and its products;
- the company registration certificate;
- an original and valid tax clearance certificate; and
- the company’s B-BBEE rating certificate.

These documents are then reviewed and verified, and a decision is made as to whether the supplier qualifies to be added to the database. National departments usually have their own supplier databases. Provincial government departments have one supplier database for the whole province, and municipalities have a single supplier database for the whole municipality.

Access to state-regulated assets is regulated through Public-Private Partnerships (PPP) agreements or through the regulations that are applicable in the specific sector. For example, in the minerals and petroleum sector, applications to exploit such assets are governed by sector-specific legislation. There are no generally prescribed minimum value thresholds that determine whether a contract is subject to procurement regulation. Furthermore, procurement regulations do not generally prescribe the precise format for procurement. There are, however, value thresholds that determine what type of procurement process is appropriate to use. Generally, the higher the contract value, the more robust the tender procedure will be. National Treasury Practice Note No 8 of 2007/2008 prescribes the procurement process (ie, petty cash, verbal or written price quotations or competitive bids) applicable at the national or provincial level, according to transaction value. Procuring institutions may use petty cash for contracts with a value of up to ZAR2,000. For contracts from ZAR2,000 to ZAR10,000, verbal or written quotations can be used. For contracts from ZAR10,000 to ZAR500,000, the procuring institution should call for written quotations. Contracts with a value above ZAR500,000 must undergo a competitive tender process. At the municipal procurement level, the same threshold values apply, except that written quotes are required for contracts from ZAR10,000 to ZAR200,000, and contracts from ZAR200,000 upwards must undergo a competitive bidding process (Regulation 12(1)(c) and (d) of the Municipal SCM Regulations). The threshold values may be lowered, but not increased. A procuring institution must ensure that the procurement thresholds are strictly adhered to.

4.8.5 Stakeholder Identification and User Engagement

Cooperation and negotiation with the stakeholders throughout the Project development often also require the identification of persons within the groups who act as legitimate representatives of their respective stakeholder group, i.e., the individuals who have been entrusted by their fellow group members with advocating the groups' interests in the process of engagement with the Project. A systematic approach is often used to identify stakeholders. This begins with delineating the project's geographic sphere of influence. The approach reveals those most directly affected by the project. A quick and practical technique for undertaking this type of stakeholder mapping exercise is impact zoning. By mapping the sphere of influence of different types of environmental and social impacts, it becomes easier to identify distinct groups by impact area, and from this, stakeholders are prioritized for consultation. For larger-scale projects, with different phases to their development, mapping out both the near term and future facilities assist in identifying potential cumulative impacts on stakeholder groups that might not have been evident by just looking at the immediate project to be undertaken.

The South African government has integrated policies which ensure stakeholder engagement in the public procurement process in the country. Some of these policies include the Expanded public works programme (EPWP) which encourages public sector projects to be constructed using labour-intensive methods and a political promise that 25% of any project executed within a community must be unpacked for community SMMEs (Alli et al, 1994). Results of a research conducted in South Africa to assess the extent to which stakeholder's engagement influences the success of public projects established that stakeholders had a high

impact on public projects success with an aggregated relative importance index of 0.656 (Rathenam et al, 2017). This is attributed to the engagement of stakeholders in the procurement process in the country. Recent studies also reveal that South there are opportunities to adopt the disclosure principle within South African public procurement in order to enhance open contracting in the country (Lawson *et al*, 2017). This demonstrates the South African government's commitment to the implementation of open contracting guidelines as stipulated by OECD. This will ensure the success of public projects in the country when proper identification and engagement of stakeholders in the public procurement process is done (Nguyen et al, 2009 and Olaku et al, 2015).

4.9 Tanzania

4.9.1 Overview of the General Country Context

Public procurement in Tanzania is regulated by the Public Procurement Act, 2011 (PPA) and its amendment act of 2016, which serves as an addendum to the act of 2011. In Tanzania, the public procurement law applies to any ministry, department or agency of the government, in addition to any corporate or statutory body or authority established by the government. Public procurement law also covers state-owned companies and local government authorities. Public procurement system in Tanzania is decentralized, meaning that all entities covered by the law conduct public procurement activities individually through means available in the country. Centralized procurement is also allowed via framework agreements. A contracting authority is permitted to enter into a framework agreement, provided that the agreement is arranged by the Government Procurement Services Agency for procurement of common use items and services, provided that the contract is valid only between one and three years.

In Tanzania, the adoption of e-procurement system followed the General procurement notice which appeared in UN Development Business Issue No. AfDB-690/06 dated 24th October 2006. In 2008, efforts to implement public electronic procurement came evident by the intention of the Public Procurement Regulatory Authority (PPRA) to employ a consultant to undertake a feasibility study with the main objective of assessing the readiness of the public and private sectors and the pertinent enabling environment for the implementation of public e-procurement system in Tanzania, taking into account international experiences and best practices.

TANePS (Tanzanian National e-Procurement System) is an e-portal that was created to facilitate public procurement processes in Tanzania. According to the Public Procurement Regulations of 2013, section 3, TANePS or the Tenders Portal is a web portal that contains all information relating to public tenders (Hivos, 2018). With the introduction of the electronic procurement in Tanzania and an overhaul of the legal framework in 2016, the public procurement law essentially guarantees efficient and transparent public procurement procedures. The TANePS system incorporates functions such as e-Tendering, e-Purchasing, the system of e-Auction, provision of e-Payment and e-Contract management. Nevertheless, the public procurement law of Tanzania can still be improved to maximize transparency, machine-readability of data, efficiency of procedures and competitive environment in public procurement. Tanzania's TANePS has the potential to comply with best international practice

and adopt open contracting standards to allow unhindered access to public procurement data in machine-readable formats (Hivos, 2018).

4.9.2 Policy, Legal and Regulatory Framework

The legislative framework of Tanzania also includes sub-legal and sector-specific acts, which spell out the rules and procedures of public procurement activities in Tanzania. Among the most important sub-legal texts are:

- Public Procurement Regulations 2013 (PR);
- Public Procurement (Amendments) Regulations 2016 (PRA);
- Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310R.E 2002 (LRA);
- Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014 (JR Rules);
- Public-Private Partnership Act 2010 (PPP);
- Public-Private Partnership Regulations 2011 (PPR);
- Public Procurement Appeals Rules 2014 (PPAA Rules).

The Public Procurement Act No. 7 of 2011 as Amended in 2016

Under this Act tenderer who are either Tanzanian citizens or Tanzanian firms that form associations with foreign firms in a Bidding Process, are eligible to be granted a margin of preference if they meet the criteria set out under the Public Procurement Act 2011 and amended in 2016 and are registered with the PPRA or any other statutory body acceptable to PPRA.

Public Procurement Regulations, 2013

These Regulations shall apply to- (a) all procurement of goods, works and non-consultancy services undertaken by a procuring entity except where the context provides otherwise in which case the provisions of the Act shall prevail; (b) selection and employment of consultants; (c) disposal of public assets by tender, and (d) procurement under the public-private partnership. These Regulations shall not apply to the disposal of public assets by other methods. The basic principles of public procurement shall be to make the best possible use of public funds with honesty and fairness. All public officers including accounting officers and members of tender boards shall, when undertaking or approving procurement, be guided by the following basic considerations:

- the need for economy and efficiency in the use of public funds in the implementation of projects, including the provision of related goods and services;
- the best interests of a public body in giving all eligible tenderers equal opportunities to compete in providing goods or executing works or providing services;
- encouragement of national manufacturing, contracting and service industries;
- the importance of integrity, accountability, fairness and transparency in the procurement process.

The principles of disposal of public assets, on the other hand, shall be based on the need to achieve the best available net return when disposing off of public assets by tender, while conducting all disposals with honesty and fairness.

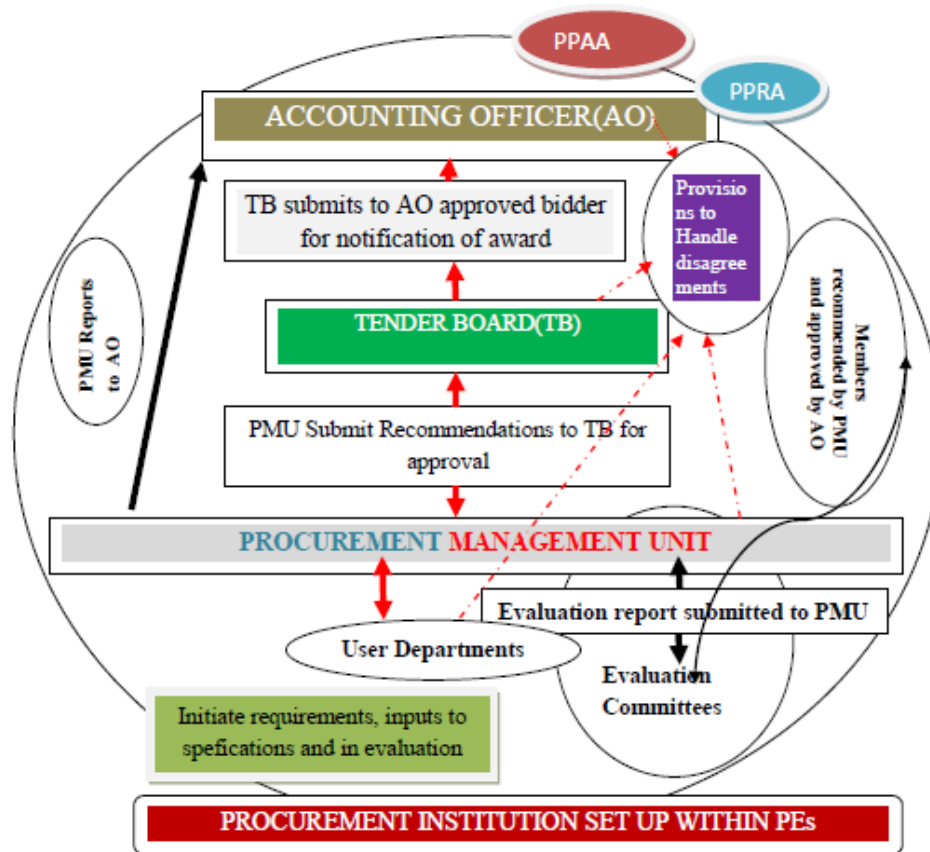
4.9.3 Institutional Arrangements

The main institution responsible for public procurement is the PPRA, which oversees procurement standards and practices, and monitors compliance of procuring entities. The Government Procurement Services Agency (GPSA) is responsible for centralizing the procurement of stock items for resale to government and non-governmental institutions, and for procuring common goods and services for other public institutions using framework contracts. The GPSA publishes procurement data on its website in an open data format.

The Public Procurement Regulatory Authority (PPRA)

PPRA is a regulatory body established under the Public Procurement Act CAP 410 as repealed by the Public Procurement Act 2011. The Authority is charged with regulatory functions and vested with oversight powers and responsibilities on all public procurement activities carried by all public bodies in mainland Tanzania. The objectives of PPRA are to ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement standards and practices; set standards for the public procurement systems in the United Republic of Tanzania; monitor compliance of procuring entities; and build, in collaboration with Public Procurement Policy Division and other relevant professional bodies, procurement capacity in the United Republic.

Figure 5: Procurement Legal Frame Work within Procuring Entities in Tanzania



Source: Mlinga (2006)

To ensure compliance with the PPA (2004), PEs has legal organs established under the Act for executing procurement functions. These organs include AO, Tender Boards, PMU, user department and Evaluation Committee. According to Section 38 of the PPA (2004), these organs have to work independently while dealing with procurement functions and usually evaluation committees are appointed on ad hoc basis for specific tender evaluation. The functioning and responsibilities of these organs in the procurement process are as indicated in Fig.5.

The Act stipulates responsibilities of each organ and its limit of jurisdiction. The user department has a duty of assisting PMU throughout the procurement process to point of contract placement. Also, it has the responsibility of providing technical inputs to statement of requirements, technical specifications, certifying payment to suppliers, contractors or service providers, preparing any report required by PMU, Tender Board or the AO, reporting any departure from terms and conditions of awarded contract as well maintaining and archive records of contract management. Furthermore, the user department prepares a work plan for procurement based on the approved budget and submits it to the PMU. The PMU has overall responsibility to manage all procurement of the PE except adjudication and award of contract, prepares advertisements of tender, prepares tender and contract documents, preparation of procurement plan recommends procurement procedures and act as a secretariat to the Tender Board.

The Tender Board is mandated to adjudicate recommendations from PMU and award of tenders, review applications for variations, addenda or amendments to ongoing contracts, approving procurement procedures as well as tendering and contract documents. Section 31 of the Act, gives powers to Tender Board that no PE shall advertise, invite, award or sign contract unless it has been approved by the Tender Board. Pursuant to Section 33 of PPA (2004), AO has overall responsibility for the execution of the procurement process including communicating award decision, certifying availability of funds, signing contracts, ensuring the implementation of awarded contract adheres to the terms and conditions of the contract. Also, the AO is mandated to appoint TB for tenure as provided in the Act, PMU staff on permanent basis and evaluation committee on ad hoc basis to carry out tender evaluation for specific procurement. The Head of PMU reports to the AO on his or her daily procurement proceedings. The procurement process commences with the user departments by submitting its requirement to the PMU. The PMU prepares documents and adverts, issues and receive bids. The evaluation committee is proposed by HPMU and approved by AO.

The committee recommends award of the tender to the PMU after completion of tender evaluation. The HPMU reviews evaluation reports and submits its recommendations to the Tender Board for adjudication. Once approved by the Tender Board, the HPMU prepares a briefing on the decision and submit to the AO for approval. The AO where satisfied himself or herself with the Tender Board decision communicates award of the tender. Therefore, this indicates a clear distribution of responsibilities for each organ established under the Act of 2004 within procuring entities.

The Public Procurement Appeals Authority (PPAA)

The PPAA is a body established in terms of section 88 of the Public Procurement Act of 2011 as well as its amendments of 2016. In terms of Sections, 88 (5) and 97 of the Public Procurement Act Public Procurement 2011, the main role of the Authority is to hear and decide on complaints or appeals arising from various public procurement processes. The Authority is also responsible for hearing complaints from a blacklist of Tenderers. In practice, the dispute settlement decisions are published on the website of the Authority. This step is a pro-active effort of the Appeals Authority to ensure maximum transparency of dispute settlement. It is recommended that legal guarantees for the transparency of dispute settlement results are spelt out in the public procurement law and public procurement regulations so that the good practice of the Appeals Authority is sustainable.

4.9.4 Technical Assessment of Procurement Processes

Section 11(1) of the PPA provides that in all circumstances where there is an agreement between a public and a private entity, in which the private entity agrees with a public entity to perform one or more functions of the public entity, the procurement procedure must be followed. Under section 2 of the PPA, defence and national security organs manage their procurement on a dual-list basis. The dual list covers items subject to open and restricted procurement or disposal methods respectively. The defence or national security organs can use single sourcing whenever they deem it is the most appropriate. All non-public bodies, or

authorities and bodies that were not established and mandated by the government to carry out public functions, are not considered ‘contracting authorities.’

The Tanzanian public procurement law ensures access to information on annual public procurement plans, tender announcements and awarded contracts through its online portal TANEPS if procedures are conducted electronically. The information made available by the public procurement law on these aspects of public procurement is comprehensive, however, TANEPS does not provide full access to this information. Additionally, the datasets are not available in machine-readable formats such as CSV or JSON. Only, general procurement notices are available for download on the TANEPS and in excel format. Having individual sets of information is useful for case-by-case analysis, but to conduct full-scale monitoring of the procurement system, access to information in bulk is necessary (Hivos, 2018).

Guaranteeing full transparency of the process and public access to justifications of the choice of procedure will ward off any doubt related to misconduct or improper use of procedures. Detailed indication of the grounds for the choice of such procedure may also have an analytical purpose, to verify what types of single-source procurement clauses are used more often. Existence of such measures and guarantees in the PPL once again serve the purpose of increasing the trust towards the public procurement system and the procuring entities (Hivos, 2018).

4.9.5 Stakeholder Identification and User Engagement

There is no program in place to engage citizens and the private sector in open contracting. However, the PPRA has reached out to citizens through educational television programs, Swahili brochures, radio shows, and through the Tanzania Procurement Journal. There is little evidence of publicly available information being used by the government, private sector, or civil society for policymaking, business development, or advocacy (Hivos, 2016b).

Tanzania’s public procurement law does not incorporate possibilities for consultations with the civil society organizations and the private sector. Such a mechanism can be useful for understanding the needs and concerns of the stakeholders vis-à-vis the public procurement system (Hivos, 2018). Such a mechanism can be mandatory or voluntary and frequency for such consultations can be defined by law. This mechanism can prove to be useful to understand what type of public procurement information should be made public in addition to what is available currently in Tanzania. Such an approach creates an environment of common ownership and builds trust towards the public procurement system, which may be beneficial for popularizing the TANEPS system, which is still relatively new and not widely used.

4.10 Uganda

4.10.1 Overview of the General Country Context

Uganda has been a leader in Africa in the implementation of public procurement reforms. The process of procurement reforms in Uganda started in 1997 and 2003 Uganda was one of the first countries in Africa to enact a procurement law. The Public Procurement and Disposal of Public Assets Authority (PPDA) was then created by this law and on February 2003 it

became operational as a regulator of public procurement and disposal of public assets in Uganda. The burden of the young Authority in 2003 was to ensure that all Government departments at the local and central level worked from the same sheet. This led to the amending of the Local Government Act to allow enactment of the LG (PPDA) Regulations, 2006, which harmonized procurement at all government levels. Since then, PPDA has been at the forefront of promoting a well-functioning procurement system by working together with local and international partners.

The Public Procurement Authority signed an agreement with the Uganda Contracts Monitoring Coalition (UCMC) to ensure transparency and accountability in public contracts. There is difficulty in meeting the need for the authority's services upcountry, in view of limited resources in the areas of staff and funding. Corruption remains a big challenge and there is an inadequate number of trained professionals in procurement in Uganda. The lack of experienced trained procurement officers in the districts and some central government ministries creates hardship in observing procurement regulations and guidelines.

4.10.2 Policy, Legal and Regulatory Framework

Public Procurement and Disposal of Public Assets Authority (PPDA) Act 2003

The Public Procurement and Disposal of Public Assets Act, Act No. 1 of 2003 came into force on the 21st day of February 2003 (S.I. No. 10 of 2003), the Public Procurement and Disposal of Public Assets (Amendment) Act, Act No. 11 of 2011 came into force on the 3rd day of March 2014 (S.I. No. 3 of 2014). Act to establish the Public Procurement and Disposal of Public Assets Authority; to formulate policies and regulate practices in respect of public procurement and disposal activities and other connected matters. This Act applies to all public procurement and disposal activities and in particular, shall apply to:

- all public finances— (i) originating from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, whatever form these may take; (ii) that may be earmarked for external obligation purposes, except those resources that may be earmarked for payments of membership subscriptions and contributions; and (iii) of a procuring and disposing entity;
- resources in the form of counterpart transfers or co-financing or any finances of a similar nature within the context of development co-operation agreements for the implementation of national programmes;
- procurement and disposal by a procuring and disposing entity, within or outside Uganda;
- procurement financed from specific public finances specified in paragraph (a), in the case of an entity not being of Government, except where the Authority confirms in writing, that the procurement system of the entity is satisfactory;
- procurement and disposal by a company registered under the Companies Act, in which a procuring and disposing entity has majority interest.

4.10.3 Institutional Arrangements

The Public Procurement and Disposal of Public Assets Authority (PPDA)

The Public Procurement and Disposal of Public Assets Act 1 of 2003 set up the PPDA as the principal regulatory body for public procurement and disposal of public assets in Uganda. The amendments to the PPDA law have introduced several changes prominent of which is the strengthening and enhancement of the role of PPDA in the execution of its regulatory mandate. The Act sets up the Public Procurement and Disposal of Public Assets Authority to:

- Ensure the application of fair, competitive, transparent, non-discriminatory, and value for money procurement and disposal standards and practices
- Harmonize the procurement and disposal policy systems and practices of Central Government, Local Governments and Statutory bodies
- Set standards for the public procurement and disposal systems in Uganda
- Monitor compliance of procuring and disposing of entities
- Build procurement and disposal capacity in Uganda.

Africa Freedom of Information Centre (AFIC)

Africa Freedom of Information Centre (AFIC) is the largest membership pan-African civil society organization and resource centre that promotes citizens right of access to information (ATI) in Africa. It was registered in Uganda in October 2010 and strives to become reliable, dependable and all-round freedom of information support centre on the African continent. AFIC is comprised of 41 civil society organisations and Think Tank across 21 African countries. AFIC promotes ATI through comparative research, coordinating regional advocacy, facilitating information-sharing and capacity building. It promotes democratic rule and socio-economic justice for African citizens through fostering a culture of increased transparency, integrity and accountability among governments, regional and international bodies.

Since 2011, AFIC has worked with public, private and civil society actors in Africa promoting the enhancement of disclosure (access to information) and citizen participation in all stages of public contracting with the ultimate objective of increasing value for money in public contracts. During AFIC's 2016 General Assembly, a strategic decision to set up a Working Group (WG) on open contracting was made. The goal of the working group is to provide the leadership, coordination, conceptual and technical skills to review the current architecture of the open contracting agenda across Africa.

AFIC is part of a network of passionate Ugandans who dedicate their time to tracking public contracting processes across the country, helping citizens to ensure their communities get the goods, services and works they need, and public officers have the information and resources they need to purchase those items at the fairest price. The group is diverse, but shares a common goal: "value for money, value for many." They believe this occurs most effectively when people understand the contracts that affect their communities and participate in decisions made about those deals — from companies wanting to do business with the government to citizens who benefit from the services.

The Uganda Contracts Monitoring Coalition (UCMC)

The Uganda Contracts Monitoring Coalition (UCMC) is a loose network of civil society organizations, public and private sector actors, the media and other stakeholders that aspire to promote contract performance and value for money for the people of Uganda. UCMC is a non-partisan multi-stakeholders' initiative established to promote contract performance through promoting transparency, participatory approaches and accountability in the planning, bidding, awarding, implementation, monitoring and evaluation of Contracts. UCMC is a voluntary, charitable and not for profit loose network. It is a part of an Africa-wide movement to promote transparency and accountability in the development and implementation of public contracts.

4.10.4 Technical Assessment of Procurement Processes

The legal framework (PPDA Act and Regulations) establishes the procurement methods under Part VI of the PPDA Act and Part IV, Division III of the PPDA Regulations. Section 80 of the PPDA Act also determines competitive procurement as the default method of procurement. Regulation 109 of the Regulations defines situations in which less competitive methods could be used. The law prohibits fractioning of contracts to avoid open competition. The law also specifies under Section 29 of the PPDA Act that the Contracts Committee is responsible for approving the methods of procurement. The standards for international competitive tendering are also specified under the 4th schedule of the PPDA Act 2003.

The regulatory framework (Regulation 141 of the PPDA Regulations) specifies the minimum advertising period for each procurement method. The same Regulation requires bids to be published in a newspaper of wide circulation. The law also requires entities to post their bid notices on the PPDA website. Regulation 140 also requires that a bid notice be based on the standard format that is provided for in the 7th schedule. This provides sufficient information for potential bidders to determine whether they can meet the requirements of the bid. The legal framework establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or by international agreements; requires the use of pass/fail basis for determining qualifications to the extent possible; limits domestic price preferential, if allowed, to a reasonable amount (e.g.15% or less); and requires justification for set-asides that limit competition. It also ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms. The regulations also provide for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations. Rules for the participation of government-owned enterprises that promote fair competition are also provided. However, there are no clear rules for the participation of Government-owned enterprises that promote fair competition.

There are Standard Bidding Documents which establish the minimum content of the tender documents and ensures that this is sufficient to enable bidders to respond. Regulation 135 requires a statement of requirements to use common specification standards based on national or international standards. Regulation 164 requires that the opened bids are to be kept in a secure place. Regulation 164 also allows for records of bid opening to be available for review while Regulation 159 stipulates how bids are to be received and are secured. Confidentiality

of bids is maintained before bid opening. The law also provides for the right of review for participants in a procurement process. Section 89-91 of the PPDA Act provide for administrative review where a bidder feels there is a breach of the Regulations, with the review being conducted by the Accounting Officer of the entity concerned in the first instance but providing for a right of appeal to the Authority if the bidder is not satisfied with the Accounting Officer's decision. The matters that are subject to review are defined under Regulation 343, while Regulation 344 establishes the time frames for issuance of decisions by the procuring agency and administrative body. Although it is not specified in the law, parties have a right to go to Court when not satisfied with the decision of the Authority. Despite having an elaborate legal framework for procurement processes, the enforcement is poor and basic principles of open contracting are not always adhered to.

4.10.5 Stakeholder Identification and User Engagement

Stakeholder engagement is an important element of any planned intervention as it goes a long way in shaping decisions related to such interventions. It is a continuous process that needs to be understood as running throughout the lifecycle of the intervention and beyond. The engagement process has been designed to meet both Ugandan legal requirements for stakeholder engagement and international requirements for engagement as outlined in the JICA Guidelines for Environmental and Social Considerations, 2010. The PPDA's commitment to the values of open contracting go beyond the implementation of OCDS. Its strategic plan increases transparency at contract implementation and increases the chances of procurement meeting its objectives. Its recognition of the value of non-state participation in the procurement process, including by civil society, has been manifest in its openness to engagement on several fronts. This view of public engagement and monitoring is supported by the Constitution and the Public Sector Monitoring and Evaluation Policy.

The UCMC has also been very pro-active in Uganda to ensure that public procurement is transparent and that Uganda citizens get value for money from public procurement. Before open contracting was established, citizens made complaints and requests about contracts on an ad-hoc basis, they did not know whether any action was taken, and there was often little clarity about which government office was responsible for what processes. The strength and collaborative nature of the AFIC group has helped them to advocate successfully for the government to adopt open contracting — a best practice approach designed to improve the management and performance of public contracting through open data and public engagement. It's an ambitious project — corruption is endemic in Uganda, especially in public procurement, the anti-graft laws are poorly enforced, freedom of speech is often restricted, and government agencies are under-resourced. Unreliable IT infrastructure and technology make setting up stable digital resources a challenge. There are early signs this network's efforts seem to begin paying off. The government has used open contracting to begin making its public procurement portal more useful for a wider range of people. Civil society has created their platform¹⁵ (Budeshi-Uganda) that displays procurement information in a way that is easy for community monitors to understand, drawing on open data extracted

¹⁵ <http://budeshi.ug/#/home>

from the government's portal and supplemented by Freedom of Information (FOI) requests. The public procurement agency is using open contracting data to identify potential irregularities in procurement processes. Public access to contracting documents has improved since open contracting reforms were introduced, as have communication channels between citizens, civil society and public servants. Meanwhile, the government is drafting an amendment to the procurement law, the PPDA Act, that would improve transparency and accountability in the sector. There have also been notable improvements reported in some procurement policies and practices; in particular, public officers say contracting data has helped them to plan and budget better, and open contracting has been embedded in anti-corruption reforms within the country's largest procuring entity.

4.11 Zambia

4.11.1 Overview of the General Zambia Context

The government of Zambia is championing open contracting. The World Bank and the OCP are supporting the development of a new e-procurement system that allows the publication of open data in accordance with the OCDS. Since 2015, Zambia has been integrating open contracting principles into its public procurement processes. One case that ignited interest in cracking down on poor procurement practices was a controversial deal to purchase fire trucks. In 2012, the Government of Zambia announced that it intended to improve fire safety, and embarked on a process over the next few years to obtain the necessary equipment. A competitive procurement process was announced, awarded, challenged and then confirmed throughout 2015 and 2016. The government bought 42 fire trucks for US\$ 42 million. Despite the lengthy and fraught process, there remained questions as to whether the trucks were in good condition, appropriate and good value, and whether the winning contractor was a shell company. Six people who took part in an anti-corruption protest against the result were arrested and charged with "disobeying lawful orders," a move that one of the activists described as typical of the intimidation used against government critics.

After this and other explosive procurement scandals, the Zambian Public Procurement Authority (ZPPA) began working to make public procurement more transparent, accountable, and effective. As part of this work, they have introduced a new electronic government procurement system developed by European Dynamics. This is one of the first e-GP systems to be developed with the OCDS from the start. ZPPA has also begun to define how these data should be used for enhanced monitoring and oversight. The OCP has provided support to the ZPPA, including technical support and advice on using OCDS data for monitoring.

4.11.2 Policy, Legal and Regulatory Framework

In Zambia, Procurement of government contracts is regulated by the following legislation:

- (i) The Constitution of Zambia
- (ii) the Public Procurement Act No 12 of 2008 of the Laws of Zambia (the "Public Procurement Act");
- (iii) the Public Procurement (Amendment) Act No 15 of 2011 (the "Public Procurement Amendment Act");

- (iv) the Public Procurement Regulations Statutory Instrument No 63 of 2011 (the “Public Procurement Regulations”); and
- (v) the National Council for Construction Act No 13 of 2003 of the Laws of Zambia (the “NCC Act”), only to the extent that the Act applies to construction projects by government and other public entities.

The Constitution of Zambia

The Constitution of Zambia prescribes what one would call the public procurement objectives which inform and characterise the public procurement system in Zambia. Article 210(1) provides:

“210. (1) A State organ, State institution and other public office shall procure goods or services, in accordance with a system that is fair, equitable, transparent, competitive and cost effective, as prescribed.”

The above-quoted provision can, at best, be described as a mandatory constitutional call for the government to conduct and practice public procurement in a manner that is fair, equitable, transparent, competitive and cost-effective. To say the least, this article embodies some of the most important policy objectives of a good public procurement system. It necessarily follows, therefore, that any government procurement policies and legislation that stifle a competitive and robust regime, which fail to promote financial probity, fairness or accountability, are unconstitutional and therefore void. By the same token, legislation and procurement policy approaches that discriminate suppliers of goods and services based on their nationality, origin or race, or that encourage corrupt practices are unconstitutional and therefore void.

Additionally, Article 11 as read with article 23 of the bill of rights in the Zambian Constitution¹⁹ guarantees fairness and equal treatment of every person in Zambia. Article 23 prohibits unfair discrimination on grounds of nationality, race, colour, place of birth, ethnic and social origin, economic or social status among other categories. It is worth noting that the fact that article 11 states that ‘every person’ means that the extent of protection guaranteed in the Constitution generally and in the equality clause, in particular, is not restricted to Zambian citizens only. It applies with equal measure to foreign citizens doing business in, or with Zambia. Accordingly, under article 23, legislation and policy practices that unfairly discriminate against a certain category of foreign or domestic suppliers and contractors in favour of others are unconstitutional. It is interesting to note that the equality clause in the Constitution also features in section 37 of the Public Procurement Act. The section provides: A bidder shall not be excluded from participating in public procurement on the basis of nationality, race, religion, gender or any other criterion not related to its eligibility or qualifications, except to the extent provided for in this Act.

Public Procurement Act No. 12 of 2008

The Public Procurement Act No. 12 of 2008 and the Public Procurement Regulations of 2011 provide a comprehensive regulatory framework for public procurement in Zambia. Although the Act predates the Constitution in its amended form, having been enacted in 2008, its underlying objectives relate to the objectives mentioned in the Constitutional provisions

discussed above. This is an Act to continue the existence of the Zambia National Tender Board and rename it as the Zambia Public Procurement Authority; revise the law relating to procurement to ensure transparency and accountability in public procurement; regulate and control practices relating to public procurement in order to promote the integrity of, fairness and public confidence in, the procurement process; repeal and replace the Zambia National Tender Board Act, 1982 and provide for matters connected with or incidental to the foregoing.

The Act provides that open national bidding and selection shall be limited to citizens and local bidders while in open international bidding and selection, foreign bidders shall partner with Zambia citizens or suppliers. In addition, a margin of preference may be granted to a bidder in consideration of policies pertaining to citizens or local suppliers/industries or SMEs. Participation in open national bidding and selection shall be limited to the citizen and local bidders. A foreign bidder shall partner with a citizen or local supplier or bidder in open international bidding and selection Art.63 A procuring entity may ... (a) *grant a margin of preference for the benefit of bids by a target group offering goods, works or services manufactured or performed by the target group, [for which] any preference or reservation scheme shall be determined in accordance with Government economic and social policies...*

National Council for Construction Act No. 13 of 2003

The National Council for Construction (NCC) is a statutory body set up under the National Council for Construction Act No. 13 of 2003 with the responsibility of providing for the promotion, development, training and regulation of the construction industry in Zambia. Under the Act, the NCC is further charged with the responsibility of registering of contractors, affiliation of professional bodies or organizations whose members are engaged in activities related to the construction industry and to provide for matters connected with or incidental to the foregoing.

The public procurement (amendment) bill, 2011

The object of this Bill is to amend the Public Procurement Act, 2008, so as to— (a) empower the Zambia Public Procurement Authority to recommend disciplinary measures against approvals authorities that contravene procurement procedures; (b) extend the tenure of the Central Tender Committee; (c) require approvals authorities to obtain confirmation of the use of bid solicitation documents before they are issued; and (d) provide for matters connected with, or incidental to, the foregoing.

4.11.3 Institutional Arrangements

Zambia Public Procurement Authority (ZPPA)

Formerly known as the Zambia National Tender Board, ZPPA was established under the Public Procurement Act No. 12 to regulate public procurement. In discharging its function, ZPPA shall uphold its shared values of fairness, accountability, integrity, mutual respect, transparency, confidentiality, professionalism and excellence. ZPPA is capable of suing and of being sued in its corporate name. Powers and functions of ZPPA include the following: The Authority shall be an independent regulatory body with responsibility for policy, regulation, standard-setting, compliance and performance monitoring, professional

development and information management and dissemination in the field of public procurement. Without prejudice to the generality of subsection (1), the functions of the Authority are to:

- a) regulate the procurement of goods, works and services by procuring entities and ensure transparency and accountability in public procurement;
- b) monitor compliance with this Act and the procurement performance of the procuring entities and make recommendations to the Minister on the performance and functioning of the public procurement system;
- c) issue standard bidding documents and other standard procurement documents for use by procuring entities;
- d) advise the Government and procuring entities on procurement policy and other matters relating to public procurement;
- e) consider applications for deviations to public procurement processes, methods and rules and the accreditation of alternative procurement systems;
- f) commission and undertake investigations in public procurement matters and institute procurement audits;
- g) promote economy, efficiency and maximum competition to ensure value for money in the use of public funds;
- h) promote private sector participation, through the fair and non-discriminatory treatment of bidders;
- i) formulate preference and reservation schemes to promote the economic development of citizen bidder and suppliers in collaboration with the appropriate Government institutions;
- j) maintain a register of bidders and suppliers who are suspended from participating in public procurement;
- k) coordinate and promote capacity-building and professional development in the public procurement system;
- l) organise and maintain systems for the management of procurement data, statistics and information and the publication of data on public procurement opportunities, contract awards and other information of public interest; and
- m) do all such other acts and things as are incidental to the foregoing or conducive to the attainment of the objectives of the Authority.

The Board of ZPPA consists of the Minister responsible for Finance who is also the Chairperson of the Board, four (4) Ministers appointed by the President, the Secretary to the Cabinet, the Attorney General, the Governor of the Bank of Zambia, Permanent Secretary in the Ministry responsible for financial management, Permanent Secretary in the Ministry responsible for Commerce, Permanent Secretary in the Ministry responsible for works and supply and two other persons appointed by the President from among persons in the private sector.

A scrutiny of the composition of the ZPPA Board reveals that it has many politicians and political appointees. Undoubtedly, executive political appointments as is the case with the ZPPA Board ignores the importance of professional technocrats and creates a real possibility

that ZPPA Board members would be more politically aligned and thus amenable to political manipulation. Once this becomes the case, its decision-makers could fail to tie bureaucratic rules, thus compromising the integrity of the institution. The challenge with this state of affairs is that the operations of the institution are bound to be directly affected by mainstream politics. There is also a possibility that the institution is bound to be perceived, or perceive itself, as being part of the Executive. The composition of the Board also creates an impression that the institution is not necessarily corporate, but political and is at liberty to overlook or ignore critical corporate governance principles and measures in order to pursue or satisfy political objectives. Moreover, executive control over the ordinary operations of the ZPPA is manifest throughout the Act. For instance, the first schedule to the Act empowers the President to four Ministers to sit on the ZPPA Board. The President is further empowered to appoint two other persons to sit on the Board. Under section 7, the President is also responsible for appointing and fixing the remuneration of Chief Executive Officer of ZPPA. In light of the foregoing, it is inconceivable that the executive may be said to have no control or influence over the ordinary operations of ZPPA.

Construction Sector Transparency (CoST)

CoST is an initiative launched in October 2012 by engineers committed to ending corruption whilst improving infrastructure through openness and accountability in construction work. It aims to improve the value for money spent on public infrastructure, by increasing transparency in the delivery of projects. It works with government agencies to gather, verify and disclose information into the public real. CoST works by opening up the decision-making process to public scrutiny so that stakeholders can see how the money is being spent. It does this by developing the systems and procedures that are necessary to enable the public disclosure of project information. CoST makes other institutions to benefit from its efforts. Government benefits, for example, from more efficient delivery systems, savings on infrastructure that are available for other priorities, improved public confidence and a business environment that is more attractive to investors. Industry benefits from a fairer contract award and administration system and an environment with fewer commercial risks. And civil society benefits too through access to information that can help to promote its agenda around social justice.

The Office of the Auditor General (OAG)

The Office of the Auditor General exercises oversight over public procurement and has been doing a commendable job in exposing weaknesses, poor practices, corruption cases etc. in the public procurement system resulting in losses to Government and poor service delivery. Over the years these revelations by the OAG have been submitted before Parliament but there does not seem to be any improvement in the performance of Ministries, Provinces and Spending Agencies (MPSAs) in this regard. Every year the Auditor General's Report contains recommendations by the Public Accounts Committee which remain outstanding. There is, therefore, a particular concern with how Parliament keeps an eye on the activities of the Executive. It is precisely in the oversight function that many commentators detect the greatest weakness of the Zambian Parliament. Various studies have noted serious lack of ministerial accountability to Parliament. Parliament is not able to hold individual ministers accountable

for their performance because they are supposed to be collectively accountable, and doing so is perceived as infringing upon the presidential prerogative since the President appoints the ministers and they are accountable to him for their performance, and only he has the power to sanction them.

4.11.4 Technical Assessment of Procurement Processes

Since public procurement plays a very critical role in the development programmes of any country, the procurement system needs to be effective and efficient in order to obtain value for money. A well-functioning procurement system is based on transparency, accountability, and fairness. Proper procurement of public goods, works, and services is crucial for good economic management and addressing leakages of government funds.

Section 3(1) of the Public Procurement Act stipulates that the Act applies to procurement carried out by procuring entities using public funds. Pursuant to Section 2 of the Public Procurement Act, procuring entities include the following:

- (i) government agencies;
- (ii) parastatal bodies (a statutory corporation or body, a local authority or a company in which the government has a majority or controlling interest); or
- (iii) any other body or unit established and mandated by the government to carry out procurement using public funds

Regarding participation in public procurement, Section 37 of the Public Procurement Act provides for non-discrimination save for the limited circumstances set out under Section 63 of the Act. Section 63 provides that a procuring entity, in consultation with government bodies responsible for economic and social policy, formulate preferential or reservation schemes for certain targeted groups with a view to enhancing economic opportunity and attaining particular social and economic objectives.

Although the law requires procuring entities to prepare annual procurement plans as part of the budget preparation process, many have not developed these plans leading to the haphazard implementation of programmes.

To enhance transparency, there is an obligation to release the statement of procurement requirements which outlines, amongst other issues, how bidders are selected and the evaluation of tenders. This is to ensure fair and open competition and to ensure that the goods, works or services that are subject to procurement are fit for purpose and meet appropriate quality standards. Section 53 of the Public Procurement Act provides that within seven days of awarding a contract, all those who submitted bids, including all unsuccessful parties, must be informed of who received the contract award and the value of the proposed bid. Section 56 requires the procuring entity to inform unsuccessful bidders that their bids were not successful and to give reasons for the decision made by the procuring entity. Section 53 provides that within seven days of awarding a contract, a notice should be given indicating the best-evaluated bidder and value of the contract. This requirement does not apply where simplified or direct or limited bidding (if there is insufficient time) are used. Section 53(2) of

the Public Procurement Act requires a standstill period of at least ten days between the notification of the contract award decision and the conclusion of the contract.

While the law outlaws discrimination, it is not oblivious to the need for some form of positive discrimination aimed at advancing particular social and economic goals. There is no doubt that the above-quoted provision allows the government to achieve other social and economic goals through the implementation of preferential procurement policy. In fact, the Authority is empowered, in consultation with government bodies responsible for economic and social policy, to formulate preferential or reservation schemes for certain social groups to enhance economic opportunity and attain particular social and economic objectives. The above notwithstanding, it can, thus, be argued that the above discussed legal framework engenders transparency and integrity in government procurement to the extent that aggrieved bidders and suppliers can invoke the legal provisions discussed above and challenge the award of tenders on the basis of unfairness or some other illegal or unconstitutional grounds. No doubt, the Constitution and the Public Procurement Act, if they are adhered to, can safeguard the integrity of the public procurement system in Zambia.

One of the strongest successes of Zambia's open contracting reform is its roll-out of the e-GP system and publication of OCDS data, which began in 2017. ZPPA makes reports publicly available on their e-procurement website. The e-GP system supports public procurement procedures through several sub-modules that provide various functions along the procurement process from tender to implementation, including tender notification, bid preparation and submission, online bid evaluation, contract awarding, placement of electronic purchase orders, electronic invoicing, and order tracking. The key benefits of e-GP span not only procurement entities, but also oversight institutions, civil society, and the private sector: time and cost savings from simplified tendering and data publication processes; improved oversight and transparency from more timely and complete publication of tender, award, and implementation data; and visibility of spending patterns by procuring entities.

Importantly, the technical teams at ZPPA and European Dynamics have the skills and capacity to publish high-quality data. What is published is highly usable and includes a detailed versioned history, which unlocks use cases around tracking amendments and other changes that occur throughout the contracting process. The data reviewed is technically valid, which is an important foundation for interoperable data and is essential for the data to be used in OCDS tools and scripts. The data also contains some of the key features which are important to users of contracting information, such as identifiers for organizations, common classifications for the items being procured and links to documents. Full change history is provided via the OCDS releases and records model which is a stand out feature of the implementation and is important for users who want to track change over time.

4.11.5 Stakeholder Identification and User Engagement

In Zambia, public procurement needs to be conducted based on International Standards. The observation within civil society is that there are high levels of corruption in the procurement processes through which Zambia has lost millions of Kwacha. This is attributed to the lack of

stakeholder involvement and participation in the procurement process in the country. Formation of CoST has greatly led to the improvement of procurement processes, especially in the construction sector. Different engagement activities are carried out with stakeholders based on their different engagement needs. In each phase of procurement, information on the project and its potential benefits and environmental and social impacts are disclosed in accordance with the international and national policy and helps to ensure that each stakeholder has been adequately informed about the projects and can contribute to their advancement. However, stakeholder engagement public procurement faces constraints such as low literacy and education levels, limited access to public procurement information, and poor capacity to participate effectively in the procurement process in Zambia.

It was reported in 2012 that procuring entities in the country do not consider the low capacity of the private sector to participate in public procurement. Private sector participation in the supply of goods, works and services to the public sector are minimal. Since local suppliers and contractors often do not have the capacity to raise credit and bid securities from local banks and insurance companies due to the high-interest rates and other conditions such as collateral, large proportion of contracts are awarded to foreign companies. The failure to engage the local stakeholders in the public procurement process affects the success of public projects in Zambia. There is low user involvement in the procurement process meaning that there is some dissatisfaction with the procurement process, top management does not support stakeholder participation in the procurement process and there is minimal stakeholder interaction as the procurement process is carried out. There has been some significant improvement in stakeholder engagement in the public procurement process. However, political interference has been adversely mentioned as one of the major factors that hinder open contracting in Zambia. However, ZPPA has also shown its commitment to working with actors across sectors to use data and drive results. ZPPA has organized several workshops in and outside Lusaka to share information with stakeholders and has introduced quarterly press briefings to share procurement information with the public. The press briefings have the potential to be used as opportunities to share data from the e-GP system with the public and point them to the data that is available on the portal.

Non-governmental commitment to and interest in open contracting is high. We saw that the private sector is eager to work with ZPPA to disseminate information to their members and encourage them to seek further information from the Procuring Entities with whom the private sector works. CSOs are now eager to consider how they can use open data to hold government accountable and demand more openness and improvements to the public procurement system. It was clear that all interviewees felt that there were opportunities to use open contracting data for their work. Procurement officials also showed a keen interest in using and disseminating OCDS data and reports among their members.

5. COMPARATIVE ANALYSIS OF COMPLIANCE TO OPEN CONTRACTING

This section analyses the different models in public procurement and how open the contracting processes are. The aspects that work well, those that do not work well and why will be discussed to help countries to adopt the most effective approaches for quicker implementation of open contracting. Case studies of successes and failures have also been highlighted throughout this section.

5.1 Country to Country comparison

The study countries compared very well in many aspects of public procurement principles and practices. They all have the requisite policies and legal frameworks; they all have elaborate institutional frameworks for public procurement. The table below shows the progress made by the study countries in implementing open contracting based on the views of the majority of the respondents and to some extent secondary literature.

Table 2: State of Public Procurement Openness per study country

Variable of interest	Cote d'Ivoire	Ghana	Kenya	Malawi	Nigeria	Senegal	South Africa	Tanzania	Uganda	Zambia
Presence of procurement policy and procurement Authority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monitoring of procurement laws by government agency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Laws supporting access to data and engagement of citizens in procurement processes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Requirement by law public procurement processes are Audited	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Availability of policies for data collection and validation at each stage of procurement process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
New initiatives aimed at increasing the level of openness in procurement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discussions on new/amendment of legislation to support Open contracting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- Yes

- No

All the study countries have elaborate laws that allow access to public procurement data and engagement of citizens in the procurement processes. However, there are different levels at which these laws are implemented and enforced in the countries under study. The disclosure of data varies from step to step in the procurement process from country to country. Our findings, however, revealed that there are preferred stages where stakeholders want to have procurement data availed. Awarding of contract stage data was most preferred by the majority of the respondents (39%) followed by the planning stage (21.7%) and then tendering and implementation stage (17.3%). The least (4.3%) preferred data was that relating to the prequalification of suppliers. Only 8.7% of the respondents preferred to have data from all the stages of procurement.

Most of the study countries are embracing new initiatives that are aimed at increasing openness in public procurement as well as developing new policies or amending existing ones to make them more robust in increasing openness, accountability and increasing participation of stakeholders. In South Africa for instance, stakeholders, led by the civil society organizations are pushing to review the public procurement policy. Currently, the draft Public Procurement Bill is in its final drafting stages (Dlamini, 2020). The COVID-19 pandemic has unveiled weaknesses in the procurement policies in almost all the countries studied. In Senegal, the president issued a Decree (Sanchez et al., 2020) that exempted all COVID-19 related procurements from following the set procurement code of practice. The pandemic challenges have raised issues that require a rethink of how to procure vital goods and services while at the same time ensuring accountability, transparency and citizens participation.

According to this study, 80% of the respondents interviewed in Cote d'Ivoire agreed that there were no restrictions on public access to procurement data (Fig 6). The government also made tremendous steps towards ensuring the accessibility of public procurement data by the citizens through the publication of procurement data in an online and structured, machine-readable format for external use (Fig 7). These steps confirm Cote d'Ivoire's commitment to embracing open contracting

Figure 6: Restrictions on public access to procurement data

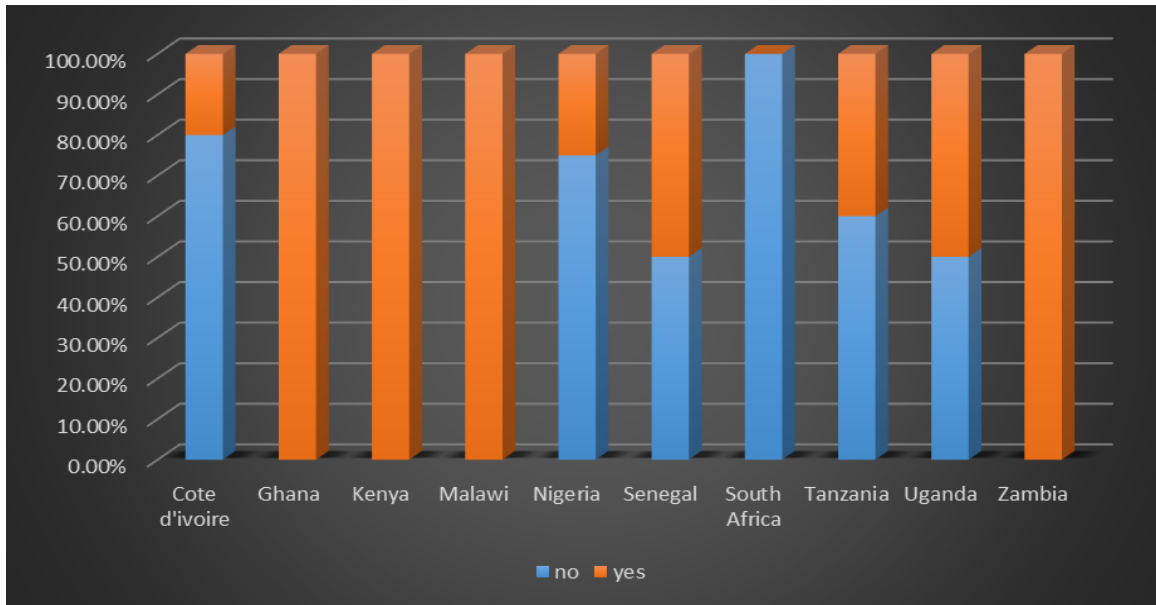
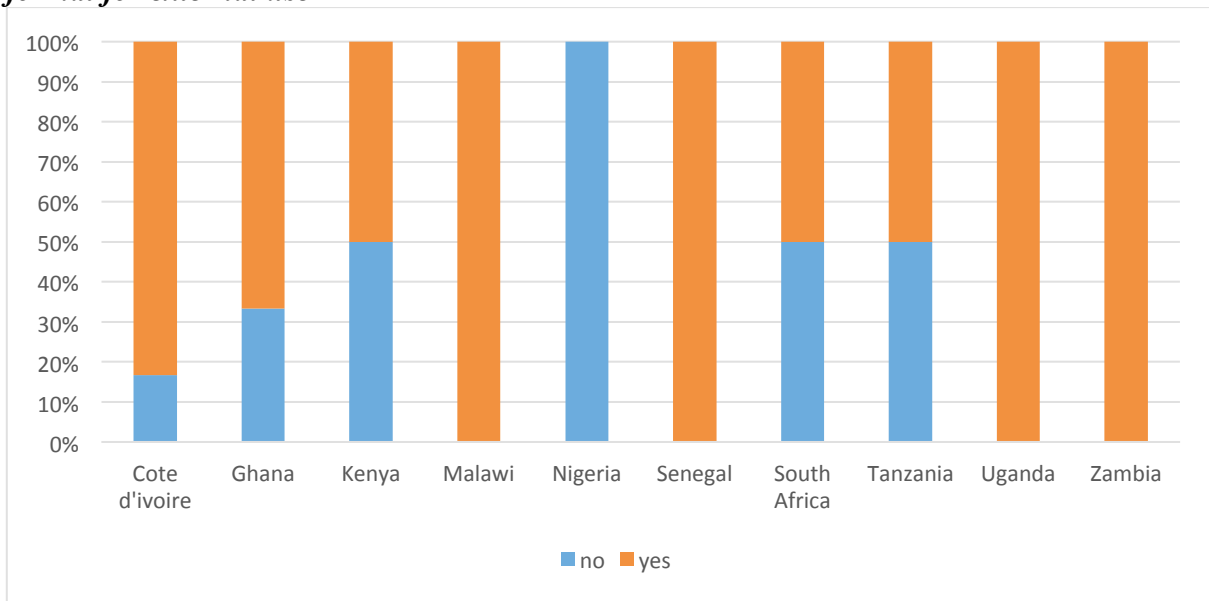


Figure 7: Publication of procurement data in an online and structured, machine-readable format for external use



5.2 Case Studies of Procurement Practices in the study countries

a) Kenya

Even though such initiatives have been a great milestone, the system has not been able to forestall problems such as uncontrolled contract variations, overpricing (buying at inflated prices), lack of a structured authorization of expenditure levels, lack of fair and transparent competition, inappropriate application of procurement methods, air supply (meaning the non-delivery of goods), uncontrolled low-value procurement of items, poor procurement records and documentation, excessive delays in the procurement process, conflict of interest among players in the procurement system, and lack of legal permanence and enforcement.

Despite existing legislation to curb graft, there have been rising concerns on the pervasiveness in the lack of accountability and transparency in the management of public resources. The apparent indifference by key oversight institutions such as the National Assembly has resulted in the slow pace in the examination of audit findings and prosecution of adversely mentioned cases. Consequently, the fight against corruption is yet to yield tangible results in terms of recovery of the public resources (Kerrow, 2016). A holistic approach that entails training and creation of awareness regarding economic losses attributable to graft to the members of the public and all the stakeholders is thus necessary for not only capacity building the institutions but also in enhancing policy formulations that promote national values and integrity. There are gaps between the country's procurement legislation requirements and their implementation in practice.

In Kenya, the 2011 reform created the Public Procurement Complaints Review and Appeal Board, later merged with the Administrative Review Board, to deal with complaints about procurement decisions. This also opened the possibility for bidders to monitor the procedures of the actual procuring entities and to subsequently file a complaint, thus creating more transparency in the procurement system. In Botswana, Ecuador, Hungary, Mongolia, Serbia, Togo and Uruguay a company would see that any person can file a complaint and thus trigger a suspension. But in Kenya, the Kyrgyz Republic, Peru, Tanzania and Zambia a company would see that automatic suspensions exist but that only those who submitted a bid can file a complaint (World Bank, 2016).

The introduction of the AGPO program in Kenya means that the government can now register and pre-qualify youth, women and persons with disabilities owned enterprises so that they can access government tenders and contracts (Box 1). Participation of the disadvantaged groups in procurement is designed to create employment, wealth and enhance economic growth for the country in line with its vision 2030. The disadvantaged groups are also encouraged to compete with other stakeholders for the rest of the remaining 70% of procurement opportunities offered by the government.

Box 1: AGPO Case Study in Kenya-Elgeyo Marakwet

Although Kenya's Access to Government Procurement Opportunities (AGPO) program requires that 30% of procurement opportunities be allocated to women, youth, and people with disabilities, these groups still face significant obstacles (related to finance and expertise) in the procurement market. Unfortunately, unethical contractors have taken advantage by using proxies to capitalize on the AGPO policy.

To address these issues, as part of its first OGP action plan in 2017, the county government held a training specifically for special interest groups—including women, youth, and people with disabilities—on how to access government procurement opportunities. This work continues in the current 2018–2020 action plan, in which the government commits to implement several policies aimed at further involving the public in the procurement process and, in particular, combating the abuse of AGPO so that special interest groups can take full advantage of procurement opportunities.

While disaggregating contracting data by women-owned businesses is a basic first step, further disaggregation of the data would provide additional insights. For example, disaggregating women-owned businesses by new versus existing businesses, or by other minority or protected class status could help measure the success of targeted outreach efforts over time. Similarly, it would be useful to track the quality of implementation, as well as the distribution of prime contracts versus subcontracts awarded to women. (See “Lessons from reformers: Inclusive contracting in Elgeyo-Marakwet, Kenya” on the previous page for an example of practice in OGP.)

To avoid abuses by firms that have received preferences or set-asides, limitations must be placed on their ability to subcontract work and assign or transfer their contracts to other firms. Without these limitations, there is the potential for firms that are eligible for preferential treatment to act as fronts for those that are not, which undermines the socioeconomic goals of the preferential procurement programmes.

In Box 2 below, the Elgeyo Marakwet County in Kenya worked with citizens to design gender-responsive policies that aimed to encourage women-owned businesses and CSOs to participate in public procurement.

Box 2: Inclusive contracting in Elgeyo Marakwet, Kenya

Beyond disclosing data on the participation of women-owned businesses in public procurement, governments could engage women's business groups and civil society more broadly to develop gender-responsive procurement policies. There are a variety of reforms that governments can implement to address the low involvement of women in public procurement, such as establishing mandatory goals or targets, instituting preferences for women-owned businesses, or carrying out capacity-building programs. Regardless of the policy, governments should actively collaborate with civil society—women's business groups in particular—to ensure that policies take into account the particular challenges that women entrepreneurs face when they try to access public procurement markets. Given that limited access to information is a significant barrier for women entrepreneurs, governments could also devote resources to raising awareness of tender opportunities and instructions on how to submit bids. While this information may already be online in public contracting platforms, sharing information directly with women's business organizations and other associations can be a more effective way of overcoming common hurdles, such as lack of internet access. (See “Lessons from reformers: Inclusive contracting in Elgeyo-Marakwet, Kenya” and “Lessons from reformers: Using data on women-owned businesses in Albania” for examples of practice in OGP.)

b) Côte d'Ivoire

In Côte d'Ivoire, the supreme court rightly ruled that the matters relating to procurement need to be handled by the relevant bodies within the procurement authorities as is the case for DRACI (Box 3).

Box 3: Arbitration procedure for dispute regarding tender awards in Cote d'Ivoire

There has been a recent important court decision in Côte d'Ivoire, namely DRAGON Company of Cote d'Ivoire (DRACI) v National Public Procurement Regulatory Authority (ANRMP) before the Administrative Chamber of the Supreme Court.

Further to a tender, DRACI won a government contract. INTERCOR Company filed a claim before the awarding authority in order to cancel the award decision of the government contract. The authority rejected INTERCOR's request of cancellation. INTERCOR appealed before the ANRMP, which cancelled the award decision. DRACI brought the case before the Administrative Chamber of the Supreme Court seeking the overruling of the ANRMP's decision.

Solution of the Administrative Chamber of the Supreme Court

After review of the case, the Administrative Chamber of the Supreme Court pointed out that DRACI should have asked the ANRMP to review its decision before filing a lawsuit before the Supreme Court, as provided by the Government Procurement Code.

c) Ghana

In Ghana, the Ghana Health Service holds a suppliers' forum once a year to educate their suppliers - especially those who have missed out on the tendering process (Box 4). In the past, the PPA also held an annual review forum that was free for participants. Since 2015, the

PPA has charged a fee (GHC 1000) for participation, which has discouraged participation (by multiple stakeholders) in the annual review of procurement processes.

Box 4: Efforts of Ghana Anti-Corruption Coalition in promoting Open Contracting in Ghana

The Ghana Anti-Corruption Coalition (GACC), has been holding dialogues with stakeholders on Open Contracting. The dialogues are expected to provide for a multi-stakeholder perspective on the effect of open contracting on the nation's development, as well as outline strategies in promoting open contracting in the country. The Head of Human Resource and Administration at the Public Procurement Authority (PPA) Ms. Yvonne Vanderpuye, said Government spent over 70% of its budget (after emoluments) on procurement of goods, works and services every year. These included the procurement of simple items like syringes for hospitals, books for school of roads, bridges, dams and the engagement of consultants for various services. She explained that the provision of all these were funded by the taxes and monies that belonged to all Ghanaians and foreign residents in the country.

According to an OECD Reports, transparent procurement procedures could contribute to a more efficient allocation of resources through increased competition, higher quality procurement and budgetary savings for government and tax payers. She added that efficient and transparent procedures could largely assist local suppliers to improve their competencies as they competed for public contracts, thereby making them more competitive.

"Transparent procurement procedures could also reduce bribery and corruption practices in Public Sector Procurement" Miss Vanderpuye indicated. According to Ms Vanderpuye, among every group of persons who handled funds and money, 5% each was completely incorruptible or was very corrupt while 90% are in the middle, yet to make a determination to be corrupt or otherwise.

She said this explained the need for systems to protect this 90% from being corrupted while they strategized to deal with the 5% corrupt cases, adding that the only way of ensuring the protection of this 90% was to strengthen institutions and for civil society to monitor all procurements.

Ms Florence Dennis, Executive Secretary of the Coalition said government spends between 60 to 70 per cent of its expenditure on procurement where contracts are signed with providers for the delivery of basic goods and services.

Ms Dennis said information to such contracts are either not made public or the contracts are poorly managed, preventing the citizenry from deriving benefits from these huge investments. Ms Dennis noted that open contracting sought to promote contract disclosure and participation in public contracting to trigger better contract performance and improved development outcomes. Open contracting would help increase community participation in selecting and monitoring the procurement process to the point of contract award, and subsequently contract execution until project closure.

d) Malawi

Malawi has a significant shortage of trained staff within the civil service, combined with the persistence of hierarchical modes of working, limited accountability and a culture of frequent disregard of rules had made it impossible to implement the “best practice” model of decentralised procurement. However, Malawi has demonstrated its commitment to embrace open contracting through collaboration with institutions such as CoST that has made efforts towards the realization of the benefits of open contracting in the country as shown in Box 5 below.

Box 5: A case of open contracting in Malawi

Construction Sector Transparency (CoST) Malawi established several channels for citizens to share their concerns about public infrastructure projects. An SMS messaging service and public radio debates allow citizens to share feedback and question decision-makers. CoST Malawi also made an effort to engage the media through training and “Media Awards” that recognize excellent reporting on key issues in public infrastructure. As for impacts, CoST Malawi helped to terminate a contract on a public road that included poor quality work, as well as a price increase. This outcome mirrors those that CoST has achieved elsewhere, such as ensuring that a defective bridge in Ukraine was repaired and helping to stop environmental pollution on a construction site in Honduras.

e) Nigeria

In Nigeria, the government decided to prioritize reforms in key ministries and committed to work with other stakeholders to implement the OCDS (Box 6).

Box 6: Leveraging OGP to implement the OCDS in Nigeria

After joining OGP in 2016, the government of Nigeria made a commitment in its first OGP action plan (2017–2019) to adopt the OCDS in its public procurement systems. The government decided to prioritize reforms in key ministries, including Power, Transportation, Works, Agriculture, Health, Education, Niger Delta, Environment, and Solid Minerals. Importantly, the government committed not only to disclose information in OCDS format, but also to establish a multi-stakeholder procurement council and train civil society organizations, the private sector, and the media on the use of the new platform as a way of improving citizen engagement in the procurement process. This has improved the state of open contracting in Nigeria in line with OCDS regulations.

In Nigeria, the Budeshi (Box 7) is a living platform that demonstrates the utility of the (OCDS), and it is based on the latest version of the OCDS schema at every given point. Nigeria has also been pushing for beneficial ownership transparency in procurement and in the extractives sector. The country has legal provisions dating back to 2004 that partly address beneficial ownership. There is also a closed register of companies. However, many of the names cited are not the real owners and there is no mechanism to verify them or sanctions

for falsifying information. As a resource-rich country that has been plagued by grand corruption, beneficial ownership transparency has emerged as an important tool. For example, Global Witness helped to uncover shell companies that have since been implicated in the alleged theft of US\$1.1 billion in revenues from the awarding of an oil field to a Nigerian company, Malabu Oil and Gas, which was actually owned by a former oil minister. Currently, two global oil companies, ENI and Shell, are standing trial with others in Italy over allegations of corruption related to this deal, which is estimated to have cost Nigeria US\$6 billion in potential revenues. Overall, it has been estimated that US\$15.7 billion in illicit flows leave the country's financial system every year.

Box 7: The Budeshi Platform in Nigeria

By working very closely within the Open Contracting Community, and with a commitment to research, Budeshi seeks to continuously respond to local user needs for engaging and interacting with [OCDS] data; thus, contributing to the adoption and advancement of the OCDS. On a broader scale, Budeshi which translates to “Open It” makes the case for what we stand to achieve by collectively deploying “Joined-up Data Standards” rather than every data-owning and controlling agency working in silos. The Budeshi platform is primarily being used to demonstrate to public institutions the utility of using uniform data standards to publish and report information across stages in the procurement value chain. Budeshi gives users access to procurement data such as budget amounts, contract amounts, contractor details, project location, e.t.c from over 90 Ministries, Departments and Agencies (MDAs) in Nigeria at the federal level. Information uploaded on the portal is obtained through freedom of information requests sent to these MDAs in line with the Freedom of Information Act (2011).

f) Uganda

In Uganda, the Africa Freedom of Information Centre (AFIC) a Pan-African non-for-profit organization based in Kampala. Its membership is civil society organization and resource centre that promotes the right of access to information and freedom of expression across Africa through comparative research, capacity strengthening, technical support to national advocacy as well as leading continental and global advocacy, monitoring treaty compliance and implementation, facilitating information-sharing and network development. It has a membership of 40 organisations, located across 22 African countries. AFIC has partnered with PPDA in the publication of procurement data using the OCDS, a standardized, open-format data model that facilitates disclosure of procurement data and relevant documents at all stages of the contracting process. This has enhanced the process of adopting an e-Procurement system with the potential to improve data collection, compliance with procurement regulations and enhance data publication efforts in Uganda.

The Ugandan government has proposed changes to the Income Tax (Amendment) Bill¹⁶, 2019 in order to clearly define a beneficial owner. Is adopted, a beneficial owner will be

¹⁶ <https://ulii.org/ug/legislation/bill/2019/6>

referred to as “a natural person who owns or has a controlling interest over a legal person other than an individual, and who exercises control over the management and policies of a legal person or legal arrangement directly or indirectly whether through ownership or voting securities, by contract or otherwise.”

g) Tanzania

In Tanzania, the extractives industry has taken the lead in incorporating the concept of beneficial ownership. As a signatory to the Extractive Industries Transparency Initiative (EITI), it should ensure that mining companies, including those with oil and gas rights, make disclosure of the natural persons who directly or indirectly own, control and benefit from them.

Box 8: Beneficial Ownership in the Extractive Industry in Tanzania

The Extractive Industries Transparency Initiative (EITI) requires all EITI implementing countries to ensure that by 2020 all companies that are applying or holding mining, oil and gas rights comply and disclose the identity of the individuals who directly or indirectly own, control and economically benefit from a company regardless of their political status. Despite this positive development, several countries face a challenge of defining what beneficial ownership is and what metrics should be included or excluded in providing a meaning of the term. For instance, towards establishment of Beneficial Ownership (BO) in Ghana, there was a major disagreement between stakeholders on the definition of Politically Exposed Persons (PEP), and whether family members who may not necessarily approve of the PEPs’ political role should be compelled to disclose their business interest. Several recommendations have been provided to minimize the challenge, one among them being to conduct BO disclosure meetings with stakeholders to propose definitions of BO and Politically Exposed Persons, as well as the level of details to be disclosed and how to approach the disclosure.

On 12th May 2016, during the anti-corruption summit in London, Prime Minister of The United Republic of Tanzania Hon. Kassim Majaliwa assured stakeholders that the government will ensure that beneficial ownership information of the extractive companies is publicly available through a central register by the year 2020. Hon. Majaliwa further agreed to establish bilateral arrangements for information sharing among partner countries.

Tanzania being one of the EITI implementing states, has taken a number of initiatives including undertaking a pilot study in 2017 for beneficial ownership disclosure and formulating and amending a number of laws and regulations that govern the sector to cover issues in relation to beneficial ownership disclosure.

h) South Africa

The Black Economic Empowerment (BEE) is one of the great things that happened in South Africa to increase the participation of all in procurement opportunities. The BEE is an integration programme launched by the South African government to reconcile South Africans and redress the inequalities of Apartheid. For this exercise businesses are awarded points which they can claim on their BBEE certificate. However there have been challenges in the implementation as has been described in Box 9.

Box 9: Challenges of the broad-based black economic empowerment Act of South Africa

The South African government adopted the provision of BEE to empower all historically disadvantaged people rather than only a small group of black investors. To this end, it adopted the Broad-Based Black Economic Empowerment Act (BBBEEA), which calls for expanded opportunities for workers and smaller enterprises as well as more representative ownership and management. BEE provisions have, however, in many instances failed to ensure a broad-based approach, instead imposing significant costs on the economy without supporting employment creation or growth.

The present BEE model remains excessively focused on transactions that involve existing assets and which benefit a relatively small number of individuals. The following shortcomings have emerged in the implementation of BEE: First, ownership and senior management issues receive disproportionate emphasis. The unintended consequences of this trend include 'fronting', speculation and tender abuse. Secondly, the regulations do not adequately incentivise employment creation, support for small enterprises and local procurement. The preferential procurement regulations aggravate this situation by privileging ownership over local production. Finally, the BBBEE regulations penalise public entities as suppliers. The democratic state owns public entities on behalf of its people yet the regulations do not count them as 'black empowered' (Zuma, 2009).

5.3 Challenges of and opportunities for Open Contracting

5.3.1 Challenges of open contracting

a) Lack of user engagement

In most of the study countries, there were no clear mechanisms for user identification and participatory engagement in public procurement processes. It was established that in some country's stakeholders were just identified but not actively involved in the procurement process as they should be. Special interest groups in the communities were not engaged in the procurement process, even though some policies existed in many countries that emphasize the need to have them included. One of the reasons stated in some of the countries where there were no inclusions of special interest groups for engagement is that they did not meet the set procurement threshold/requirements. For example, in road construction, procuring entities insisted that bidders must demonstrate the existence of some fixed assets like trucks that the less privileged/special interest group cannot afford. This means the well financially established cream the society benefits from such contracts as the poor remain poor.

b) Corruption in procurement processes

Corruption has been adversely mentioned in nearly all the study countries. Many nations have lost public money to powerful, influential and unscrupulous contractors who make themselves rich at the expense of their countries across the continent. This was noted to be a threat to the economic development of countries involved. Some of the factors that

exacerbated corruption in the study countries included lack of procurement laws/policies and lack of powers for the procurement regulatory bodies to prosecute those who break the procurement laws. Another loophole enhancing corruption is lack of e-procurement system to help protect public fund lost to corrupt agencies.

c) Political Will

Public procurement is considered an inherently politically sensitive activity. Pillary (2004) argues that senior officials and political leaders use public office for private gain and this has weakened the motivation to remain honest. Raymond (2008) also opined that ministers and political parties receive clandestine payments in government procurement. This ultimately interferes with the procurement process and constrains compliance. Lodhia and Burritt (2004), recognized that social and political influences have an important bearing on public sector reform. In developing countries; one of the major obstacles to the procurement system is ministerial interference with the tender process where ministers intervene and influence tender awards. The threat of being suspended or fired has in many cases intimidated public officers into obeying illegal ministerial directives leading to non-compliance (Akech, 2005). In support of this, Hui et al. (2011) asserted that interference from the local politicians, business persons, members of parliament and very influential top management individuals has interrupted the procurement processes and deterred transparency. Political influence in public sector management limits information, transparency and favour are extended without management being held to account. Coviello and Gagliarducci (2010) also revealed that politicians influence public procurement through non-compliance acts such as collusion. It, therefore, implies that political interference harms public procurement compliance. If procurement laws and regulations are not enforced to the letter, issues of corruption will continue to cover headlines in both the print and electronic media. Wilson (2004) argued that in a situation where there are huge system loopholes coupled with laxity in legal and administrative systems, compounded by non-transparency and extensive discretionary powers at the hands of politicians, there needs to be concerted effort to ensure strict enforcement of laws to achieve the purpose for which those laws were enacted. Studies in Uganda, Tanzania and Kenya reveal that corruption in public procurement has mainly been through hidden violation of laid down procurement rules (Transparency International, 2009). Low detection of breaches of the law (Kanaga, 1999), weak enforcement of rules (Larmour, 2006) and regulations will also strengthen the hands of wrongdoers to misapply the law with impunity. According to Omagbon (2016), Local Governments' level of compliance with the public procurement Act in Nigeria was at its lowest end. The reason for this low-level compliance was due to poor media publicity of local government procurement and poor display of professionalism in the procurement process by the local government procurement officers. This was further reinforced by the considerable political interference with the procurement process in the Local Government.

d) Complexity of the reform

Donors should be careful when requiring that only their own rules and conditions are followed. Lawson (2012) explains that this may have happened in Burkina Faso and Malawi: governments were presented with a limited range of options by development partners and

‘were not encouraged either to consult or to reflect more widely on the choice of reform models’ with the result that the reformed system is not fully functional because of capacity shortfalls. Best practices being pushed on a country may not be appropriate to the institutional context, especially in the area of procurement. As a result, different types of interventions are insufficiently considered in light of the local context (e.g. Fölscher et al., 2012; Lawson, 2012). This may lead to a range of problems that relate to the challenges described above, such as a lack of skilled procurement staff to carry out all the work laid out in the new rules. Also, reforms aim at an ultimate state (longer-term), whereas donor-funded projects focus on the shorter term

e) Low sense of urgency and/or limited local support

Lack of urgency to public procurement reform, resulting in the delayed or inadequate implementation of comprehensive reform plans. This lack of urgency may find its origin at the governmental level. Sometimes, procurement reform is not given equal urgency compared with other interventions that take place at the same time (Fölscher et al., 2012). In the case of Malawi, procurement reform did receive donor support but very little funding from the governmental development budget. Fölscher et al. (2012) raised questions about governmental commitment regarding planned changes in the Malawian procurement function. As a result of what seemed to look like reduced urgency, slow progress was made establishing and filling posts for a common procurement service across government. Ameyaw et al. (2012) noted that ‘the principal challenge in assessing political will is the need to distinguish between reform approaches that are intentionally superficial and designed only to bolster the image of political leaders and substantive efforts that are based on strategies to create change’. Lack of local support can also result from a misfit with the local context.

f) Payments of suppliers

According to the World Bank report (2016) a third of economies surveyed a company has to ask for the inclusion of payment terms in the contract. Their procurement systems do not stipulate a payment timeline and do not require that payment terms be in the contract. But in Kenya, the procuring entity has to process the payment in 30 days if the said company were owned by youths, women or persons with disabilities. In some economies procuring entities are not requested to respect a particular deadline to pay their suppliers, unless payment terms are specified in the procurement contract. In Senegal, a company receives payment within 45 days of submitting its request. In Côte d’Ivoire, Nigeria and Tanzania payment can be received after 60 calendar days.

g) Conflict of Interest

Procurement officials must be immediately excluded from participating in the procurement as soon as they have a conflict of interest. This prevents officials from potentially influencing the process, and furthers the perception of an independent procuring entity. In Tanzania, nothing in the laws and regulations prevents such officials from being involved in the bid evaluation committee.

h) Reporting officials-Whistle-blowers’ protection

A crucial aspect of a functioning reporting system is protecting procurement officials who report misconduct. When there are no sanctions against others who may retaliate or options for protecting a reporting official's identity, whistle-blowers have no incentive to come forward, so accountability suffers. Of the countries that provide the means to report for example in Nigeria require whistle-blowers to provide their ID number.

i) Complementary reforms needed

Other difficulties that increase the complexity of reform have to do with parallel reforms that take place or need to take place in order to support public procurement reform. 'External' reforms may be necessary to achieve the objectives of the public procurement reform, such as in The Gambia, where the World Bank emphasizes that the private banking system needs to facilitate suppliers by issuing bid and performance securities at reasonable costs (World Bank, 2005). Similarly, Evenett and Hoekman (2005) find that, when countries consider the implementation of e-procurement, they need to realise that these innovations will entail additional costs related to infrastructure, training of procurement staff as well as suppliers, possible changes in telecommunications regulations, etc. When a new procurement law aims to reduce levels of corruption, additional steps will have to be taken to combat corruption—country-wide and not only in the procurement sector.

j) Private Sector is not ready

A different perspective on lack of capacity is found on the supplier side. To have a functional procurement system, the private sector must be capable and vibrant as a competent supplier as well as in terms of being a competent bidder (World Bank, 2012). Local suppliers are not capable of competing for major infrastructure projects because they are not very well organised, financially solid and/or technical capabilities. Suppliers' own procurement capacities may also be low. The private sector may not be ready to go along with the new rules, and additional reforms specifically aimed at the private sector are needed to align supply and tender capability with the new situation.

5.3.2 Opportunities for open contracting

a) Increasing awareness creation

There is need to raise awareness among citizens and CSOs about the availability and the usefulness of procurement data/information. Citizens and civil society actors should be more informed of the procurement data available online and, most importantly, the participatory mechanisms (online complaints and denunciations) put in place, so they can better play their role as sentinels for better use of public funds. Regulations should also be revised in order to introduce open contracting principles and increase citizens' engagement during procurement planning, tendering, award and implementation. More stakeholders are increasingly interested in participating in public procurement processes to ensure that they are transparent and ensure value for money. The media particularly has a vital role to play in relaying information to the public.

b) Increased demand for Transparency and Accountability

Different countries across the globe have adopted various tools to reduce corruption while reinforcing competition and efficiency in procurement procedures. Over 40 countries have commitments between civil society and government to make government procurement more open through the Open Government Partnership. Several countries including Colombia, Canada, Mexico and Romania are implementing the Open Contracting principles. Colombia, Georgia, Korea, Slovakia and the United Kingdom are innovatively using technology to increase the transparency and effectiveness of procurement processes through online platforms. Mongolia, Mexico and the Philippines have institutionalized roles for civil society participation and monitoring of public contracting in the legal and regulatory framework. Guinea and Liberia have created centralized portals for the disclosure of contracts related to extractive industries. Civil society organizations are officially monitoring public contracts in Afghanistan, Costa Rica, Dominican Republic, Ghana, Lithuania, Mongolia, Montenegro, Nigeria and Slovakia. Several governments have adopted integrity pacts to instil integrity in public procurement when dealing with private companies. Integrity Pacts are essentially an agreement between the government agency offering a contract and the companies bidding for it that they will abstain from bribery, collusion and other corrupt practises for the extent of the contract. To ensure accountability, Integrity Pacts also include a monitoring system typically led by civil society groups. Only companies that certify that they meet anti-corruption commitments should be eligible for contract awards. Development partners on the other hand are enhancing open contracting by setting up strict conditions for grants and loans. Borrowers are required to fulfil certain conditions in order to receive funds for their projects. This may include enactment of laws, policies and procedures as well as signing pacts that have strict clauses for transparency and accountability.

The EITI requires all EITI implementing countries to ensure that by 2020 all companies that are applying or holding mining, oil and gas rights comply and disclose the identity of the individuals who directly or indirectly own, control and economically benefit from a company regardless of their political status. As for now, more than 20 EITI countries are working hard to include beneficial ownership in their EITI related reports.

c) Increased technological innovations in public procurement

Achieving all the principles of open contracting through a manual process is quite cumbersome and time-consuming. However, most of the leading procurement solutions that are available in the market today, provide these to a very large extent. There may exist the need to customize or configure the applications to exactly meet the unique process requirements of each specific country. Innovative adaptations to current procurement systems can help attain sustainable development goals, resulting in more and better-quality public goods and services to reach those in need. Specifically, innovation can increase transparency and reduce government corruption in procurement. With the ever-increasing quality and availability of information and communication technologies, it is becoming apparent that e-procurement is a comprehensive, cost-effective solution to meet these ends, especially in developing countries.

6. CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Public procurement reforms among African countries are not significantly different in terms of stages of reform, components of reform strategies, and implementation. In most African countries, public procurement reforms have been preceded by assessments of the existing system, either by consultants or by external donor agencies particularly the World Bank, AfDB, Hivos, Open Contracting Partnership, Transparency International among others through country procurement reports. There has been increasing interest across Africa to open up procurement systems and embrace open contracting, a system of procurement that allows disclosure of procurement data at all stages of procurement and allows for engagement and feedback from other stakeholders. This has been brought about by the obvious benefits that come with its full implementation. Many African countries have been making significant progress towards implementing open contracting by enacting procurement policies that are in tandem with most of the principles of open contracting. Increasingly, African countries are putting in place institutional frameworks that are geared towards enacting laws and regulating procurement procedures in their countries. However, these institutional frameworks have not fully embraced the participation of other stakeholders in the whole procurement process. Challenges have emerged that range from untimely reporting or release of procurement data, improper data management, lack of compliance monitoring, and proactive disclosure has remained a major stumbling block due to a lack of user-friendly digital tools for procurement. Some countries have embraced e-procurement systems but there are capacity challenges across the various spectra of stakeholders hence, defeating the need to have them meaningfully participate in the entire processes. Procurement entities across the study countries do not proactively disclose all procurement data at all stages of procurement, most notably at the stages involving payment, service delivery (implementation) and the evaluation reports. Progress has significantly been made by some countries towards engaging various user groups (such as civil society, media and private sector) in the procurement processes as well as in the procurement authorities. These have been seen to help in identifying key gaps in existing data collection, have informed efforts to improve data systems (including the design of e-procurement systems) and have provided critical input in reforms and review of procurement policies and practices. Countries that never embraced the engagement of various user groups like CSO and even citizens in their procurement systems reported high losses of public money due to corruption.

6.2 Recommendations

The following recommendations are informed by the study conducted in the ten (10) countries. These recommendations cut across the four (4) main areas: Policy and legal frameworks, Institutional Arrangements, Technical Assessment of Procurement Systems and Stakeholder Identification and User Engagement.

This study recommends:

a) Strengthening the enforcement of existing policies and Institutional frameworks:

Considering that most countries have existing policies and institutional frameworks on procurement and open contracting system, it becomes imperative that the gap or failure in achieving desired targets is in implementation and enforcement.

- To achieve sustained impact, it is recommended that the independence of the procurement and regulatory authorities be ensured and devoid of interference from politicians and other senior civil servants.
- To ensure transparency and add value to the system individuals from other non-government actors need to be integrated into the institutional setup and at all stages in the open contracting process made open to the citizens.
- There is need to provide strong enforcement mechanisms, to facilitate compliance with the laws. This may include developing rewards and sanctions mechanisms in open contracting. A reward and sanction system will encourage and or deter people within the procurement entities or regulatory authorities to conform with the open contracting initiative or face the consequences of not conforming to the laid down principles and practices.
- The study also recommends monitoring, evaluation and regular review of the procurement policies and its implementation to appraise the process to ensure the desired objectives is achieved. There should be continuous monitoring, evaluation, learning and reporting (MELR) in Open Contracting. Systems need to be put in place to aid monitoring, evaluation, learning and reporting in every step of public procurement. Reports from the MELR should be utilized in adjusting and improving the system for efficiency and effectiveness.
- Where the existing policies and institutional frameworks on procurement do not conform with international best practices, there is need to kick-start a review process of such policies and frameworks. In reviewing such policies and frameworks, efforts should be made to ensure citizens participation and inclusion of all critical actors in the process. Workable models will need to be adapted based on the local content and contexts to ensure sustainability and easy implementation of such new policies and institutional frameworks. Develop a framework upon which procurement policies are aligned with other existing statutory policies so that they are not only in conflict at any one time but also allow for flexibility in its application whenever the need arises.
- Accord procurement officials and those all involved in the procurement cycle autonomy to make independent and professional decisions and be accountable to any decisions they make. This will eliminate or minimize political interference when implementing procurement policies.

- Develop an inclusive code of conduct that will streamline and guide not only procurement professionals but also all other stakeholders involved in the procurement processes.
- The policymakers should revisit the manner in which public procurement policies are structured in order to make them clearer and more connected for better application by the relevant stakeholders.

b) Capacity building and strengthening of relevant actors across the open contracting value chain:

The study revealed that there are substantial capacity gaps in the staff of the regulatory authorities, public sector, media, private sector as well as in civil society especially in the ability to decipher open contracting data for use in various purposes. It is therefore recommended that constant training and retooling to ensure that all the actors are up to date with the new emerging technologies, tools and trends in public procurement.

- Ensure that adequate training is provided for all employees and stakeholders involved in implementing procurement policies. Lack of training can act as a powerful restraint to effective policy implementation and overall organizational success. Training issues include resistance to change, fear of technology, rapidly changing technology, retaining quality employees, work ethics, decision-making and individual/organizational IT expertise.
- In order to encourage meaningful engagement of all stakeholders, there is need to initiate strong advocacy campaigns to sensitize the public and educate them on their rights in public procurement processes for purposes of ensuring they are open and align to international standards. The media/infomediaries can play a big and important role here especially through the use of innovative communication tools that are easily interoperable by the different spectra of stakeholders.

c) Increase investments in Open Contracting infrastructure:

Many technologies and systems have been developed to ease public procurement as well as minimize loopholes in the process. Caution should, however, be taken to ensure that the systems adopted do not impede openness and access to the procurement data across all the stages. E-procurement systems have been used in different countries and the results are encouraging. There is need to ensure a steady transition from manual to digital open contracting systems across board from planning to implementation. This investment in digital infrastructure for public procurement data collection, processing, sharing, storage and archiving should be deliberately done to enhance the openness of the process.

- Identify, procure and implement technologies that will help departments accomplish their goals most effectively and efficiently.

- There is need to fully support the adoption and implementation of the OCDS in African countries to support the opening up public procurement and ease up the availability of data for various uses. The OCDS systems in public procurement have been very successfully used elsewhere in the world.
- More robust mechanisms should be implemented in e-procurement to enhance its functionalities at all the stages of the public procurement cycle. E-procurement is less prone to manipulation. Despite the adoption of e-procurement by most Ministries, Departments and Agencies, the strategy has not been completely effective especially at the post-award stage in relation to contract management, riddled with supplier breaches in terms of product quality, price variations, adjustments to timelines and delivery of sub-standard work.

d) Ensure inclusivity and stakeholder engagements across all the procurement steps:

Participation in the procurement processes is a major concern in the study countries. Efforts need to be made to ensure all open contracting systems are as inclusive as possible, open and transparent. This should target having all stakeholders in the procurement authorities as well as in all committees in the procurement chain. The engagements should cut across the public sector, private sector, civil society, media, women, youth, vulnerable, girls, people living with disability, among other special groups that may emerge in the respective countries.

- Initiatives such as the AGPO program as implemented in Kenya, the preferential preservation procurement in South Africa among others need to be encouraged and adopted by other countries that have not yet developed them. Loopholes that may hinder the achievement of the goals of these initiatives need to be identified and closed. Such initiatives need to be independent and empowered in their functions to lockout political interference that has been adversely mentioned as the major barrier to achieving the goal of open contracting in many countries.
- Timely sharing of procurement data will provide an opportunity to get inputs from all stakeholders at every step of open contracting. This will ensure that the feedback loop of open contracting will be complete and the inputs will be used to improve the process and sustain public trust and accountability.

e) Adjust the bidding thresholds to ensure an all-inclusive participation

In as much as there is need to achieve high stakeholders' engagement in the public procurement process to enhance open contracting, there is also need to review bidding thresholds set by the procuring entities. These entities always set their bidding requirements so high that some sections of stakeholders are unable to meet. Such stakeholders include the handicapped, the youth and the poor. Such standards should be lowered to accommodate a good percentage of the stakeholders.

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Annex II: Data Collection Tools

QUESTIONNAIRE

African Technology Policy Studies Network (ATPS) in partnership with Hivos have teamed up to assess the levels of progress, innovations, collaborations and typologies of reforms that can be replicated and scaled up to advance open contracting in Africa. Specifically, we aim to Conduct an in-depth reviews of the state of open contracting in ten (10) African countries (Kenya, Uganda, Tanzania, Nigeria, Zambia, Malawi, Ghana, Senegal, Côte d’Ivoire and South Africa); comparative the state of open contracting in the selected African countries to identify and document what works, what doesn’t work and why in the implementation of open contracting in the respective countries; and lobby and advocate knowledge products for the uptake of open contracting in African countries.

We are therefore requesting you as a key stakeholder to kindly provide us with the information requested in the questionnaire below. This information will only be used for the purposes described above and your personal data will not be used without your consent.

1. Respondent/stakeholder specific details

- 1.1. Name of respondent (optional): Click here to enter text.
- 1.2. Phone number: Click here to enter text.
- 1.3. Email address: Click here to enter text.
- 1.4. Skype ID/Address Click here to enter text.
- 1.5. Sex and disability disaggregation
Male Female Other Please specify if other.....
Disability Status: With disability Without disability
- 1.6. Age:
18-34 35-40 41-50 51-60 61+
- 1.7. Name of organization you work in: Click here to enter text.
- 1.8. Country: Click here to enter text.
- 1.9. Category of organization/respondent
 - a. Policymaker/Government Official/Legislator/County Official
 - b. Public research and training institution
 - c. Private research and training institution
 - d. Academic institution
 - e. Development organization
 - f. Non-Governmental Organization (NGO)/Civil Society Actor
 - g. Community Based Organization (CBO)
 - h. Faith Based Organization (FBO)
 - i. Trader, Producer/producer organization
(Manufacturer, processor, input supplier, exporter, etc.)
 - j. Consumer/consumer organization
 - k. Any other (please specify e.g Consultancy) Click here to enter text.
- 1.10. Designation: Click here to enter text.
- 1.11. Number of years worked in the organization: Click here to enter text.

SECTION 1: INSTITUTIONAL ARRANGEMENT

Procurement Implementation

1a. Describe the government institutions that are responsible for public procurement and their hierarchy/relationships. In particular, which governmental entities are responsible for conducting procurement and which for overseeing procurement management and implementation?

[Click here to enter text.](#)

1b. A line ministry wishes to procure computers. What is the procurement process from planning to delivery?

[Click here to enter text.](#)

Procurement Oversight

1c. Is there a clear government agency/body that has primary responsibility for the creation, monitoring, and enforcement of procurement rules?

Yes No Explain:

[Click here to enter text.](#)

1d. Does this government agency/body have sufficient legal authority, political weight and competency to effectively lead the procurement process and implement a reform agenda?

Yes No Explain:

[Click here to enter text.](#)

1e. Can you describe the ICT skills and resources/infrastructure (people, servers, software) available to leading agencies/bodies (see 3a) for implementation and maintenance of systems for procurement data collection and/or disclosure? Do you feel these resources are sufficient for their needs and why?

[Click here to enter text.](#)

Interagency Relationships

1f. Are there inter-agency mechanisms for coordinating processes for procurement data collection and/or disclosure? Yes No If yes, please describe:

[Click here to enter text.](#)

Sub-National Procurement

1g. Do sub-national government entities report procurement data through the same channels as central government agencies? Yes No Explain:

[Click here to enter text.](#)

Please describe the relationship between sub-national procurement entities and national entities.

[Click here to enter text.](#)

1h. Describe the procurement process of a local/county government aiming to procure street lights from planning to delivery if this process differs from the national level process described above.

[Click here to enter text.](#)

1i. Do citizens and CSOs give any opinions or feedback on the effectiveness and adequacy of this existing institutional arrangements? Yes No Explain:

[Click here to enter text.](#)

What is the frequency of this review? Are citizens part of the review? Yes No If yes, how do citizens participate?

[Click here to enter text.](#)

What challenges have been experienced in relation to citizen participation?

[Click here to enter text.](#)

SECTION 2: LEGAL FRAMEWORK

Procurement Laws/Regulations

2a. Please identify and describe the legal texts/sections/articles that set forth the regulations governing the procurement process?

[Click here to enter text.](#)

2b. Do procurement laws/regulations provide clear guidance on the timeline for publication of data at each stage of the procurement process? *(Note, for example, requirements related to bid period, evaluation of bids (evaluation period), contract negotiation, etc.)*

[Click here to enter text.](#)

2c. Which procurement methods are provided for within the legal code?

[Click here to enter text.](#)

2c.1 Which of these procurement methods are used most frequently?

[Click here to enter text.](#)

2c.2 Are international companies permitted to participate under the rules of these procurement methods?

Yes No Explain

[Click here to enter text.](#)

2d. Are award criteria specified by law? *(Procuring entities typically specify if a supplier will be selected in relation to specific award criteria, such as: lowest cost, best value, best proposal, etc.)*

Yes No Explain

[Click here to enter text.](#)

2e. Are there exceptions to the general laws/regulations on procurement related to specific sectors (e.g. oil, defense, other extractives, etc.) or procurement methods or types (e.g. public private partnerships, sole source contracts, etc.)? Yes No Explain

[Click here to enter text.](#)

2f. Are procurement entities or government agencies required to use contracting data to produce annual procurement reviews, monitoring and evaluation frameworks, supplier performance reviews, or other tools and publications?

Yes No Explain

[Click here to enter text.](#)

Procurement Transparency

2g. Are there laws/regulations that recognize the right of the public to access procurement information? Yes No

Does the law require proactive disclosure, or disclosure upon request? *(If there is proactive disclosure, please note whether it is related to planning, tender, award, and contract or implementation phases.)* Yes No Explain:

[Click here to enter text.](#)

2h. Do the procurement laws/regulations specify how, or in which formats, procurement data should be made available to the public? (E.g. in a printed journal or register, online, in open format, etc.) Yes No Explain:

[Click here to enter text.](#)

2i. Are there **laws/regulations** that recognize the right of the public to access the following information types?

Phase	Data example	
Planning	Procurement plans	Yes <input type="checkbox"/> No <input type="checkbox"/>
Tender	Procurement notices (invitations to bid); bidding documents; flagged companies list	Yes <input type="checkbox"/> No <input type="checkbox"/>
Award	Award notifications (including winner, amount, reasons) for all award types (including non-competitive awards)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Summary of bid evaluation reports signed off by tender committees	Yes <input type="checkbox"/> No <input type="checkbox"/>
Contract	Full contracts (including scope of work)	Yes <input type="checkbox"/> No <input type="checkbox"/>
Implementation	Information about payments and project evaluation (procurement performance results, anti-corruption information, progress reports on implementation of the contract, handover certificates/certificates of completion)	Yes <input type="checkbox"/> No <input type="checkbox"/>

Citizen Participation

2j. Do the **procurement laws/regulations** require procuring entities to engage citizens in the procurement process? Yes No

If yes, how and at which stages? *[If a prompt is needed, potential examples include: 1) Public hearings to gain citizen feedback and buy-in in project planning (planning phase), 2) Complaints can be filed to alert authorities to fairness issues (tender phase), 3) Citizen monitoring of project implementation (implementation phase).*

[Click here to enter text.](#)

2k. Are all of the relevant laws and regulations on public procurement publicly accessible through a government website? Yes No Explain:

[Click here to enter text.](#)

2L. Are there discussions of new legislation or regulation that would significantly change the current legal environment for public procurement? Yes No Explain:

[Click here to enter text.](#)

2M. Does legislation explicitly define fraud and corruption/abuse of public office and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption? Yes No Explain:

[Click here to enter text.](#)

2N. Does legislation explicitly define conflict of interest and includes mechanisms for its prevention? Yes No Explain:

[Click here to enter text.](#)

2O. Does legislation stipulate that all procurement related documentation must be maintained? Yes No Explain:

[Click here to enter text.](#)

2P. Does legislation stipulate that public procurement operations must be subject to internal and external audit conducted by qualified specialists? Yes No Explain:

[Click here to enter text.](#)

SECTION 3: POLICY CONTEXT

General Policy

3a. Do you know of statements/policies from senior government leadership in favor of open contracting/disclosure of procurement data? Yes No Specify:

[Click here to enter text.](#)

Are these policies being implemented in practice? Please list/describe.

[Click here to enter text.](#)

3b. Are groups with special needs and marginalized groups such as PWDs, women, and youth recognized in the existing policies on public procurement? Please list/describe.

[Click here to enter text.](#)

Policy Leadership

3c. Are particular agencies (e.g. Ministry of Finance, Office of Public Procurement) taking the lead on procurement openness and reform? Please list/describe.

[Click here to enter text.](#)

Data Release Policies

3d. Do you know of specific policies and processes for the release of data at the following stages? Yes No Explain:

[Click here to enter text.](#)

Is there compliance? Yes No If no, why? [Click here to enter text.](#)

3d.1 Procurement Plans

[Click here to enter text.](#)

3d.2 Tender

[Click here to enter text.](#)

3d.3 Award Decisions

[Click here to enter text.](#)

3d.4 Contract Signature

[Click here to enter text.](#)

3d.5 Implementation/Project Evaluation

[Click here to enter text.](#)

Data Collection/Validation

3e. Are there policies/processes for the collection and validation of data at each stage? Yes No Explain:

[Click here to enter text.](#)

3f. Are these policies related to existing mechanisms (platforms and processes)? Yes No Explain:

[Click here to enter text.](#)

3g. Are these policies centralized, or does each agency create its own data collection policies? Yes No

Explain:

[Click here to enter text.](#)

3h. Is there a centralized data collection responsibility (agency and portal/tool) or are individual entities responsible for their own data collection, reporting, and disclosure? Yes No Explain:

[Click here to enter text.](#)

SECTION 4: TECHNICAL ASSESSMENT

Questions to data owners:

Primary respondents to this section should be government officials, in particular, data owners.

These questions are to be asked to data owners (ministry staff, procurement entity staff, etc.) and are aimed to gain a more specific understanding of the qualities of information they are gathering/making available through their specific procurement systems.

Managing or conducting the procurement process

4a. What key systems do you use in managing or conducting the procurement process?

[Click here to enter text.](#)

Can you provide a technical description of the electronic systems in use, if any?

[Click here to enter text.](#)

4b. What types of information are being collected about the procurement process through the use of these systems? (*Note if information is related to the following stages: planning, tender, award, contract, implementation.*)

[Click here to enter text.](#)

What types of information are being published for citizens' oversight about the procurement process through the use of these systems? (*Note if information is related to the following stages: planning, tender, award, contract, implementation.*)

[Click here to enter text.](#)

<u>Key Data Categories</u>	
The following information types are among those that procuring entities may be collecting.	
<p>Planning:</p> <ul style="list-style-type: none"> - Project identifier - Procurement plans - Budgets - Project identifiers - Approvals - Consultation documents <p>Tender:</p> <ul style="list-style-type: none"> - Tender - Bidding documents - Names of bidders - Tender dates/evaluation dates - Flagged companies list 	<p>Award:</p> <ul style="list-style-type: none"> - Award identifier - Award amount - Reasons for award <p>Contract:</p> <ul style="list-style-type: none"> - Contract documents - Info about winning supplier - Contract amount and dates <p>Implementation</p> <ul style="list-style-type: none"> - Milestones/implementation progress - Payments/financial progress - Termination information - Evaluation/results information/statistics

4c. How is this data collected and stored? (*Is it paper-based, stored in a database or Excel file, through another web-based system, etc.*).

[Click here to enter text.](#)

4d. If information is stored in a web-based system, is it in a structured format/open? Yes No Explain:

[Click here to enter text.](#)

4e. Are accompanying documents collected in the same system? (*E.g. contract, bidding documents,*

tender plans, etc.) Yes No Explain:

[Click here to enter text.](#)

4f. Who can access this information? (E.g. it is limited to particular staff of certain ministries, it is publicly available, etc.)

[Click here to enter text.](#)

4g. When can they access this information? (eg. as it is collected, after it is approved by a manager, once the contracting process has been completed, etc.)

[Click here to enter text.](#)

4h. Are there restrictions on public access to this information? (eg. fees paid, registration required, memberships obtained, captcha disabled. Additionally, some data may have licenses preventing distribution. If information or documents are licensed, please collect the license information.)

[Click here to enter text.](#)

Open & Structured

4j. Are data available in an open, structured, machine readable format for internal use? Yes No Explain:

[Click here to enter text.](#)

4k. Are data published online in an open and structured, machine-readable format for external use? Yes No Explain:

[Click here to enter text.](#)

Key Data Elements

4l. Are there consistent identifier numbers (like OCID) associated with the following entities? Yes No

If yes, please describe how this identifier is assigned. If no, please outline whether it is possible to link-together any of the planning, tender, award, contract and implementation stages of a contracting process using common identifiers.

Category	Identifier Number (Y/N)	How is identifier assigned?
Contracting Process	Yes <input type="checkbox"/> or No <input type="checkbox"/>	
Suppliers (companies that win)	Yes <input type="checkbox"/> or No <input type="checkbox"/>	
Procuring Entities	Yes <input type="checkbox"/> or No <input type="checkbox"/>	
Goods & Services (like UNSPSC)	Yes <input type="checkbox"/> or No <input type="checkbox"/>	

4p. Are identifiers stable and used across all stages of the procurement process? Yes No

4q. Are procurement IDs linked to IFMIS or other government public financial management (PFM) systems?

Yes No

Systems (Data Collection, Publication and Analytics)

4r. Is information being collected through transactional (e.g. eProcurement) systems or through manual reporting?

[Click here to enter text.](#)

4s. If procurement is conducted through both electronic and offline systems (e.g. procurement newsletters), what proportion of procurement is collected through these various systems?

[Click here to enter text.](#)

4t. Do existing system(s) provide functionality for bulk data export (e.g. to csv, xls(x) formats)? Yes No Explain:

[Click here to enter text.](#)

4u. Are systems developed using a service-oriented architecture (e.g. do API endpoints for accessing data programmatically exist)? Yes No Explain:

[Click here to enter text.](#)

4v. Are there active support contract(s) for the maintenance and extension of existing platform(s) for collecting, analysing, and sharing procurement data? Yes No Explain:

[Click here to enter text.](#)

Do vendor(s) have the necessary skills to extend functionality (e.g. adding bulk export or API endpoints, creating analytics, etc.)? Yes No Explain:

[Click here to enter text.](#)

4w. Do existing systems preserve versions of data, as new information is collected? Yes No If yes, How?

[Click here to enter text.](#)

SECTION 5: USER ENGAGEMENT

Citizen Engagement

5a. Please describe any efforts by procuring entities and oversight authorities (including guidance being provided and programs being implemented) to engage with citizens and the private sector in procurement matters.

[Click here to enter text.](#)

5b. What specific measures are providers of government data taking to ensure that procurement data is easily understandable by citizens?

[Click here to enter text.](#)

5c. Are data at each stage of the procurement process published in time for you to be able to use it for your purposes?

Yes No Explain:

[Click here to enter text.](#)

What reports are published for public use and scrutiny for each public contract /procurement? *e.g are summary evaluation reports disclosed /published, are environmental impact assessments published; progress reports on contract implementation stage proactively disclosed /published?* How frequently?

[Click here to enter text.](#)

Feedback/Redress

5d. Is there a feedback redress mechanism in place for procurement activities? Yes No Explain:

[Click here to enter text.](#)

At which stages can feedback/petitions/complaints be provided?

[Click here to enter text.](#)

Use Cases

5e. Kindly provide examples where someone (or someone you know) has used procurement data for policy making, business development, or advocacy?

[Click here to enter text.](#)

5f. If you had greater access to open contracting data or increased resources, how would you use that data? Which are the key priorities?

[Click here to enter text.](#)

5g. How has user engagement promoted/enhanced compliance to laws that relate to preferential and reservations in public contracting or women, youth, PWDs and other minorities eg Access to Government Procurement Opportunities (AGPO) in Kenya?

[Click here to enter text.](#)

SECTION 6: STAKEHOLDER IDENTIFICATION

Section 6a: Government

6a.1 Who do you think are the most important government stakeholders/agencies for procurement data publication, analysis, and use?

[Click here to enter text.](#)

6a.2 Are there ongoing government initiatives/programs where open contracting data is already being used or efforts aimed at increasing the level of openness in contracting processes? Yes No If yes, please describe: [Click here to enter text.](#)

6a.3 How do you perceive the attitudes and awareness of each of the primary government stakeholders/agencies towards increased openness in contracting?[Click here to enter text.](#)

6a.4 In the scale of 1-5 (1 being the lowest and 5 being the highest influencer) how influential do you consider the primary government stakeholders in guiding decisions on how procurement data are collected, disclosed, shared, and used? Explain:

[Click here to enter text.](#)

6a.5 How open are the primary government stakeholders to partnership and engagement with external (especially non-government) stakeholders? Do you have any advice for engaging these stakeholders/agencies?

[Click here to enter text.](#)

6a.6 How capable are government stakeholders/agencies in matters of data collection, disclosure, analysis, and use? (*for strategic planning, conducting oversight of procurement processes, etc.*)

[Click here to enter text.](#)

6a.7 What are the key capacity needs that you perceive?

[Click here to enter text.](#)

6a.8 How do you think these capacity needs could best be addressed? (*e.g. additional financial resources, training, dashboards/visuals, etc.*)?

[Click here to enter text.](#)

6a.9 Where do you think enhanced access to procurement data and procurement data analysis can have the largest impact on governmental functioning? [*If a prompt is needed, potential examples include: 1) budget allocation processes, 2) decision-making processes, 3) policy formulation, etc.*]

[Click here to enter text.](#)

6a.10 Describe an example when you or citizens you know about or Civil society groups have utilized published reports to scrutinize, ask questions about a particular procurement process? Was the government responsive? what changes occurred as a result?

[Click here to enter text.](#)

SECTION 6B: CIVIL SOCIETY/NETWORKS/INFOMEDIARY/MEDIA

6b.1 Who do you think are the most important civil society and media stakeholders for procurement data analysis, explanation, and use in your country?

Civil Society:
Networks:
Infomediaries:
Media:

6b.2 Are there ongoing civil society initiatives/programs where open data on procurement is already being used or advocacy initiatives aimed at increasing the level of openness in contracting processes? Yes No If yes, please describe:

[Click here to enter text.](#)

6b.3 How do you perceive the attitudes and awareness of each of these stakeholders (from 6b.1) toward (proactive disclosure of public contracting information and citizens' scrutiny and feedback at each stage of public contracting?

[Click here to enter text.](#)

6b.4 In the scale of 1-5 (1 being the lowest and 5 being the highest influencer), how influential do you consider each of these stakeholders (from 6b.1) in affecting decisions on how procurement data are

collected, disclosed, shared, and used? Explain

[Click here to enter text.](#)

6b.5 How open do you consider each of these stakeholders (from 6b.1) to partnership and engagement with other stakeholders? [Click here to enter text.](#)

Do you have any advice for engaging these organizations?

[Click here to enter text.](#)

6b.6 How capable are civil society and media stakeholders in matters of data collection, disclosure, analysis, and use? (*i.e. for monitoring government contracts, investigating potential corruption, etc.*)

[Click here to enter text.](#)

6b.7 What are the key capacity needs that you perceive?

[Click here to enter text.](#)

6b.8 How do you think these capacity needs could best be addressed? (*e.g. additional financial resources, training, dashboards/visuals, etc.*)?

[Click here to enter text.](#)

6b.9 Where do you think enhanced access to procurement data and procurement data analysis can have the largest impact on civil society/media functioning? [*If a prompt is needed, potential examples include: 1) budget allocation processes, 2) decision-making processes, 3) policy formulation, etc.*]

[Click here to enter text.](#)

6b.10 What is the level citizens' utility of feedback mechanisms?

[Click here to enter text.](#)

6b.11 What stages of the public contracting processes need to be opened up more for public scrutiny?

[Click here to enter text.](#)

6b.12 What additional mechanisms for citizens' engagement need to be established or strengthened?

[Click here to enter text.](#)

SECTION 6C: INTERNATIONAL ORGANIZATIONS/DONOR AGENCIES

6c.1 Which international organizations and donor agencies do you view as being most involved in engaging on (or providing support to) procurement reform issues? (*This can include organizations that are focused on procurement as it relates to specific sectors, such as extractive industries.*)

International organizations:

Donor agencies:

6c.2 Are there ongoing initiatives where open data on procurement is already being used or initiatives aimed at increasing the level of openness in contracting processes? Yes No If yes, please describe:

[Click here to enter text.](#)

6c.3 How do you perceive the attitudes and awareness of each of these stakeholders (from 6c.1) toward open contracting?

[Click here to enter text.](#)

6c.4 In the scale of 1-5 (1 being the lowest and 5 being the highest influencer), how influential do you consider each of these stakeholders (from 6c.1) in affecting decisions on how procurement data are

collected, disclosed, shared, and used?

[Click here to enter text.](#)

6c.5 How open do you consider each of these stakeholders (from 6c.1) to partnership and engagement with other stakeholders?

[Click here to enter text.](#)

Do you have any advice for engaging these organizations?

[Click here to enter text.](#)

6c.6 How capable are government stakeholders/agencies in matters of data collection, disclosure, analysis, and use? (*i.g. for strategic planning, conducting oversight of procurement processes, etc.*)

[Click here to enter text.](#)

6c.7 What are the key capacity needs that you perceive?

[Click here to enter text.](#)

6c.8 How do you think these capacity needs could best be addressed? (*e.g. additional financial resources, training, dashboards/visuals, etc.*)?

[Click here to enter text.](#)

6c.9 How capable are these stakeholders (from 6c.1) in matters of data collection, disclosure, analysis, and use?

[Click here to enter text.](#)

What are the key capacity needs that you perceive?

[Click here to enter text.](#)

6c.11 Where do you think enhanced access to procurement data and procurement data analysis can have the largest impact on governmental functioning? [*If a prompt is needed, potential examples include: 1) budget allocation processes, 2) decision-making processes, 3) policy formulation on local level, etc.*]

[Click here to enter text.](#)

6c.12 Are processes that result in government to government contracts open and proactively disclosed?

[Click here to enter text.](#)

6c.13 In your assessment what is the level of citizen participation in processes that result in government to government contracts?

[Click here to enter text.](#)

SECTION 6D: PRIVATE SECTOR

6d.1 Which private sector actors (e.g. small and medium enterprises, large national firms, international firms) do you view as being most involved in engaging on (or providing support to) procurement reform issues? [Click here to enter text.](#)

6d.2 Are there ongoing private sector initiatives/programs where open contracting data is already being used or advocacy initiatives aimed at increasing the level of openness in contracting processes? If yes, please describe:[Click here to enter text.](#)

6d.3 How do you perceive the attitudes and awareness of each of private sector groups toward increased transparency of procurement data or online procurement?[Click here to enter text.](#)

6d.4 In the scale of 1-5 (1 being the lowest and 5 being the highest influencer), how influential do you consider each group in affecting decisions on how procurement data are collected, disclosed, shared, and used?[Click here to enter text.](#)

6d.5 What is the role of international firms with respect to open contracting? Do you believe that international firms support enhanced procurement transparency? [Click here to enter text.](#)

6d.6 Do you believe that international firms are potential partners in advocating for increased openness and disclosure?

[Click here to enter text.](#)

6d.7 How open do you consider each private sector group to partnership and engagement with other stakeholders? Do you have advice for engaging these?

[Click here to enter text.](#)

6d.8 How capable are private sector stakeholders in matters of data collection, disclosure, analysis, and use? (*i.g. for monitoring opportunities, ensuring a fair process, etc.*)

[Click here to enter text.](#)

6d.9 What are the key capacity needs that you perceive?

[Click here to enter text.](#)

6d.10 How do you think these capacity needs could best be addressed? (*e.g. additional financial resources, training, dashboards/visuals, etc.*)?

[Click here to enter text.](#)

6d.11 Which groups of private sector actors (e.g. small and medium enterprises, large national firms, international firms) would benefit most from procurement data analysis, intermediary functions, and use?

[Click here to enter text.](#)

6d.12 Where do you think enhanced access to procurement data and procurement data analysis can have the largest impact on governmental functioning? [*If a prompt is needed, potential examples include: 1) budget allocation processes, 2) decision-making processes, 3) policy formulation on local level, etc.*]

[Click here to enter text.](#)